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Wednesday
August 30, 1995

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WASHINGTON, DC

WHEN: September 12 at 9:00 am

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

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Atlanta, GA

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

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

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 HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Ivermectin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Merck Research Laboratories, Division of Merck & Co., Inc. The supplement provides for subcutaneous use of ivermectin injection as an antiparasitic in ranch-raised foxes.

EFFECTIVE DATE: August 30, 1995.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Merck Research Laboratories, Division of Merck & Co., Inc., P.O. Box 2000, Rahway, NJ 07065, is sponsor of NADA 128–409 which provides for the use of Ivomec® Injection (ivermectin) as an antiparasitic for horses, cattle, reindeer, and swine. The supplement provides for use of 0.27 percent ivermectin as an antiparasitic for treatment and control of ear mites (*Otodectes cynotis*) in ranch-raised foxes. Approval is based in part on data and information in Public Master File (PMF) 5307 established under the National Research Support Project No. 7 (NRSP–7) (formerly the Interregional Research Project No. 4 (IR–4)), Northcentral Region, Michigan State University, East Lansing, MI 48824. The supplemental NADA is approved as of July 13, 1995, and the regulations are amended in § 522.1192 (21 CFR 522.1192) to reflect the approval. The basis of approval is discussed in the freedom of information summary. Also, the heading of § 522.1192 is amended to read ''Ivermectin injection.''

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplement does not qualify for marketing exclusivity because the supplement does not contain reports of new clinical or field investigations (other than bioequivalence or residue studies) essential to the approval and conducted or sponsored by the applicant.

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

List of Subjects in 21 CFR Part 522

Animal drugs

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

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

2. Section 522.1192 is amended by revising the section heading, the heading for paragraph (a)(3), and by adding new paragraph (d)(5) to read as follows:

§ 522.1192 Ivermectin injection.

(a) * * *

(3) *Piglets 70 pounds or less and ranch-raised foxes.* * * *

* * * * *

(d) * * *

(5) *Ranch-raised foxes.* (i) *Amount.* 200 micrograms per kilogram body weight. Repeat in 3 weeks.

(ii) *Indications for use.* For treatment and control of ear mites (*Otodectes cynotis*).

(iii) *Limitations.* For subcutaneous use only. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism.

Dated: August 14, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–21454 Filed 8–29–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 529

Certain Other Dosage Form New Animal Drugs; Gentamicin Sulfate Intrauterine Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Macleod Pharmaceuticals, Inc. The ANADA provides for the use of a generic gentamicin solution for control of bacterial infections of the uterus (metritis) of horses and as an aid in improving conception in mares with uterine infections caused by bacteria sensitive to gentamicin.

EFFECTIVE DATE: August 30, 1995.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1612.

SUPPLEMENTARY INFORMATION: Macleod Pharmaceuticals, Inc., 2600 Canton Ct., Fort Collins, CO 80525, is the sponsor of ANADA 200–115, which provides for the use of a generic gentamicin solution (100 milligrams/milliter (mg/mL)) for control of bacterial infections of the uterus (metritis) in horses and as an aid in improving conception in mares with uterine infections caused by bacteria sensitive to gentamicin.

Approval of ANADA 200–115 for Macleod Pharmaceuticals' gentamicin sulfate solution (100 mg/mL gentamicin) is as a generic copy of Schering's Gentocin® Solution (100mg/mL gentamicin) in NADA 046724. The ANADA is approved as of July 21, 1995, and the regulations are amended in 21 CFR 529.1044a to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

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

List of Subjects in 21 CFR Part 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 529 is amended as follows:

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 529 continues to read as follows:

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

§ 529.1044a [Amended]

2. Section 529.1044a *Gentamicin sulfate intrauterine solution* is amended in paragraph (b) by removing ''000061, 057561, and 000856'' and adding in its place ''000061, 000856, 057561, and 058711''.

Dated: August 14, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–21455 Filed 8–29–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 91

[Docket No. FR 3611–F–10]

Consolidated Submission for Community Planning and Development Programs

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: As part of HUD's effort to consolidate and streamline submission requirements for the four formula grant programs, the Department published in the **Federal Register** on January 5, 1995, a final rule that consolidated into a single submission the planning and application aspects of the Department's Community Development Block Grant (CDBG), Emergency Shelter Grant (ESG), HOME Investment Partnerships (HOME), and Housing Opportunities for Persons with AIDS (HOPWA) programs. The purpose of this rule is to make an amendment to the deadline for submission of the Consolidated Plan in order to receive Community Development Block Grant funds.

EFFECTIVE DATE: September 29, 1995.

FOR FURTHER INFORMATION CONTACT: James R. Broughman, Director, Office of Block Grant Assistance, Office of Community Planning and Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–3587 (voice) or (202) 708–2565 (TDD). (These are not toll-free numbers.) Copies of this amendment will be made available on tape or large print for those with impaired vision that request them. They may be obtained at the above address.

SUPPLEMENTARY INFORMATION: On January 5, 1995 (60 FR 1878), the Department published in the **Federal Register**, a final rule that consolidated into a single submission the planning and application aspects of the Department's Community Development Block Grant (CDBG), Emergency Shelter Grant (ESG), HOME Investment Partnerships (HOME), and Housing Opportunities for Persons with AIDS (HOPWA) programs. The purpose of this rule is to make an amendment to the deadline for submission of the Consolidated Plan in order to receive Community Development Block Grant funds.

The regulation requires jurisdictions to align the program years for the four formula programs and to submit the Consolidated Plan 45 days before the start of the program year instead of the 30 days previously recommended for submission of the CDBG Final Statement. The final date for submission of all Consolidated Plans was established as August 16. The final date previously established for submission of all CDBG final statements had been the first working day in September. To provide maximum flexibility during this transition period, HUD is amending the Consolidated Plan rule to permit the submission of the Consolidated Plan for Fiscal Year 1995 to be made not later than September 30, 1995.

Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. However, part 10 provides that prior public procedure will be omitted if HUD determines that it is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1).

In this case, HUD finds that publishing this rule providing for a new consolidated plan deadline for FY 1995 for public comment would be impracticable and contrary to the public interest. Maximum flexibility in submitting consolidated plans during this first year of transition following publication of the final rule establishing the consolidated plan is in the public interest. The time necessary to allow for public comment would preclude the possibility of making the rule effective before the extended deadline date of September 30, 1995. It would be impracticable, therefore, to extend greater flexibility to grantees if a public comment period was provided before the rule takes effect.

Other Matters

Executive Order 12866

This final rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 on Regulatory Planning and Review, issued by the President on September 30, 1993.

Any changes made in this final rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) in connection with the development of the January 5, 1995 rule. The Finding of No Significant Impact remains applicable to this rule, and is available for public inspection and copying Monday through Friday, 7:30 a.m. until 5:30 p.m. in the office of the Rules Docket Clerk, Office of General Counsel, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Regulatory Agenda

This rule was not listed in the Department's Semiannual Agenda of Regulations published on May 8, 1995 (60 FR 23368) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive order 12612, Federalism, has determined that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under the Order. The change made by this rule increases flexibility for jurisdictions during the FY 1995 transition year.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have a potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs, as those policies relate to family concerns, will result from promulgation of this rule.

List of Subjects in 24 CFR Part 91

Grant programs—Indians, Homeownership, Low and moderate income housing, Public housing.

Accordingly, 24 CFR part 91 is amended as follows:

PART 91—[AMENDED]

1. The authority citation for part 91 continues to read as follows:

Authority: 432 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

2. In § 91.15, paragraph (a)(2) is amended to read as follows:

§ 91.15 Submission date

(a) * * *

(2) In no event will HUD accept a submission earlier than November 15 or later than August 16 of the Federal fiscal year for which the grant funds are appropriated, except for Fiscal Year 1995 in which HUD will accept a submission no later than September 30, 1995. (Failure to submit the plan by August 16 will automatically result in a loss of the CDBG funds to which the jurisdiction would otherwise be entitled, except for Fiscal Year 1995).

* * * * *

Dated: August 25, 1995.

Kenneth C. Williams,

Deputy Assistant Secretary for Grant Programs.

[FR Doc. 95–21587 Filed 8–29–95; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD02–95–011]

RIN 2115–AE46

Special Local Regulations; Ducks on the Ohio; Ohio River Mile 792.0–793.0

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: A special local regulation is being adopted for the Ducks on the Ohio which will be held on the Ohio River near Evansville, Indiana on September 9, 1995. This regulation is needed to control vessel traffic in the immediate vicinity of the event. The regulation will restrict general navigation in the regulated area for the safety of spectators, participants and through traffic.

EFFECTIVE DATE: This regulation is effective from 1 p.m. to 4 p.m. local time on September 9, 1995.

FOR FURTHER INFORMATION CONTACT: LCDR J.O. Jaczinski, Chief, Boating Affairs Branch, Second Coast Guard District, 1222 Spruce Street, St. Louis, Missouri 63103–2832. The telephone number is (314) 539–3971, fax (314) 539–2685.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LCDR J.O. Jaczinski, Project Officer, Second Coast Guard District, Boating Safety Division, and LT S. Moody, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, the sponsor's late submission of the regatta application left insufficient time to publish a notice of proposed rulemaking in advance of the scheduled event. The Coast Guard deems it to be in the public's best interest to issue a regulation immediately.

Background and Purpose

The Ducks on the Ohio consists of a duck race. The show will begin at 1 p.m. local time on September 9, 1995 and will end at 4 p.m. local time. In order to provide for the safety of spectators and participants, and for the safe passage of through traffic, the Coast Guard will restrict vessel movement in the regulated area. The river will be closed during part or all of the effective period to all vessel traffic except official regatta vessels and patrol craft. These regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because of the event's short duration.

Federalism Asessment

The Coast Guard has analyzed this action in accordance with the principles and criteria of Executive Order 12612 and has determined that this regulation does not raise sufficient federalism

implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.C of Commandant Instruction M16475.1B (as revised by 59 FR 38654; July 29, 1994) this rule is excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35.T02–046 is added, to read as follows:

§ 100.35–T02–046 Ohio River near Evansville, Indiana

(a) *Regulated area.* Ohio River mile 792.0 to 793.0.

(b) *Special local regulations.* (1) Except for official regatta vessels and patrol craft no person or vessel may enter or remain in the regulated area without permission of the Patrol Commander.

(2) The Coast Guard Patrol Commander will be a commissioned or petty officer designated by the Commanding Officer, Marine Safety Office, Louisville, Kentucky and may be contacted, during the event, on channel 16 (156.8 MHZ) by the call sign ''Coast Guard Patrol Commander.'' The Patrol Commander may:

(i) Direct the anchoring, mooring, or movement of any vessel within the regulated area,

(ii) Restrict vessel operation within the regulated area to vessels having particular operating characteristics,

(iii) Terminate the marine event or the operation of any vessel when necessary for the protection of life and property, and

(iv) Allow vessels to transit the regulated area whenever an event is not being conducted and the transit can be completed.

(3) Coast Guard commissioned or petty officers will patrol the event on board patrol vessels which display the Coast Guard Ensign. If radio or other voice communications are not available to communicate with a vessel, they will use a series of sharp, short blasts by whistle or horn to signal the operator of any vessel in the vicinity of the regulated area to stop. When signaled, the operator of any vessel in the immediate vicinity of the regulated area shall stop the vessel immediately and shall proceed as directed.

(4) Vessels desiring to transit the regulated area may do so only with the prior approval and direction of the Patrol Commander.

(5) The Patrol Commander will terminate enforcement of this section at the conclusion of the marine event if earlier than the announced termination time.

(c) *Effective date.* This section is effective from 1 p.m. to 4 p.m. local time on September 9, 1995.

Dated: August 17, 1995.

Paul M. Blayney,

Rear Admiral, U.S. Coast Guard, Commander, Second Coast Guard District.

[FR Doc. 95–21550 Filed 8–29–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD02–95–016]

RIN 2115–AE46

Special Local Regulations; Airshow on the River; Lower Mississippi River Mile 734.5–737.0

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: A special local regulation is being adopted for the Airshow on the River which will be held on the Lower Mississippi River near Memphis, Tennessee on September 2, 1995. This regulation is needed to control vessel traffic in the immediate vicinity of the event. The regulation will restrict general navigation in the regulated area for the safety of spectators, participants and through traffic.

EFFECTIVE DATE: This regulation is effective from 2 p.m. to 6 p.m. local time on September 2, 1995.

FOR FURTHER INFORMATION CONTACT: LCDR J.O. Jaczinski, Chief, Boating Affairs Branch, Second Coast Guard District, 1222 Spruce Street, St.. Louis, Missouri 63103–2832. The telephone number is (314) 539–3971, fax (314) 539–2685.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LCDR J.O. Jaczinski, Project Officer, Second Coast Guard District, Boating Safety Division and LT S. Moody, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, the sponsor's late submission of the regatta application left insufficient time to publish a notice of proposed rulemaking in advance of the scheduled event. The Coast Guard deems it to be in the public's best interest to issue a rule immediately.

Background and Purpose

The Airshow on the River consists of an aircraft fly-by and acrobatics show. The event will begin at 2 p.m. local time on September 2, 1995 and will end at 6 p.m. local time. In order to provide for the safety of spectators and participants, and for the safe passage of through traffic, the Coast Guard will restrict vessel movement in the regulated area. The river will be closed during part or all of the effective period to all vessel traffic except official regatta vessels and patrol craft. These regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because of the event's short duration.

Federalism Assessment

The Coast Guard has analyzed this action in accordance with the principles and criteria of Executive Order 12612 and has determined that this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.C of Commandant Instruction M16475.1B, (as revised by 59 FR 38654; July 29, 1994) this rule is excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35.T02–061 is added, to read as follows:

§ 100.35–T02–061 Lower Mississippi River near Memphis, Tennessee.

(a) *Regulated Area.* L. Mississippi River mile 734.5–737.0

(b) *Special local regulations.* (1) Except for official regatta vessels and patrol craft no person or vessel may enter or remain in the regulated area without permission of the Patrol Commander.

(2) The Coast Guard Patrol Commander will be a commissioned or petty officer designated by the Commanding Officer, Marine Safety Office Memphis, Tennessee and may be contacted, during the event, on channel 16 (156.8 MHZ) by the call sign ''Coast Guard Patrol Commander.'' The Patrol Commander may:

(i) Direct the anchoring, mooring, or movement of any vessel within the regulated area.

(ii) Restrict vessel operation within the regulated area to vessels having particular operating characteristics,

(iii) Terminate the marine event or the operation of any vessel when necessary for the protection of life and property, and

(iv) Allow vessels to transit the regulated area whenever an even is not being conducted and the transit can be completed.

(3) Coast Guard commissioned or petty officers will patrol the event on board patrol vessels which display the Coast Guard Ensign. If radio or other voice communications are not available to communicate with a vessel, they will use a series of sharp, short blasts by whistle or horn to signal the operator of any vessel in the vicinity of the regulated area to stop. When signaled, the operator of any vessel in the immediate vicinity of the regulated area shall stop the vessel immediately and shall proceed as directed.

(4) Vessels desiring to transit the regulated area may do so only with the prior approval and direction of the Patrol Commander.

(5) The Patrol Commander will terminate enforcement of this section at the conclusion of the marine event if earlier than the announced termination time.

(c) *Effective date.* This section becomes effective from 2 p.m. to 6 p.m. local time on September 2, 1995.

Dated: August 17, 1995.

Paul M. Blayney,

Rear Admiral, U.S. Coast Guard, Commander, Second Coast Guard District.

[FR Doc. 95–21551 Filed 8–29–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD 09–95–025]

Special Local Regulation; NFBRA Red Dog Kilo Time Trials, Niagara River, Tonawanda, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: A special local regulation is being adopted for the NFBRA Red Dog Kilo Time Trials. This event will be held on the Niagara River, Tonawanda, NY, on September 23, 1995. The NFBRA Red Dog Kilo Time Trials will have an estimated 40–45 offshore race boats racing a closed course race on the Niagara River, Tonawanda Channel, which could pose hazards to navigation in the area. This regulation will restrict general navigation on the Niagara River, Tonawanda Channel, between Tonawanda Channel Buoy 31 to approximately ½ mile southwest of Twomile Creek, and is needed to provide for the safety of life, limb, and property on navigable waters during the event.

EFFECTIVE DATE: This regulation is effective from 10:30 a.m. until 5 p.m. September 23, 1995.

FOR FURTHER INFORMATION CONTACT: Marine Science Technician Second Class Jeffrey M. Yunker, Ninth Coast Guard District, Aids to Navigation and Waterways Management Branch, Room 2083, 1240 East Ninth Street, Cleveland, Ohio, 44199–2060, (216) 522–3990.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District, until August 7, 1995, and there was not sufficient time remaining to publish a proposed final rule in advance of the event. The Coast Guard has decided to proceed with a temporary rule for this year's event and publish a NPRM, as part of the Great Lakes annual marine events list, prior to next year's event.

Drafting Information

The drafters of this notice are Lieutenant Junior Grade Byron D. Willeford, Project Officer, Ninth Coast Guard District, Aids to Navigation and Waterways Management Branch, and Lieutenant Charles D. Dahill, Project Attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulation

The NFBRA Red Dog Kilo Time Trials will be held on the Niagara River, Tonawanda Channel, Tonawanda, NY on September 23, 1995. This event will have an estimated 40–45 offshore race boats racing a closed course race on the Niagara River, Tonawanda Channel, which could pose hazards to navigation in the area. The effect of this regulation will be to restrict general navigation on the Niagara River, Tonawanda Channel, between Tonawanda Channel Buoy 31 to approximately ½ mile southwest of Twomile Creek, for the safety of spectators and participants. This regulation is necessary to ensure the protection of life, limb, and property on navigable waters during this event. Any vessel desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Officer in Charge, U.S. Coast Guard Station Buffalo, NY).

This regulation is issued pursuant to 33 U.S.C. 1233 as set out in the authority citation for all of Part 100.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard is conducting an environmental analysis for this event pursuant to section 2.B.2.c of Coast Guard Commandant Instruction

M16475.1B, and the Coast Guard Notice of final agency procedures and policy for categorical exclusions found at (59 FR 38654, July 29, 1994).

Economic Assessment and Certification

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of the DOT is unnecessary.

Collection of Information

This regulation will impose no collection of information requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulation

In consideration of the foregoing, part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35 T09–025 is added to read as follows:

§ 100.35 T09–025 NFBRA Red Dog Kilo Time Trials, Niagara River, Tonawanda, NY

(a) *Regulated area.* That portion of the Niagara River, Tonawanda Channel, between Tonawanda Channel Buoy 31 to approximately ½mile southwest of Twomile Creek along a line drawn from 43°00′45″ N 078°55′06″ W to 43°00′28″ N 078°54′56″ W (Sipco Oil Company). (NAD 83).

(b) *Special local regulation.* This section restricts general navigation in the regulated area for the safety of spectators and participants. Any vessel desiring to transit the regulated area may do so only with prior approval of the Patrol Commander.

(c) *Patrol Commander.* (1) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander (Officer in Charge, U.S. Coast Guard Station Buffalo, NY). The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign ''Coast Guard Patrol Commander.''

(2) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(3) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(4) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(5) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life, limb, or property.

(6) All persons in the area shall comply with the orders of the Coast Guard Patrol Commander.

(d) *Effective date:* This section is effective from 10:30 a.m. until 5 p.m. on September 23, 1995, unless extended or terminated sooner by the Coast Guard Group Commander Buffalo, NY.

Dated: August 17, 1995.

Paul J. Pluta,

Captain, U.S. Coast Guard, Commander, Ninth Coast Guard District Acting.

[FR Doc. 95–21560 Filed 8–29–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD 07–95–054]

RIN 2115–AE84

Regulated Navigation Area: Atlantic Ocean, Charleston, SC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a regulated navigation area in the territorial waters of the United States offshore from Charleston, South Carolina. The area is needed to protect federal interests in the sunken submarine CSS HUNLEY, from any unauthorized activity that may disturb the site.

EFFECTIVE DATE: This regulation becomes effective at noon on August 11, 1995.

FOR FURTHER INFORMATION CONTACT: LCDR Michael Millar, Chief of Maritime Safety, U.S. Coast Guard Marine Safety Office, Charleston, SC 29401, (803) 724–7683.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The remains of the CSS HUNLEY, a submarine sunk off the coast of Charleston, South Carolina in 1864, have been located near the site of the sunken vessel USS HOUSATONIC, the vessel sunk by the CSS HUNLEY during the Civil War. In order to prevent damage to the submarine, looting or unauthorized salvage, a regulated navigation area is needed to protect the vessel, considered property of the United States government, from being disturbed.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to protect the submarine from damage and looting due to unauthorized activity.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B,

this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new § 165.714 is added to read as follows:

§ 165.714 Regulated Navigation Area; Atlantic Ocean, Charleston, SC

(a) *Location.* The following area is a Regulated Navigation Area: A trapezoid at the water surface, and the entire water column from surface to seabed inclusive of the vessel, bounded by the following four coordinates:

	Latitude	Longitude
Western boundary.	32°42′56″ N	79°47′34″ W
Southern boundary.	32°42′32″ N	79°46′42″ W
Eastern boundary.	32°43′26″ N	79°45′27″ W
Northern boundary.	32°43′56″ N	79°46′08″ W

(NAD 83)

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, all vessels and persons are prohibited from anchoring, diving, laying cable or conducting salvage operations in this zone except as authorized by the Captain of the Port.

Dated: August 11, 1995.

R. T. Rufe, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 95–21553 Filed 8–29–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD01–95–129]

RIN 2115–AA97

Safety Zone: Brick Summerfest Fireworks, Metedeconk River, Brick, NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on August 31, 1995, from 8 p.m. until 10 p.m., for the Brick Summerfest fireworks display located in the Metedeconk River, Brick, New Jersey. This safety zone closes all waters of the Metedeconk River within a 300 yard radius from the center of the fireworks platform located on Windward Beach, Brick, New Jersey.

EFFECTIVE DATE: This rule is effective August 31, 1995, from 8 p.m. until 10 p.m., unless extended or terminated sooner by the Coast Guard Captain of the Port, New York.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) K. Messenger, Maritime Planning Staff Chief, Coast Guard Group New York, (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LTJG K. Messenger, Project Manager, Coast Guard Group New York and CDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM, and for making this regulation effective less than 30 days after **Federal Register** publication. Due to the date this application was received, there was insufficient time to draft and publish a notice of proposed rulemaking that allows for a reasonable comment period prior to the event. The delay encountered if normal rulemaking procedures were followed would effectively cancel this event. Cancellation of this event is contrary to the public interest. Adequate measures are being taken to ensure mariners are made aware of this regulation. Notification of this rule will be published in the First Coast Guard District's Local Notice to Mariners, and announced via Safety Marine Information Broadcasts.

Background and Purpose

The Brick Township Chamber of Commerce submitted an Application for Approval of Marine Event for a fireworks program on Windward Beach in the Metedeconk River. This regulation establishes a temporary safety zone in the waters of the Metedeconk River on August 31, 1995, from 8 p.m. until 10 p.m., unless extended or terminated sooner by the Coast Guard Captain of the Port New York. This safety zone prevents vessels from transiting a portion of the Metedeconk River within a 300 yard radius of the fireworks platform located on the ''T dock'' pier, on Windward Beach, Brick, New Jersey, in the approximate position 40°03′25″ N latitude, 074°06′47″ W longitude (NAD 1983). It is needed to protect mariners from the hazards associated with fireworks exploding in the area.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This safety zone closes a portion of the Metedeconk River, off of Windward Beach, to vessel traffic on August 31, 1995, from 8 p.m. until 10 p.m., unless extended or termination sooner by the Captain of the Port, New York. No commercial vessels are known to transit this river. Although this regulation prevents vessel traffic from transiting through the portion of the Metedeconk River affected by the safety zone, the effect of this regulation will not be significant for several reasons: The duration of the event is limited; the event is at a late hour; mariners can transit past the safety zone to the south of the affected area; and the extensive, advance advisories that will be made.

Accordingly, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard

must consider whether this regulation will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under Section 3 of the Small Business Act (15 U.S.C. 632).

For reasons given in the Regulatory Evaluation, the Coast Guard expects the impact of this regulation to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, revised 59 FR 38654, July 29, 1994, the promulgation of this regulation is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket. Under the National Environmental Policy Act, the approval of the permit for marine event for this event is a federal action which is categorically excluded in accordance with section 2.B.2.e(35)(h) of Commandant Instruction M16475.1B, as amended, July 29, 1994. This fireworks display lasts less than 30 minutes and is expected to involve less than 200 spectator craft.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Temporary Regulation

For reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary § 165.T01–129 is added to read as follows:

§ 165.T01–129 Safety Zone; Brick Summerfest Fireworks, Metedeconk River, Brick, New Jersey.

(a) *Location.* All waters of the Metedeconk River within a 300 yard radius of the fireworks platform located on the ''T dock'' pier, on Windward Beach, Brick, New Jersey, in the approximate position 40°03′25″ N latitude, 074°06′47″ W longitude (NAD 1983).

(b) *Effective period.* This section is in effect on August 31, 1995, from 8 p.m. until 10 p.m., unless extended or terminated sooner by the Captain of the Port, New York.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply to this safety zone.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: August 19, 1995.

J. Rutkovsky,

Commander, U.S. Coast Guard, Captain of the Port New York, Acting.

[FR Doc. 95–21561 Filed 8–29–95; 8:45 am]

BILLING CODE 4910–14–M '

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–033–1–7037a; FRL–5276–1]

Approval and Promulgation of Implementation Plans Georgia: Approval of Revisions to Minor Source Permit Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Georgia State Implementation Plan (SIP) to allow the State of Georgia to issue Federally enforceable state operating permits (FESOP). On March 15, 1995, the State of Georgia through the Georgia Department of Natural Resources, Environmental Protection Division (EPD) submitted a SIP revision fulfilling the requirements necessary for a state FESOP program to become Federally enforceable. In order to extend the Federal enforceability of Georgia's FESOP program to hazardous air pollutants (HAP), EPA is also approving Georgia's FESOP program pursuant to section 112 of the Clean Air Act as amended in 1990 (CAA) so that the State may issue FESOP for HAP.

DATES: This final rule will be effective October 30, 1995 unless adverse or critical comments are received by September 29, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to Yolanda Adams, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Air Protection Branch, Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Yolanda Adams, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365. The telephone number is 404/347–3555 x4149. Reference file GA033–01–7037.

SUPPLEMENTARY INFORMATION: On March 15, 1995, the State of Georgia through the EPD submitted a SIP revision designed to make certain permits issued under Georgia's existing minor source operating permit program Federally enforceable pursuant to EPA requirements as specified in a **Federal Register** document, ''Requirements for the preparation, adoption, and submittal of implementation plans; air quality, new source review; final rules.'' (see 54 FR 22274, June 28, 1989). The State will continue to issue permits which are not Federally enforceable under its existing minor source operating permit rules as

it has done in the past. The SIP revision which is the subject of today's rulemaking adds additional requirements to the State's current minor source operating permit program which allows the State to issue Federally enforceable operating permits, and provides for the issuance of generic operating permits.[1] This voluntary SIP revision allows EPA and citizens under the CAA to enforce terms and conditions of Georgia's FESOP program. Operating permits that are issued under the State's FESOP program that is approved into the State SIP and under section 112(l) will provide Federally enforceable limits to an air pollution source's potential to emit. Limiting of a source's potential to emit through Federally enforceable operating permits can affect a source's applicability to Federal regulations such as title V operating permits, New Source Review (NSR) preconstruction permits, Prevention of Significant Deterioration (PSD) preconstruction permits for criteria pollutants and Federal air toxics requirements mandated under section 112 of the CAA.

In the aforementioned June 28, 1989, **Federal Register** document, EPA listed five criteria necessary to make a State's minor source operating permit program Federally enforceable and, therefore, approvable into the SIP. This revision satisfies the five criteria for Federal enforceability of the State's FESOP program.

The first criteria for a state's operating permit program to become Federally enforceable is that the permit program that the state wishes to be Federally enforceable must be approved into the SIP. On March 15, 1995, the State of Georgia submitted through the EPD a SIP revision designed to meet the five criteria for Federal enforceability. Today's action will approve these regulations into the Georgia SIP, thereby, meeting the first criteria for Federal enforceability.

The second criteria for a state's operating permit program to become Federally enforceable is that the regulations approved into the SIP impose a legal obligation that operating permit holders adhere to the terms and limitations of such permits. Georgia's regulations meet this criteria in Rule 391–3–1–.03, subsections (2)(g) and (12)(a), by requiring that under penalty of law, the holder of any Air Quality Permit must adhere to the terms, limitations, and conditions of that permit and subsequent revisions of that permit. Hence, the second criteria for Federal enforceability is met.

The third criteria necessary for a state's operating permit program to be Federally enforceable is that the state operating permit program require that all emissions limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the SIP or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise ''Federally enforceable'' (e.g. standards established under sections 111 and 112 of the Act). Georgia satisfies this criteria in Rule 391–3–1–.03, subsection (2)(c) by stating that an operating permit will be issued upon evidence of compliance with the provisions of the Act and the rules and regulations promulgated thereunder. Said permit shall specify the conditions under which the facility shall be operated in order to comply with the Act and rules and regulations. As a condition for the issuance of an operating permit, Georgia may require the applicant to conduct performance tests and monitoring and provide reports concerning operations, to demonstrate compliance with the Act and the rules and regulations. Therefore, this subsection of Georgia's permits rule satisfies the third criteria for Federal enforceability.

The fourth criteria for a state's operating permit program to become Federally enforceable is that limitations, controls, and requirements in the operating permits are quantifiable, and otherwise enforceable as a practical matter. Georgia's Rule 391–3–1–.03, subsections (2)(h) and (12)(b), requires that the limitations, controls, and requirements in Federally enforceable operating permits be permanent, quantifiable, and otherwise enforceable as a practical matter. Therefore, the Georgia FESOP program satisfies the fourth criteria for Federal enforceability.

The fifth criteria for a state's operating permit program to become Federally enforceable is to provide EPA and the public with timely notice of the proposal and issuance of such permits, and to provide EPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be Federally enforceable. This process also must provide for an opportunity for public comment on the permit applications prior to issuance of the final permit. Rule 391–3–1–.03, subsections (2)(i) and (12)(c), states that prior to the issuance of any Federally enforceable operating permit, EPA and the public will be notified and given a chance for comment on the draft permit. EPA notes that any permit which has not gone through an opportunity for public comment and EPA review under the Georgia FESOP program will not be Federally enforceable.

In addition to requesting approval into the SIP, Georgia has also requested approval of its FESOP program under section 112(l) of the Act for the purpose of creating Federally enforceable limitations on the potential to emit of HAP through the issuance of Federally enforceable state operating permits. Approval under section 112(l) is necessary because the proposed SIP approval discussed above only extends to the control of criteria pollutants.

EPA believes that the five approval criteria for approving FESOP programs into the SIP, as specified in the June 28, 1989, **Federal Register** document, are also appropriate for evaluating and approving the programs under section 112(l). The June 28, 1989, document does not address HAP because it was written prior to the 1990 amendments to section 112, not because it establishes requirements unique to criteria pollutants.

In addition to meeting the criteria in the June 28, 1989, document, a FESOP program that addresses HAP must meet the statutory criteria for approval under section 112(l)(5). Section 112(l) allows EPA to approve a program only if it: (1) contains adequate authority to assure compliance with any section 112 standards or requirements; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the CAA.

EPA plans to codify the approval criteria for programs limiting potential to emit of HAP, such as FESOP programs, through amendments to Subpart E of Part 63, the regulations promulgated to implement section 112(l) of the CAA. (See 58 Fed. Reg. 62262, November 26, 1993.) EPA anticipates that these regulatory criteria, as they apply to FESOP programs, will mirror those set forth in the June 28, 1989, document. The EPA also anticipates that since FESOP programs approved pursuant to section 112(l) prior to the planned Subpart E revisions will have been approved as meeting these criteria, further approval actions for those programs will not be necessary.

EPA has authority under section 112(l) to approve programs to limit potential to emit of HAP directly under section 112(l) prior to this revision to

[1] A generic permit is a single operating permit that establishes terms and conditions that must be complied with by all sources subject to that permit.

Subpart E. Section 112(l)(5) requires the EPA to disapprove programs that are inconsistent with guidance required to be issued under section 112(l)(2). This might be read to suggest that the ''guidance'' referred to in section 112(l)(2) was intended to be a binding rule. Even under this interpretation, EPA does not believe that section 112(l) requires this rulemaking to be comprehensive. That is, it need not address every possible instance of approval under section 112(l). EPA has already issued regulations under section 112(l) that would satisfy any section 112(l)(2) requirement for rulemaking. Given the severe timing problems posed by impending deadlines set forth in ''maximum achievable control technology'' (MACT) emission standards under section 112 and for submittal of title V permit applications, EPA believes it is reasonable to read section 112(l) to allow for approval of programs to limit potential to emit prior to promulgation of a rule specifically addressing this issue. Therefore, EPA is approving Georgia's FESOP program so that Georgia may begin to issue Federally enforceable operating permits as soon as possible.

EPA believes that Georgia's FESOP program meets the approval criteria specified in the June 28, 1989 **Federal Register** document and in section 112(l)(5) of the CAA. As discussed previously in this document, Georgia's FESOP program meets the five criteria necessary for Federal enforceability.

Regarding the statutory criteria of section 112(l)(5) referred to above, EPA believes Georgia's FESOP program contains adequate authority to assure compliance with section 112 requirements because the third criterion of the June 28, 1989, document is met, that is, because the program does not allow for the waiver of any section 112 requirement. Sources that become minor through a permit issued pursuant to this program would still be required to meet section 112 requirements applicable to non-major sources.

Regarding the requirement for adequate resources, EPA believes Georgia has demonstrated that it can provide for adequate resources to support the FESOP program. EPA expects that resources will continue to be adequate to administer that portion of the State's minor source operating permit program under which Federally enforceable operating permits will be issued since Georgia has administered a minor source operating permit program for several years. EPA will monitor Georgia's implementation of its FESOP program to ensure that adequate resources are in fact available. EPA also believes that Georgia's FESOP program provides for an expeditious schedule for assuring compliance with section 112 requirements. This program will be used to allow a source to establish a voluntary limit on potential to emit to avoid being subject to a CAA requirement applicable on a particular date. Nothing in Georgia's FESOP program would allow a source to avoid or delay compliance with a CAA requirement if it fails to obtain an appropriate Federally enforceable limit by the relevant deadline. Finally, EPA believes it is consistent with the intent of section 112 and the CAA for states to provide a mechanism through which sources may avoid classification as a major source by obtaining a Federally enforceable limit on potential to emit.

Eligibility for Federal enforceability of permits extends not only to permits issued after the effective date of this rule but also extends to permits issued under the State's current rule prior to the effective date of today's rulemaking. If the State followed its own procedures, each permit issued under this regulation to establish a title I condition (e.g. for a source to have minor source potential to emit) was subject to public notice and prior EPA review. Therefore, EPA will consider all such operating permits issued which were processed in a manner consistent with both the State regulations and the five criteria to be federally enforceable with the promulgation of this rule provided that any permits that the State wishes to make federally enforceable are submitted to EPA and accompanied by documentation that the procedures approved today have been followed. EPA will expeditiously review any individual permits so submitted to ensure their conformity to the program requirements.

With the addition of these provisions, Georgia's FESOP program satisfies all the requirements listed in the June 28, 1989, **Federal Register** document. EPA is approving this revision to the State of Georgia's SIP thus making the State's FESOP program Federally enforceable.

Final Action

In this action, EPA is approving the Georgia FESOP program. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document elsewhere in this **Federal Register**, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective October 30, 1995 unless, by September 29, 1995, adverse or critical comments are received. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective October 30, 1995.

The Agency has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. EPA has determined that this action conforms with those requirements.

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 30, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA, 42 U.S.C. 7607 (b)(2)). The Office of Management and Budget has exempted this action from review under Executive Order 12866.

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

Under the Regulatory Flexibility Act, 5 U.S.C. 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.

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 has elected to adopt the program provided for under Section 110 of the Clean Air Act. These rules may bind the State government to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action would impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to the State government, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to the State government in the aggregate or to the private sector.

SIP approvals under section 110 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, I certify that 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. section 7410(a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Lead, Nitrogen dioxide, Intergovernmental relations, Particulate matter, Ozone, Sulfur oxides.

Dated: August 3, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart L—Georgia

2. Section 52.570 is amended by adding paragraph (c)(46) to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

(46) Revisions to minor source permit rules submitted by the Georgia Environmental Protection Division on March 15, 1995.

(i) Incorporation by reference. Revised Rule 391–3–1–.03, ''Permits'', sections (1), (2), and (12), effective August 17, 1994.

(ii) Other material. None.

[FR Doc. 95–21466 Filed 8–29–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MT31–1–7007a; FRL–5275–1]

Clean Air Act Approval and Promulgation of PM_{10} State Implementation Plan for Montana; Missoula Air Pollution Control Program Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA approves the State implementation plan (SIP) revisions submitted by the State of Montana with a letter dated March 3, 1995. This submittal consists of several revisions to Missoula City-County Air Pollution Control Program regulations, which were adopted by the Montana Board of Health and Environmental Sciences (MBHES) on September 16, 1994. These rules include regulations regarding emergency procedure, paving of roads, driveways, and parking lots, street sweeping, National standards of performance for new stationary sources (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAPs), and solid fuel burning devices. Further, this submittal satisfies the one remaining commitment made by the State in a previous PM_{10} SIP submittal.

DATES: This final rule is effective on October 30, 1995 unless adverse comments are received by September 29, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2405; Montana Department of Health and Environmental Sciences, Air Quality Division, Cogswell Building, Helena, Montana 59620–0901; and The Air and Radiation Docket and Information Center, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Amy Platt, 8ART–AP, Environmental Protection Agency, Region VIII, (303) 293–1769.

SUPPLEMENTARY INFORMATION:

I. Background

The Missoula, Montana area was designated nonattainment for PM_{10} and classified as moderate under Sections 107(d)(4)(B) and 188(a) of the Clean Air Act, upon enactment of the 1990.[1] See 56 FR 56694 (Nov. 6, 1991); 40 CFR 81.327 (Missoula and vicinity). The air quality planning requirements for moderate PM_{10} nonattainment areas are set out in Subparts 1 and 4 of Part D, Title I of the Act.[2] The EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under Title I of the Act, including those State submittals containing moderate PM_{10} nonattainment area SIP requirements [see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in this action and the supporting rationale.

Those States containing initial moderate PM_{10} nonattainment areas such as Missoula were required to submit, among other things, several provisions by November 15, 1991. These provisions are described in EPA's final rulemaking on the Missoula moderate PM_{10} nonattainment area SIP (59 FR 2537–2540, January 18, 1994).

In a letter dated August 20, 1991, the Governor of Montana submitted to EPA the Missoula City-County Air Pollution

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Pub. L. No. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended (''the Act''). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. Sections 7401, *et seq.*

[2] Subpart 1 contains provisions applicable to nonattainment areas generally and Subpart 4 contains provisions specifically applicable to PM_{10} nonattainment areas. At times, Subpart 1 and Subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the ''General Preamble'' and, as appropriate, in today's notice and supporting information.

Control Program as a revision to the Montana SIP.

EPA's review identified numerous deficiencies, including inconsistencies with the State regulations, as well as deficiencies similar to those EPA identified in the State regulations. In a December 4, 1991 letter from the EPA Region VIII Administrator to the Governor of Montana, the deficiencies in the Missoula regulations were outlined in detail (this letter is available for public inspection at the EPA Region VIII address listed at the beginning of this notice). The problem areas included rules involving emergency procedures, permitting, open burning, wood-waste burners, NSPS, NESHAPs, and variances.

To address EPA's concerns, the State took commitments through the public hearing process on November 23, 1992 and submitted the commitments to EPA in a letter dated November 30, 1992, as additional tasks to be performed to correct the deficiencies in the Missoula and statewide SIP. Montana requested that EPA consider the August 20, 1991 submittal concurrent with its June 4, 1992 PM_{10} SIP submittal and the conditions outlined in the State's commitments.

As a result, EPA approved a large portion of the Missoula City-County Air Pollution Control Program with its approval of the Missoula moderate PM_{10} nonattainment area SIP on January 18, 1994 (59 FR 2537–2540). In the January 18, 1994 rulemaking, EPA delayed action on the regulations related to the Governor's commitments.

In a March 2, 1994 submittal, the State satisfied several of its November 30, 1992 commitments related to the Missoula City-County Air Pollution Control Program. Accordingly, EPA approved the related regulations on December 13, 1994 (59 FR 64133–64139). However, one of the November 30, 1992 commitments was still outstanding. That commitment addressed Missoula NSPS and NESHAP regulations.

II. This Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566). The Governor of Montana submitted revisions to the SIP for Missoula with a letter dated March 3, 1995. The revisions amend several of the Missoula City-County Air Pollution Control Program regulations, including the regulations related to NSPS and NESHAPs.

A. Analysis of State Submission

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[3] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see Section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR Part 51, Appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

To entertain public comment, the State of Montana, after providing adequate notice, held a public hearing for the local air pollution control program revisions on September 16, 1994. Following the public hearing, the local air pollution control program revisions were adopted by the State.

The local air pollution control program revisions were submitted as a SIP revision by the Governor with a letter dated March 3, 1995. The SIP revision was reviewed by EPA to determine completeness in accordance with the completeness criteria set out at 40 CFR Part 51, Appendix V. The submittal was found to be complete and a letter dated April 27, 1995 was forwarded to the Governor indicating the completeness of the submittals and the next steps to be taken in the review process.

B. Revisions to the Local Regulations

Four public hearings were held at the local level in December 1993, and March, May, and July 1994. The Missoula City-County Air Pollution Control Board adopted the changes to the regulations, and, finally, all changes were approved at a joint public hearing by the City Council and County Commissioners on July 25, 1994. At its September 16, 1994 MBHES public hearing, the Board adopted the local regulation revisions.

[3] Also Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of Section 110(a)(2).

Specifically, the revisions are as follows:

1. Chapter XVI was amended to more clearly indicate that upon approval by the Missoula City Council and Board of County Commissioners, changes to the local air pollution rules will be forwarded to the MBHES for final approval. Such amendments and revisions become effective upon approval by the MBHES.

2. Chapter IX, Subchapter 4, Rule 401 was amended to lower the level at which PM_{10} air pollution alerts are called. The level was changed from 100 $\mu g/m^3$ to 80 $\mu g/m^3$.

3. Chapter IX, Subchapter 14, Rule 1401 was amended to include new sections which address requirements for the paving of new public roads, private roads, private driveways, and parking lots in the Air Stagnation Zone. Such projects must apply for a road construction permit and provide a plan which includes, among other things, detailed information regarding the measurements of the proposed project, thickness of the pavement that shall be used on the proposed construction, a description of the intended uses of the project, including the estimated number and type of vehicles using the road, driveway, or parking lot, and a description of adjoining exterior roads (*e.g.*, paved, unpaved, public, private). After permit approval, requirements are specified for the completion of paving and maintenance of new public roads and parking lots and private (including commercial and industrial) roads, driveways, and parking lots. A further amendment incorporates existing city street sweeping ordinances into the air pollution control program.

4. Chapter IX, Subchapter 14, Rules 1423 and 1424 were amended to incorporate by reference the federal NSPS and NESHAPs rules as of July 1, 1992. These revisions satisfy the State's one remaining November 30, 1992 commitment included with the original moderate PM_{10} nonattainment area SIP for Missoula. That commitment was as follows: ''Missoula shall revise the Missoula NSPS and NESHAP regulations to incorporate all federal requirements promulgated through July 1, 1992.''

5. Chapter IX, Subchapter 14, Rule 1428 was amended to require all new installations of solid fuel burning devices (either in new construction or in existing residences) to meet an emission rate of 1.0 gram per hour or less. In addition, uncertified woodstoves must be replaced or removed upon the sale of a home or other title transfer. Further, fines have been increased from $20 to $50 for the first violation, $50 to $200

for the second violation, and $100 to $500 for third and subsequent violations.

The revisions outlined above are consistent with Federal requirements, and therefore, are approvable. The revisions to rules 401, 1401, and 1428 are more stringent than the versions used in the attainment and maintenance demonstrations for the Missoula moderate PM_{10} nonattainment area SIP that EPA approved on January 18, 1994 (59 FR 2537). If the State wishes to receive credit for the PM_{10} emissions reductions in the Missoula moderate nonattainment area that are achieved through these more stringent requirements, a revised attainment and maintenance demonstration for the Missoula PM_{10} SIP must be submitted to EPA for consideration. However, the State has indicated that it does not wish to claim credit for these measures at this time.

C. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and EPA (see Sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, *et al.* (see 57 FR 13541). State implementation plan provisions also must contain a program to provide for enforcement of control measures and other elements in the SIP [see Section 110(a)(2)(C)].

The Missoula air pollution control regulations, as included in the SIP, are legally enforceable by the Missoula City-County Health Department (MCCHD). There are civil penalties, which increase with each violation, for noncompliance with the solid fuel burning device regulation. Violation of any other provision, regulation or rule enforced under the program results in a criminal offense punishable by a fine.

The Missoula City-County Air Pollution Control Program regulations are also enforceable by the MDHES, if the MCCHD fails to administer the program. Since the program has been approved by the MBHES in accordance with Section 75–2–301 of the Montana Clean Air Act and effectuated by a MBHES order, and since the MDHES can enforce MBHES orders, the MDHES has independent enforcement powers. Enforcement provisions are found in the Clean Air Act of Montana, Sections 75–2–401–429, Montana Code Annotated.

If a State relies on a local government for the implementation of any plan provision, then, according to Section 110(a)(2)(E)(iii) of the Act, the State must provide necessary assurances that the State has responsibility for ensuring adequate implementation of such plan provision. A State would have responsibility to ensure adequate implementation if, for example, the State has the authority and resources to implement the provision when the local entity has failed to do so.

The Missoula City-County Air Pollution Control Program was established in accordance with the requirements of Section 75–2–301 of the Montana Clean Air Act, as amended (1991). A revised version of the air pollution control regulations was approved by the Missoula City-County Air Pollution Control Board on April 24, 1991, and on June 28, 1991 the MBHES issued a board order approving these regulations. A stipulation between the MDHES and the Missoula City-County Air Pollution Control Board that delineates responsibilities and authorities between the MDHES and the local authorities was signed April 29, 1991. On March 20, 1992, the MBHES issued a board order approving revisions to the Missoula City-County Air Pollution Control Program. The April 29, 1991 stipulation, the June 28, 1991 Board order, and the March 20, 1992 Board order were incorporated into the SIP on January 18, 1994 (59 FR 2540). A November 19, 1993 MBHES Board order approving further revisions to the Missoula City-County regulations was incorporated into the SIP on December 13, 1994 (59 FR 64133).

On September 16, 1994, the MBHES issued a Board order approving additional revisions to the Missoula City-County regulations. These regulations and the September 16, 1994 Board order were submitted to EPA as a modification to the Montana SIP.

The Missoula City-County rules are in effect now. The MCCHD has adequate personnel and funding to support effective enforcement of the rules. The State of Montana has a program that will ensure that the Missoula City-County regulations are adequately enforced. EPA believes that the State's and Missoula's existing air enforcement program will be adequate.

III. Final Action

EPA is approving Montana's SIP revisions, submitted by the Governor with a letter dated March 3, 1995, for the Missoula moderate PM_{10} nonattainment area. This submittal revised several Missoula City-County Air Pollution Control Program regulations. Specifically, EPA is approving the following revised portions of Chapter IX, Regulations, Standards, & Permits: (1) Subchapter 4, Rule 401 regarding emergency procedures; (2) Subchapter 14, Rules 1401, regarding the paving of roads, driveways, and parking lots, and 1428, regarding solid fuel burning devices.

The March 3, 1995 submittal also satisfied the one remaining commitment made by the Governor of Montana to EPA in a letter dated November 30, 1992. Due to the satisfaction of that commitment, EPA can now approve Rules 1423 (NSPS) and 1424 (NESHAPs) of Subchapter 14, Chapter IX.

EPA also approves minor revisions to previously approved Chapter XVI, Amendments and Revisions.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. Under the procedures established in the May 10, 1994 **Federal Register** (59 FR 24054), this action will be effective October 30, 1995 unless, by September 29, 1995, adverse or critical comments are received.

If such comments are received, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on October 30, 1995.

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

Under the Regulatory Flexibility Act, 5 U.S.C. 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 economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Approvals of SIP submittals under section 110 and subchapter I, part D of the Clean Air Act 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, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-state relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act 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 (1976); 42 U.S.C. 7410(a)(2).

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 Section 110 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain duties. The rules being approved by this action will impose no new requirements since such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final 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.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 30, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

List of Subjects in 40 CFR Part 52

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

Dated: July 28, 1995.

Kerrigan Clough,

Acting Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart BB—Montana

2. Section 52.1370 is amended by adding paragraph (c)(41) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(41) The Governor of Montana submitted revisions to the Missoula City-County Air Pollution Control Program in a letter dated March 3, 1995. In addition, the March 3, 1995 submittal satisfies the one remaining commitment made by the State in its original PM_{10} moderate nonattainment area SIP.

(i) Incorporation by reference.

(A) Board order issued on September 16, 1994 by the Montana Board of Health and Environmental Sciences approving the amendments to Missoula City-County Air Pollution Control Program Chapters IX and XVI regarding, among other things, emergency procedures, paving of private roads, driveways, and parking lots, National standards of performance for new stationary sources, National Emission Standards for Hazardous Air Pollutants, and solid fuel burning devices.

(B) Missoula City-County Rule 401, Missoula County Air Stagnation Plan, effective September 16, 1994.

(C) Missoula City-County Rule 1401, Prevent Particulate Matter from Being Airborne, effective September 16, 1994.

(D) Missoula City-County Rule 1423, Standard of Performance for New Stationary Sources, effective September 16, 1994.

(E) Missoula City-County Rule 1424, Emission Standards for Hazardous Air Pollutants, effective September 16, 1994.

(F) Missoula City-County Rule 1428, Solid Fuel Burning Devices, effective September 16, 1994.

(G) Missoula City-County Air Pollution Control Program Chapter XVI, Amendments and Revisions, effective September 16, 1994.

[FR Doc. 95–21468 Filed 8–29–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[IA–15–1–7172; FRL–5285–8]

Removal of State Implementation Plan (SIP) for the State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; removal.

SUMMARY: Due to an adverse comment, EPA is removing the effective date of August 22, 1995, for the approval of a revision to the SIP for the state of Iowa. The revision includes special requirements for nonattainment areas, compliance and enforcement information, and adoption of EPA definitions.

The original action was published in the **Federal Register** on June 23, 1995 (60 FR 32601–32603), as a direct final rule. As stated in the **Federal Register**, if adverse or critical comments were received by July 24, 1995, the effective date would be delayed and timely notice would be published in the **Federal Register**. Therefore, due to receiving an adverse comment within the comment period, EPA is removing the final rule and will address all public comments received in a subsequent final rule based on the proposed rule also published on June 23, 1995 (60 FR 32639). EPA will not institute a second comment period on this document.

EFFECTIVE DATE: This removal is effective August 30, 1995.

FOR FURTHER INFORMATION CONTACT: Christopher D. Hess at (913) 551–7213.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule and proposed rule section located in the **Federal Register** citation mentioned in the summary.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 18, 1995.

Dennis Grams,

Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart Q—Iowa

§ 52.820 [Amended]

2. Section 52.820 is amended by removing paragraph (c)(61).

[FR Doc. 95–21463 Filed 8–29–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[VA36–1–7064; FRL–5287–9]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia: Non-CTG Reasonably Available Control Technology for Philip Morris, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is conditionally approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision establishes and requires the use of reasonably available control technology (RACT) to control volatile organic compound (VOC) emissions from the Philip Morris, Inc. (Philip Morris), Manufacturing Center in the Richmond, Virginia nonattainment area. The intended effect of this action is to approve the SIP revision on the condition that deficiencies in the Consent Order and Agreement (the Order) establishing RACT for Philip Morris are corrected and submitted within one year of this approval. If the State fails to meet this condition, this approval will convert to a disapproval. This action is being taken under section 110 of the Clean Air Act (CAA).

EFFECTIVE DATE: This final rule is effective on September 29, 1995.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Kathleen Henry, (215) 597–0545.

SUPPLEMENTARY INFORMATION: On April 7, 1995 (60 FR 17746), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed conditional approval of a SIP revision consisting of a Consent Order and Agreement (the Order) between the Department of Environmental Quality (DEQ) of the Commonwealth of Virginia and Philip Morris, establishing RACT for the Philip Morris Manufacturing Center in Richmond, Virginia. The NPR proposed conditional approval based on the Commonwealth revising the Order according to the options identified in the NPR and resubmitting it to EPA within one year of the final conditional approval. No comments were recieved on the NPR. The formal SIP revision was submitted by the Commonwealth on September 28, 1994.

EPA notes that if the Commonwealth fails to meet the conditions of this approval action, the EPA Regional Administrator will directly make a finding, by letter, that the conditional approval is converted to a disapproval and the clock for imposition of sanctions under section 179(a) of the CAA will start as of the date of the letter. Subsequently, a document will be published in the **Federal Register** announcing that the SIP revision has been disapproved.

Specific requirements of the Order and the rationale for EPA's action are explained in the NPR and will not be restated here.

Final Action

Pursuant to section 110(k)(4) of the CAA, EPA is conditionally approving the Virginia SIP revision for the Philip Morris Manufacturing Center, based on certain contingencies. In order to be approvable, the Consent Order and Agreement with Philip Morris, Inc., must be revised in one of the following ways and resubmitted to EPA within one year of this final conditional approval: (1) Eliminate the exemption to use non-ethanol-based flavorings in lieu of add-on controls; (2) restrict the applicability of the exemption to the use of non-VOC based flavorings; or (3) impose monitoring and reporting requirements sufficient to determine net increases or decreases in emissions on a mass basis relative to the emissions that would have occurred using add-on controls on an average not to exceed thirty days.

If Virginia fails to revise and resubmit the Order to EPA within one year of the final conditional approval, the approval will convert to a disapproval.

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.

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed/promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this conditional approval action of the SIP revision establishing RACT for the Philip Morris Manufacturing Center in Richmond, Virginia, must be filed in the United States Court of Appeals for the appropriate circuit by October 30, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: August 16, 1995.

W. Michael McCabe,

Regional Administrator, Region III.

Chapter I, title 40, of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart VV—Virginia

2. Section 52.2450 is added to read as follows:

§ 52.2450 Conditional approval.

Virginia's September 28, 1994 SIP submittal of a Consent Order and Agreement (Order) between the Department of Environmental Quality of the Commonwealth of Virginia and Philip Morris, Inc. establishing reasonably available control technology (RACT) for the Manufacturing Center located in Richmond, Virginia is conditionally approved based on certain contingencies. The condition for approval is to revise and resubmit the Order as a SIP revision within one year of September 29, 1995 according to one of the following: Eliminate the exemption to use non-ethanol-based flavorings in lieu of add-on controls; restrict the applicability of the exemption to the use of non-VOC based flavorings; or impose monitoring and reporting requirements sufficient to determine net increases or decreases in emissions on a mass basis relative to the emissions that would have occurred using add-on controls on an average not to exceed thirty days.

[FR Doc. 95–21504 Filed 8–29–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[ME–19–1–6668a; A–1–FRL–5273–5]

Approval and Promulgation of Air Quality Implementation Plans—Maine; Redesignation to Attainment and PM_{10} Contingency Measures for Presque Isle

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is fully approving Maine's request to redesignate the Presque Isle area to attainment for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}), along a maintenance demonstration and contingency plans which outline Maine's control strategy for maintenance of the PM_{10} national ambient air quality standards (NAAQS). EPA is also approving a State Implementation Plan (SIP) revision submitted by the State of Maine to satisfy federal requirements for contingency measures for the Presque Isle initial nonattainment area. This action is being taken under the Clean Air Act.

DATES: This final rule is effective October 30, 1995, unless notice is received by September 29, 1995 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Susan Studlien, Acting Director, Air, Pesticides and Toxics Management Division, EPA-New England, JFK Federal Building (AAA), Boston, MA 02203–2211. Copies of the documents relevant to this action are available for public inspection by appointment during normal business hours at the Air, Pesticides and Toxics Management Division, EPA-New England, One Congress Street, 10th floor, Boston, MA; Air and Radiation Docket and Information Center, US Environmental Protection Agency, 401 M Street, SW (LE–131), Washington, DC 20460; and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Matthew B. Cairns, (617) 565–4982.

SUPPLEMENTARY INFORMATION:

Background

Part D, Subparts 1 and 4 of Title I of the Clean Air Act Amendments of 1990 (hereafter referred to as ''the Act'') set out air quality planning requirements for moderate PM_{10} nonattainment areas. The EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under Title I of the Act, including those State submittals containing moderate PM_{10} nonattainment area SIP requirements. [See, generally, 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992).] Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in this approval and the supporting rationale.

By November 15, 1991, States containing initial moderate PM_{10} nonattainment areas were required to submit most elements of their PM_{10} SIP. [See §§ 172(c), 188, and 189 of the Act.] Some provisions were due at a later date. For example, such States also must submit contingency measures by November 15, 1993, which become effective without further action by the State or EPA upon a determination by EPA that the area has failed to achieve RFP or to attain the PM_{10} NAAQS by the applicable statutory deadline. [See § 172(c)(9) and 57 FR 13543–44.]

In order for an area to be redesignated as attainment, the State must meet the following conditions listed in § 107(d)(3)(E) of the Act:

(i) The EPA has determined that the NAAQS have been attained.

(ii) The applicable implementation plan has been fully approved by EPA under § 110(k).

(iii) The EPA has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions.

(iv) The State has met all applicable requirements for the area under § 110(k) and Part D.

(v) The EPA has fully approved a maintenance plan, including a contingency plan, for the area under § 175A.

EPA guidance titled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (September 4, 1992 memorandum from AQMD Director John Calcagni) outlines how to assess the adequacy of redesignation requests against the conditions listed above.

Summary of Maine's SIP Revision and Redesignation Request for Presque Isle

On January 12, 1995, EPA approved Maine's PM_{10} Attainment Plan (60 FR 2885) for Presque Isle. However, on January 26, 1994, EPA had notified Maine of ''a finding of failure to submit'' contingency measures for PM_{10}, which were due by November 15, 1993. According to EPA guidance titled ''Contingency Measure Due Date for Initial PM_{10} Moderate Nonattainment Areas'' (February 25, 1992 memo from Calcagni), states were not obligated to submit contingency measures until EPA established a due date for their submittal. On April 16, 1992 EPA gave States until November 15, 1993 to submit required contingency measures. (See General Preamble at 57 FR 13543 footnote 26.) Although the due date for contingency measures had passed by the

time EPA proposed approval of Maine's PM_{10} Attainment Plan, EPA fully approved of this SIP revision because it meets all requirements applicable as of the time of its adoption by Maine and submittal to EPA. Furthermore, full approval did not relieve Maine from the obligation to submit a separate SIP revision to meet contingency measure requirements. (See 59 FR 24096 (May 10, 1994).)

On June 1, 1994, the Maine Department of Environmental Protection (Maine DEP) submitted a SIP revision for Chapter 114 ''Classification of Air Quality Control Regions'' and a request to redesignate the Presque Isle area to attainment for PM_{10}, accompanied by contingency and maintenance plans. On July 22, 1994, EPA-New England determined this submittal was complete and acceptable for processing. The completeness determination stopped the associated sanctions clock for failure to submit contingency measures. EPA also noted that Maine's contingency plan could satisfy both the contingency measure requirement for initial moderate PM_{10} nonattainment areas under § 172(c)(9) and the contingency provisions required for redesignation under § 175A(d).

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals. (See 57 FR 13565–66.) Specific requirements and the rationale for EPA's approval action are detailed in the Technical Support Document (TSD), dated May 18, 1995, and are summarized, but not restated, here in the following paragraphs. Interested parties should consult the TSD or Maine's submittal for details.

Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing. Section 172(c) of the Act also requires that plan provisions for nonattainment areas meet the applicable provisions of § 110(a)(2).

EPA must also determine whether a submittal is complete and therefore warrants further EPA review and action. [See § 110(k)(1) and 57 FR 13565.] EPA's completeness criteria for SIP submittals are set out at 40 CFR Part 51, Appendix V (1991), as amended by 57 FR 42216 (August 26, 1991).[1] EPA attempts to make completeness determinations within 60 days of receiving a submittal. However, a submittal is deemed complete by operation of law if EPA does not make a completeness determination by 6 months after receipt of the submittal.

The State of Maine held a public hearing on March 24, 1994 to entertain public comment on the redesignation request and contingency measures for Presque Isle. EPA reviewed Maine's submittal to determine completeness in accordance with criteria outlined in 40 CFR Part 51 Appendix V and as amended by 57 FR 42216 (August 26, 1991). As noted above, EPA-New England informed the Director of Maine DEP's Bureau of Air Quality (the Maine Governor's designee) that the submittal was complete and explained how the review process would proceed.

Redesignation to Attainment

In the TSD prepared for approval of Maine's PM_{10} Attainment Plan (January 2, 1994 memorandum from Brian Hennessy), EPA noted that the NAAQS have been attained and that the improvement in air quality is due to permanent and enforceable reductions in emissions [requirements (i) and (iii) above] had already been met for purposes of redesignating Presque Isle to attainment. With the following explanations, Maine's redesignation request has satisfied the remainder of EPA's guidance concerning redesignation to attainment.

Maintenance Plan and Contingency Provisions Under Section175A

Section 175A defines the general frame work of a maintenance plan. The maintenance plan will constitute a SIP revision and must provide for maintenance of the relevant NAAQS in the area for at least 10 years after redesignation. In addition, the maintenance plan shall contain contingency provisions necessary to ensure prompt correction of any violation of the NAAQS. [See §§ 175A(b) and (d).] EPA's guidance on redesignations outlines 5 core provisions that are necessary to ensure maintenance of the relevant NAAQS in an area seeking redesignation from nonattainment to attainment. The following paragraphs describe how Maine has fulfilled each provision.

Attainment Inventory. A PM_{10} emission inventory for Presque Isle was necessary in order to analyze the impact of current and projected emissions on the ambient PM_{10} air quality, to quantify emission reductions from the MOU,[2] and to determine whether Maine's control strategy will maintain the PM_{10} NAAQS. Maine DEP has inventoried residential, commercial, and industrial combustion and process sources in Presque Isle. As detailed in the approval of Maine's PM_{10} Attainment Plan, the control strategy does not require emission reductions from these source categories. As Maine DEP's receptor modeling showed, emissions from paved roads dominate the PM_{10} inventory in Presque Isle. EPA is satisfied that Maine's inventory is sufficiently accurate and comprehensive for purposes of redesignating Presque Isle consistent with the requirements in § 107(d)(3)(E) and § 175A. Therefore, EPA is approving Maine's emissions inventory for Presque Isle, the details of which are embodied in the TSD.

Maintenance Demonstration. A State may generally demonstrate maintenance of the PM_{10} NAAQS by either showing that future emissions of PM_{10} or its precursors will not exceed the level of the attainment inventory or by modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS. Whether a dispersion or receptor model has been used to relate base case emissions to air quality, a proportional, or rollback, calculation may be used to show that planned emission reductions will achieve and maintain NAAQS. For the 24-hour NAAQS these conditions are met when air quality improvements projected from enforceable emission reductions, including consideration of growth, result in 24-hour design values below 150 $\mu g/m^3$. Emissions from both road dust and diesel exhaust categories are expected to grow at the same rate (that is, the rate of growth in VMT, disregarding any improvements to diesel vehicle emissions, as determined by the Maine Department of Transportation) of 2.09%.

Maine DEP used the rollback technique or model to demonstrate that the planned strategies result in required

[1] Since redesignations are subject to § 107(d)(3)(D) rather than § 110(k), EPA is not required to promulgate completeness criteria or make completeness determinations on redesignations. However, under its general rulemaking authority of § 301(a) of the Act as necessary to implement the requirements of § 107(d)(3)(D), EPA has determined it is appropriate to apply the completeness criteria applicable to § 110(k) actions to redesignations. (See 56 FR 42216–7, August 26, 1991.)

[2] Maine DEP has entered a joint memorandum of understanding (MOU) with the City of Presque Isle, which includes several measures to abate dust re-entrainment from paved roads and open areas in the downtown area. As part of Attainment Plan for Presque Isle, Maine DEP has demonstrated that the control measures in Part B of the MOU have attained and will maintain the PM_{10} NAAQS. (See 60 FR 2885, January 12, 1995.)

reduction in observed PM_{10} concentrations so that the Presque Isle area will maintain the NAAQS. These calculations account for growth during the period between sample collection date and the year 2005. Rollback was performed on the four highest observed PM_{10} concentrations monitored during the three year period 1987–1989, the year in which Presque Isle attained the PM_{10} NAAQS. This approach is consistent with EPA's ''PM_{10} SIP Development Guideline'' (EPA–450/2–86–001: June, 1987). In summary, Maine DEP has demonstrated that both emissions projections and proportional modeling from implementation of the MOU will maintain the PM_{10} NAAQS for at least 10 years beyond redesignation.

Monitoring Network. Once an area has been redesignated, the State should continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR Part 58, to verify the attainment status of the area. The redesignation of Presque Isle to attainment will not change the monitoring network which Maine has in place. On the contrary, the contingency plan (as described below) is based on continued monitoring of PM_{10} in the Presque Isle area.

Verification of Continued Attainment. Each State should ensure that it has the legal authority to implement and enforce all measures to attain and to maintain the NAAQS. Sections 110(a)(2)(B) and (F) of the Clean Air Act and regulations promulgated at 40 CFR 51.110(k), suggest that one such measure is the acquisition of ambient and source emission data to demonstrate attainment and maintenance.

In this redesignation request, Maine has committed to performing a periodic inventory of emission sources in the Presque Isle area at 3 year intervals. An emission summary will be prepared and submitted in December of the year following the year of the inventory. The detail of the inventory will be consistent with that employed in the PM_{10} Attainment Demonstration SIP for Presque Isle. The first year of the inventory will be 1996, with the subsequent summary report completed in December, 1997.

Contingency Provisions. Section 175A(d) of the Clean Air Act requires that a maintenance plan also include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area. The contingency plan is considered an enforceable part of the SIP and should ensure that contingency measures are adopted expediently once they are triggered. The plan should clearly identify the measures to be adopted, a schedule and procedure for adoption and implementation, and a specific time limit for action by the State. As a necessary part of the plan, the State should also identify specific indicators, or triggers, which will be used to determine when the contingency measures need to be implemented.

By virtue of incorporation into Maine's SIP, Part B of Maine DEP's revised MOU with the City of Presque Isle will supplement the existing control plan for Presque Isle with two contingency levels. Maine has developed this MOU to meet the requirements of §§ 175A(d) and 172(c)(9).

The City of Presque Isle will use salt and liquid calcium chloride as the main source of winter antiskid control within a ½ mile radius of the Northeastland Hotel. As climatic conditions develop where the use of salt and liquid calcium chloride is ineffective, the City will use the harder, low percent fines material, since liquid calcium chloride becomes ineffective at about –20 °F. The contingency plan will be implemented as soon as Maine DEP notifies the City that 24-hour PM_{10} concentrations of 130 $\mu g/m^3$ have been measured at the maximum impact site. Maine DEP will know within 7 days of the occurrence of the concentration and will notify the City immediately.

The City of Presque Isle will expand the use of salt and liquid calcium chloride to an additional ¼ mile radius on roads which are considered major arteries to the City as soon as Maine DEP notifies the City that 24-hour PM_{10} concentrations of 140 $\mu g/m^3$ have been measured at the maximum impact site.

Maine has proposed these contingency measures that Presque Isle has implemented voluntarily and which have resulted in a reduction of measured PM_{10} concentrations. Substitution of the liquid calcium chloride for a sand/salt mix has achieved lower silt loadings than the current MOU requires. Voluntary implementation of this contingency plan does not preclude its use in a contingency plan.

Control efforts in Presque Isle have focused on emissions from road sanding. The City of Presque Isle has demonstrated its commitment to solving the re-entrained dust problem by using durable sand containing a low percentage of fines. More recently, the City of Presque Isle reduced PM_{10} levels by using liquid calcium chloride as a de-icer whenever temperatures permit.

As provided in § 172(c)(9) of the Act, all moderate nonattainment area SIPs that demonstrate attainment must include contingency measures. (See generally 57 FR 13543–44.) These measures were required to be submitted by November 15, 1993 for the initial moderate nonattainment areas. These measures must take effect without further action by the State or EPA, upon a determination by EPA that the area has failed to make RFP or attain the PM_{10} NAAQS by the applicable statutory deadline.

EPA is accepting Maine's contingency plan as adequate to fulfill both § 175A(d) contingency provision and § 172(c)(9) contingency measure requirements.

Applicable Requirements Under Section 110 and Part D

The requirements under § 107(d)(3)(E)(ii) and (iv) listed above are addressed in the January 2, 1994 TSD. Specifically, EPA's January 12, 1995 approval of Maine's PM_{10} Attainment Plan noted the only outstanding PM_{10} SIP element was the § 172(c)(9) contingency measures. In approving Maine's PM_{10} Attainment Plan, EPA-New England stated that the ''contingency plan'' developed to meet the § 175A(d) contingency provisions requirement for redesignation also could satisfy those contingency measures required for initial moderate nonattainment areas under § 172(c)(9). Consequently, with the redesignation of Presque Isle to attainment, Maine has satisfied all § 110 and Part D requirements applicable to Presque Isle for PM_{10}.

Final Action

EPA is approving the PM_{10} redesignation request, maintenance plan, and contingency measures Maine submitted to the EPA on June 1, 1994. EPA is also approving a revision to Chapter 114 of Maine's Department of Environmental Protection Regulations, ''Classification of Air Quality Control Regions,'' which removes Presque Isle as a nonattainment area for PM_{10}. Chapter 114 was adopted by the Board of Environmental Protection on April 27, 1994 and accepted by the Secretary of State with an effective date of May 9, 1994.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective October 30, 1995

unless adverse or critical comments are received by September 29, 1995.

If the EPA receives such comments, this action will be withdrawn before the effective date by simultaneously publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on October 30, 1995.

Under the Regulatory Flexibility Act, 5 U.S.C. § 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.

Under §§ 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 revision, the State and any affected local or tribal governments have elected to adopt the program provided for under § 110 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. To the extent that the rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this 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.

SIP approvals under § 110 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, I certify that 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. USEPA, 427 US 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. The Office of Management and Budget (OMB) has exempted this action from review under Executive Order 12866.

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.

Under § 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 30, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. [See § 307(b)(2).]

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated July 20, 1995.

John P. DeVillars,

Regional Administrator, EPA-New England.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart U—Maine

2. Section 52.1020 is amended by adding paragraph (c)(40) to read as follows:

§ 52.1020 Identification of plan.

* * * * *

(c) * * *

(40) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on June 1, 1994.

(i) Incorporation by reference.

(A) Letter from the Maine Department of Environmental Protection dated June 1, 1994 submitting revisions to the Maine State Implementation Plan.

(B) Revisions to Chapter 114 of the Maine Department of Environmental Protection Regulations, ''Classification of Air Quality Control Regions,'' adopted by the Board of Environmental Protection on April 27, 1994 and accepted by the Secretary of State with an effective date of May 9, 1994.

(C) Revisions to Part B of the Memorandum of Understanding which the Maine Department of Environmental Protection (DEP) entered into (and effective) on May 25, 1994, with the City of Presque Isle, and the Maine Department of Transportation.

(ii) Additional materials.

(A) A maintenance demonstration and contingency plan which outline Maine's control strategy for maintenance of the PM_{10} NAAQS and contingency measures and provision for Presque Isle.

(B) Nonregulatory portions of the submittal.

3. In § 52.1031 the table is amended by adding a new citation to entry ''114'' to read as follows:

§ 52.1031 EPA-approved Maine regulations.

* * * * *

TABLE 52.1031.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.1020	Comments
*	*	*	*	*	*	*
114	Classification of Air Quality Control Regions.	4/27/94	Aug. 30, 1995	[Insert FR citation from published date].	(c)(40)	Revision to remove Presque Isle as nonattainment for PM_{10}.
*	*	*	*	*	*	*

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 81.320 is amended by revising the table for ''Maine—PM_{10} Nonattainment Areas'' to read as follows:

§ 81.320 Maine.

* * * * *

MAINE—PM_{10} *Nonattainment Areas*

Designated area	Designation		Classification	
	Date	Type	Date	Type
Aroostook County:				
City of Presque Isle (part)[1]	Aug. 30, 1995	Attainment		
That area bounded by Allen Street from its intersection with Main Street east to Dudley Street, Dudley Street south to Cedar Street, Cedar Street west to Main Street, Main Street south to Kennedy Brook, Kennedy Brook northwest crossing Presque Isle Stream to Coburn Street, Coburn Street northwest to Mechanic Street, Mechanic Street west to Judd Street, Judd Street northeast to State Street, State Street northwest to School Street, School Street northeast to Park Street, Park Street east to Main Street				
Rest of State	11/15/90	Unclassifiable		

[1] This definition of the nonattainment area redefines its borders from the entire City of Presque Isle to this area of 0.6 square miles which circumscribe the area of high emission densities and ambient PM10 levels. (60 FR 2885, January 12, 1995)

[FR Doc. 95–21464 Filed 8–29–95; 8:45 am]
BILLING CODE 6560–50–P

[OPP–300396; FRL–4971–8]

40 CFR Part 180

Lepidopteran Pheromones: Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a food tolerance for residues of certain Lepidopteran pheromones resulting from the use of these substances independent of formulation, mode of application or physical form or shape with an annual application limitation of 150 grams active ingredient per acre (gm AI/acre) for pest control in or on all raw agricultural commodities. This exemption pertains only to the pheromone active ingredient. Any encapsulating material needs to be a cleared inert for pesticidal uses on food crops. EPA is establishing this regulation on its own initiative.

EFFECTIVE DATE: This regulation becomes effective August 30, 1995.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, OPP–300396, may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to: Public Docket, Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number ''OPP–300396.'' No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit IV. of this document.

FOR FURTHER INFORMATION CONTACT: By mail: Phil Hutton, Product Manager (PM-90), Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 5th Floor, Crystal Station 1, 2805 Crystal Drive, Arlington, VA, (703) 308–8260, e-mail: hutton.phil@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 29, 1995 (60 FR 16128), EPA issued a notice of filings and invited comments on a pesticide petition to propose amending 40 CFR part 180 by establishing an exemption from the requirement of a food tolerance for certain Lepidopteran pheromones regardless of mode of application when used at rates less than or equal to 150 grams ai/acre/year. The Agency received no comments in response to its notice. In this document, EPA sets forth its reasons for determining that a tolerance for these pheromone products is not necessary to protect public health.

For the purposes of this exemption, a Lepidopteran pheromone is defined as a naturally occurring compound, or identical or substantially similar synthetic compound, designated by the unbranched aliphatics (with a chain between 9 and 18 carbons) ending in an alcohol, aldehyde or acetate functional group and containing up to 3 double bonds in the aliphatic backbone. This definition encompasses the majority of Lepidopteran pheromones. While other types of chemical compounds have been demonstrated to be Lepidopteran pheromones and other arthropod pheromones have been recommended for tolerance exemptions, there is limitied toxicity data and exposure information available. The Agency believes the type described here represents not only the majority of Lepidopteran pheromones but also those with the most complete toxicological data base. Synthetically produced compounds that are identical to a known aliphatic Lepidopteran pheromone as described above, and those that differ only in that their molecular structures are stereochemical isomers (or ratios of such isomers) are also included in this tolerance exemption. Other Lepidopteran pheromones and other pheromones not included within the described scope will still require mammalian toxicity testing (40 CFR 158.690) if used on food crops and are not otherwise exempt from the requirement of a tolerance.

I. Background

A pheromone (including an identical synthetic compound) is defined by EPA as a compound produced by an arthropod (insect, arachnid, or crustacean) that modifies the behavior of other individuals of the same species (40 CFR 152.25(b)). Lepidopteran pheromones are those produced by a member of the order Lepidoptera, which includes butterflies and moths. One physical-chemical feature common to all these compounds is their volatility which is the basis for the signalling and homing mechanism. The Agency has registered 17 arthropod pheromones active ingredients, 11 of which are Lepidopteran pheromones.

The Agency has assumed that pheromones and other similar semiochemicals are different from conventional synthetic pesticides, and has attempted to facilitate their registration with reduced data requirements and regulatory relief efforts. Most recently the Agency has recognized that a special category of pheromone products dispensed from larger sized polymeric matrices with low annual use rates represent minimal risk for dietary and environmental exposure and has greatly eased the burden to register these items. Broadcast methods of application were not included because the Agency did not have sufficient information on the levels of exposure from pheromones applied in this manner. The Agency has since received data in this area. In addition to submitted data, the Agency utilized in its decision an internal document of the toxicology of certain Lepidopteran pheromones related by their chemical structure.

For pheromone products, especially those directly applied to food, one problem has been a lack of subchronic toxicity studies and an estimate of the actual pheromone residues occurring with use. Some pheromone uses in solid matrix dispensers have been registered based on the low probability of exposure justifying the waiver of the subchronic toxicity studies, namely the 90–day feeding, the developmental toxicity and immunotoxicity studies. However, the Agency has held that sprayable formulations or other modes of application that may increase the likelihood of human exposure would still require the subchronic toxicology studies.

II. Human Health

Data has been submitted on subchronic toxicology studies done to date on compounds similar in structure to the Lepidopteran pheromones and published in the peer reviewed, public literature. The information submitted covered compounds that were from six to sixteen carbon unbranched alcohols, acetates and aldehydes. Since the Agency is basing this tolerance exemption on chemical structure, it is relevant to consider the available subchronic toxicology data for this group. The results given in these literature reports indicate that there is no significant acute toxicity associated with the primary alcohols, acetates or aldehydes mentioned (C_8 to C_{16} unbranched aliphatics). In addition, the subchronic toxicity of an isomeric mixture of tridecenyl acetate indicated no significant signs of toxicity other than those expected with longer term exposure to high doses of a hydrocarbon. The findings of the published studies indicate that there were no significant health effects from subchronic exposures to this group of chemicals.

Studies examining the volatilization of a pheromone from a microcapsule indicates that about 70 percent of the pheromone remains after 30 days. These results indicate the pheromone is released at a slower rate than anticipated. The studies show that only a small proportion of the microcapsules actually release any pheromone or only a portion of the total pheromone loaded into the capsule is capable of ever being released. These laboratory studies indicate a potential for pheromone residues to occur in the absence of any biological or environmental factors.

In a submitted field study, however, residue analyses from field treated plants indicate no significant amounts of pheromone can be detected on the resulting fruit. The detectable residues on unwashed fruit of tomato pinworm pheromone ranged from 21–72 ppb on the day of application, decreased to 0.9–6.8 ppb on day 15, and was recorded at 0.29–1.2 ppb on day 30. Washing the tomatoes brought all the residues below the level of detection. This study demonstrates that the expected pheromone residue levels found in tomato fruit are several orders of magnitude lower than previously calculated estimates. The process of application, weathering, and other environmental degradation leads to a reduction in the active ingredient that approaches the system limit of detection in the expected 3–week lifetime of the raw agricultural product.

III. Conclusion

The Agency believes that the potential for pheromone residues is not a dietary hazard. This conclusion is based on: (1) The low acute toxicity seen in the data

review of the Lepidopteran pheromones registered to date; (2) the known metabolism of long-chain fatty acids that predicts these compounds would be metabolized either by β-oxidation yielding a series of paired carbon losses or by complexing with glucuronide and excretion by the kidneys; and (3) low exposure subsequent to application from product aging, volatilization, and the results of the field residue studies.

EPA has determined that, when used in accordance with good agricultural practices, a food tolerance for the defined subset of Lepidopteran pheromones is not necessary to protect the public health. A generic exemption for this low-risk, low-exposure group of substances will facilitate the use of semiochemicals as alternatives to conventional synthetic pesticides. Therefore, EPA is establishing an exemption from the requirement of a tolerance as set forth below for the defined group of compounds with from 9 to 18 carbon atoms, regardless of formulation or mode of application, at use rates of less than 150 grams active ingredient/acre/year. It is important to note that any encapsulating material needs to be a cleared inert for pesticidal uses on food crops. To the extent that other straight chained, or non-straight chained chemicals within this group may be naturally occurring and sufficiently similar to these Lepidopteran compounds in use, they may also meet the exemption from the requirement for a food tolerance upon review by the Agency.

Any person adversely affected by this regulation may, within 30 days, file written objections and/or request a hearing with the Hearing Clerk and a copy submitted to the OPP docket for this rulemaking at the addresses given above.

IV. Rulemaking Record

A record has been established for this rulemaking under docket number ''OPP–300396'' (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number ''OPP–300396'', may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

V. Regulatory Assessments

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Dated: August 18, 1995.

Janet L. Andersen,

Acting Director, Biopesticides and Pollution Prevention Division Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By adding § 180.1153 to subpart D to read as follows:

§ 180.1153 Lepidopteran pheromones; exemption from the requirement of a tolerance.

Lepidopteran pheromones that are naturally occurring compounds, or identical or substantially similar synthetic compounds, designated by an unbranched aliphatic chain (between 9 and 18 carbons) ending in an alcohol, aldehyde or acetate functional group and containing up to 3 double bonds in the aliphatic backbone, are exempt from the requirement of a tolerance in or on all raw agricultural commodities. This exemption pertains to only those situations when the pheromone is applied to growing crops at a rate not to exceed 150 grams active ingredient/acre/year in accordance with good agricultural practices.

[FR Doc. 95–21037 Filed 8–29–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 4E4404/R2162; FRL–4962–1]

RIN 2070–AB78

Glyphosate; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes pesticide tolerances for residues of glyphosate in or on the raw agricultural commodities peppermint and spearmint. The Interregional Research Project No. 4 (IR-4) requested in a petition submitted to EPA pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA) this regulation that establishes the maximum permissible level for residues of the pesticide in or on the commodities.

EFFECTIVE DATE: This regulation becomes effective August 30, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 4E4404/R2162], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division

(7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 4E4404/R2162]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Product Manager, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783; e-mail: jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 7, 1995 (60 FR 35365), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 4E4404 to EPA on behalf of the Agricultural Experiment Station of Washington. The petition requested that the Administrator, pursuant to section 408(e) of the FFDCA, 21 U.S.C. 346a(e), amend 40 CFR 180.364(d) by establishing tolerances for residues of glyphosate (*N*-(phosphonomethyl)glycine) resulting from the application of the isopropylamine salt of glyphosate, in or on the raw agricultural commodities peppermint and spearmint at 200 parts per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register,** file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 4E4404/R2162] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 4E4404/R2162], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant

economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 18, 1995.

Susan Lewis,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.364, paragraph (d) is amended by adding and alphabetically inserting the entries for peppermint and spearmint, to read as follows:

§ 180.364 Glyphosate; tolerances for residues.

* * * * *

(d) * * *

Commodity	Parts per million
* * * * *	
Peppermint	200
* * * * *	
Spearmint	200
* * * * *	

[FR Doc. 95–21514 Filed 8–29–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 4E4374/R2158; FRL–4968–3]

RIN 2070–AB78

Dimethoate; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for residues of the insecticide dimethoate in or on the raw agricultural commodity asparagus. The Interregional Research Project No. 4 (IR-4) requested this regulation to establish a maximum permissible level for residues of the insecticide in or on the commodity in a petition submitted pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective August 30, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 4E4374/R2158], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 4E4374/R2158]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (7505W), Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 259, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783; e-mail: jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 5, 1995 (60 FR 34945), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted a pesticide petition, PP 4E4374, to EPA on behalf of the Agricultural Experiment Stations of North Carolina and Oklahoma. The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 346a(e)), amend 40 CFR 180.204 to establish a tolerance for residues of the pesticide dimethoate (*O,O*-dimethyl *S*-(*N*-methylcarbamoylmethyl) phosphorodithioate) including its oxygen analog (*O,O*-dimethyl *S*-(*N*-methylcarbamoylmethyl) phosphorothioate) in or on the raw agricultural commodity asparagus at 0.15 part per million (ppm). The petitioner proposed that use of dimethoate on asparagus be geographically limited to exclude California and Arizona based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seking geographically broader registration should contact the Agency's Registration Division at the address provided above.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register,** file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A

request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 4E4374/R2158] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 4E4374/R2158], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 18, 1995.

Susan Lewis,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.204, paragraph (b) is amended in the table therein by adding and alphabetically inserting a new entry, to read as follows:

§ 180.204 Dimethoate including its oxygen analog; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million
Asparagus	0.15

* * * * *

[FR Doc. 95–21513 Filed 8–29–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 5E4425/R2157; FRL–4968–2]

RIN 2070–AB78

Imidacloprid; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for residues of the insecticide (1-[6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine (referred to in this document as imidacloprid) and its metabolites in or on the raw agricultural commodity dried hops. The Interregional Research Project No. 4 (IR-4) requested the regulation to establish a maximum permissible level for residues of the insecticide pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective August 30, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 5E4425/R2157], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 5E4425/R2157]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 259, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783; e-mail: jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 5, 1995 (60 FR 34943), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 5E4425 to EPA on behalf of the Agricultural Experiment Stations of Oregon and Washington. This petition requests that the Administrator, pursuant to section 408(e) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), amend 40 CFR 180.472 by establishing a tolerance for residues of the insecticide imidacloprid (1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, all expressed as 1-[(6-chloro-3-pyridinyl)-methyl]-*N*-nitro-2-imidazolidinimine, in or on the raw agricultural commodity dried hops at 6 parts per million.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register,** file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 5E4425/R2157] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [5E4425/R2157], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 18, 1995.

Susan Lewis,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.472, paragraph (a) is amended in the table therein by adding and alphabetically inserting an entry for dried hops, and paragraph (d) is removed and designated as ''reserved'' as follows:

§ 180.472 1-[(6-Chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine; tolerances for residues

(a) * * *

Commodity	Parts per million
* * * * *	
Hops, dried	6
* * * * *	

* * * * *

(d) [Reserved]

[FR Doc. 95–21512 Filed 8–29–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Parts 180 and 186

[PP 4F4337 and FAP 4H5700/R2167; FRL–4976–2]

RIN 2070–AB78

Imidacloprid (NTN); Pesticide Tolerances and a Feed Additive Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: These regulations establish time-limited tolerances and a feed additive regulation for residues of the insecticide 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine (also known as imidacloprid) and its metabolites in or on wheat and sugarbeets with an expiration date 3 years after its effective date. Gustafson, Inc., submitted petitions under the Federal Food, Drug and Cosmetics Act (FFDCA) that requested these regulations to establish these maximum permissible levels for residues of the insecticide.

EFFECTIVE DATES: These regulations became effective on August 24, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 4F4337 and FAP 4H5700/R2167], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 4F4337 and FAP 4H5700/R2167]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 19, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6386; e-mail: edwards.dennis@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of November 2, 1994 (59 FR 54907), which announced that Gustafson, Inc., P.O. Box 660065, Dallas, TX 75266-0065, had submitted a petition to amend 40 CFR part 180 by establishing under sections 408 and 409 of the Federal Food Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a and 348, a regulation to permit residues of the insecticide (1-[6-chloro-3-pyridinyl) methyl]-*N*-nitro-2-imidazolidinime, in or on the raw agricultural commodities wheat, forage at 7.0 ppm, wheat, straw at 0.3 ppm, wheat, grain at 0.1 ppm; barley, forage at 1.2 ppm, barley, straw at 0.2 ppm, and barley, grain at 0.1 ppm, sorghum, forage at 0.2 ppm, sorghum, straw at 0.1 ppm, sorghum, grain at 0.1 ppm, beet, sugar, (roots) at 0.1 pm, and beets sugar (tops) at 0.1 ppm. Gustafson, Inc., later withdrew the proposed sorghum tolerance and resubmitted it as separate petition. Gustafson also amended the petition to request a feed additive tolerance of 0.5 ppm on sugarbeet molasses and revised the tolerance proposed for wheat grain to 0.05 ppm and sugarbeet roots to 0.05 ppm (see the **Federal Register** of June 15, 1995 (60 FR 31467)). The Agency has since decided that the appropriate sugarbeet molasses tolerance should be 0.3 ppm.

On August 14, 1995, Gustafson, submitted a revised Section F deleting barley from this petition. It will be resubmitted as a separate petition.

These tolerances and feed additive regulation are being established with a 3-year time limit to enable Gustafson to complete additional residue trials and present a final report. On June 2, 1994, the Agency issued a guidance document on crop residue trials. Among other things, this document provided guidance on the number and location of domestic crop field trials for establishment of pesticide residue trials. Based on this guidance document, the Agency determined that additional field trials are needed for wheat and sugarbeets. However, the Agency does not believe that these data will significantly change its risk assessment.

All relevant materials have been evaluated. The toxicology data considered in support of the tolerances include:

1. A three-generation rat reproduction study with a no-observed-effect level (NOEL) of 100 ppm (8 mg/kg/day); rat and rabbit teratology studies which were negative at doses up to 30 mg/kg/day and 24 mg/kg/day, respectively.

2. A 2-year rat feeding/carcinogenicity study that was negative for carcinogenic

effects under the conditions of the study and had a NOEL of 100 ppm (5.7 mg/kg/day, male and 7.6 mg/kg/day, female) for noncarcinogenic effects that included decreased body weight gain in females at 300 ppm and increased thyroid lesions in males at 300 ppm and females at 900 ppm.

3. A 1-year dog-feeding study with a NOEL of 1,250 ppm (41 mg/kg/day).

4. A 2-year mouse carcinogenicity study that was negative for carcinogenic effects under conditions of the study and that had a NOEL of 1,000 ppm (208 mg/kg/day).

There is no cancer risk associated with exposure to this chemical. Imidacloprid has been classified under ''Group E'' (no evidence of carcinogenicity) by EPA's OPP/HED's Reference Dose (RFD) Committee.

The reference dose (RfD), based on the 2-year rat feeding/carcinogenic study with a NOEL of 5.7 mg/kg/bwt and 100-fold uncertainity factor, is calculated to be 0.057 mg/kg/bwt. The theoretical maximum residue contribution (TMRC) from published uses is 0.008088 mg/kg/bwt/day. This represents 14.189% of the RfD for overall U.S. population. The proposed tolerance will increase the TMRC, .000091 mg/kg/day representing an increase in the ADI of 0.158%. Thus the TMRC will be .0008179 mg/kg/day utilizing 14.377% of the RFD. For exposure of the most highly exposured subgroups in the population, children ages 1 to 6 years, the TMRC for the published and proposed tolerances is is 0.016934 mg/kg/day. This is equal to 29.709% of the RfD. Dietary exposure from the existing uses and proposed use will not exceed the reference dose for any subpopulation (including infants and children) based on the information available from EPA's Dietary Risk Evaluation System.

The nature of the imidacloprid residue in plants and livestock is adequately understood. The residues of concern are combined residues of imidacloprid and it metabolites containing the 6-chloropyridinyl moiety, all calculated as imidacloprid. The analytical method is a common moiety method for imidacloprid and its metabolites containing the 6-chloropyridiyl moiety using a permanganate oxidation, silyl derivatization, and capillary GC-MS selective ion monitoring. Imidacloprid and its metabolites are stable in the commodities when frozen for at least 24 months. There are adequate amounts of geographically representative crop field trial data to show that combined residues of imidacloprid and it metabolites, all calculated as imidacloprid, will not exceed the proposed tolerances when use as directed.

There are currently no actions pending against the continued registration of this chemical.

This pesticide is considered useful for the purposes for which the tolerance is sought and capable of achieving the intended physical or technical effect. Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 will protect the public health and that use of the pesticide in accordance with the regulation established by amending 40 CFR part 186 will be safe. Therefore, these tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 4F4337 and FAP 4H5700/R2167] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 4F4337 and FAP 4H5700/R2167], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or

the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180 and 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 24, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR parts 180 and 186 are amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.472, by adding new paragraph (e), to read as follows:

§ 180.472 1-[(6-Chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine; tolerances for residues.

* * * * *

(e) Time-limited tolerances are established for residues of the insecticide 1-[6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine and its metabolites containing the 6-chloropyridinyl moiety, all expressed as 1-[(6-chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine, in or on the following raw agricultural commodities

Commodity	Parts per million	Expiration date
Beets, sugar (roots)	0.05	August 24, 1998
Beets, sugar (tops)	0.1	
Wheat, forage	7.0	Do.
Wheat, straw	0.3	Do.
Wheat, grain	0.05	Do.

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 186.900, by revising the section heading and adding new paragraph (d), to read as follows:

§ 186.900 1-[(6-Chloro-3-pyridinyl) methyl]-N-nitro-2- imidazolidinimine.

* * * * *

(d) A time-limited feed additive tolerance is established for residues of the insecticide 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine and it metabolites containing 6-chloropyridinyl moiety in or on processed feed when present therein as a result of application to sugarbeets.

Commodity	Parts per million	Expiration date
Beets, sugar, molasses	0.3	August 24, 1998

Residues in this commodity not in excess of the established tolerances resulting from the use described in this paragraph remaining after expiration of the time-limited tolerance will not be considered to be actionable if the insecticide is applied during the term of and in accordance with the provisions of the above regulation.

[FR Doc. 95–21668 Filed 8–28–95; 2:17 pm]

BILLING CODE 6560–50–F

40 CFR Part 271

[FRL–5286–3]

Georgia: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate Final Rule.

SUMMARY: Georgia has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Georgia's revisions consist of the provisions contained in the rules promulgated for the Burning of Hazardous Waste in Boilers and Industrial Furnaces. These requirements are listed in Section B of this notice. The Environmental Protection Agency (EPA) has reviewed Georgia's application and has made a decision, subject to public review and comment, that Georgia's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Georgia's hazardous waste program revisions. Georgia's application for program revisions is available for public review and comment.

DATES: Final authorization for Georgia shall be effective October 30, 1995 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Georgia's program revision application must be received by the close of business September 29, 1995.

ADDRESSES: Copies of Georgia's program revision application are available during regular office hours of 9 a.m. to 5 p.m., Monday through Friday, at the following addresses for inspection and copying: Georgia Department of Natural Resources, Environmental Protection Division, Floyd Towers East, Room 1154, 205 Butler St., SE, Atlanta, Georgia 30334; U.S. EPA Region 4, Library, 345 Courtland Street, NE, Atlanta, Georgia 30365; (404) 347–4216, vmx 6050. Or you may contact the State Coordinator at (404) 347–2234, vmx 2004.

FOR FURTHER INFORMATION CONTACT: Al Hanke, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365; (404) 347–2234 vmx 2018.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act (''RCRA or ''the Act''), 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 addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984, hereinafter (''HSWA'')) allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive ''interim authorization'' for the

HSWA requirements under Section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for HSWA requirements.

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 through 266, 268, 270, and 279.

B. Georgia

Georgia initially received final authorization for its base RCRA program effective on August 21, 1984. Georgia has received authorization for revisions to its program through RCRA Cluster III on July 10, 1995. Today Georgia is seeking approval of the Burning of Hazardous Waste in Boilers and Industrial Furnaces (BIF) rules which are contained in RCRA Clusters I, II, and III in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Georgia's application, and has made an immediate final decision that Georgia's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Georgia. The public may submit written comments on EPA's immediate final decision up until September 29, 1995. Copies of Georgia's application are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of Georgia'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.

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 will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Georgia is today seeking authority to administer the following Federal requirements.

Federal requirement	HSWA or FR notice	Promulgation	State authority
Checklist 85 BIF Rule	56 FR 7134	2/21/91 OCGA	391–3–11.07(1), 391–3–11.11(3)(d)(e)&(g)(7)(d),&(13) OCGA 12–8–62(2),(10),(20), 12–8–64(1)(J), 12–8–64(1)(M), 12–8–65(a)(16)&(21), 12–8–66
Checklist 94 BIF Rule	56 FR 32688	7/17/91	391–3–11—.10(1) & (3), 391–3–11—.11(3)(e)&(g)(7)(d)&(10) OCGA 12–8–62(11)&(13), 12–8–64(1)(A)(B)(C)(D)(F)(I), 12–8–65(a)(3)&(21), 12–8–66
Checklist 96 BIF Rule	56 FR 42504	8/27/91 OCGA	391–3–11—.07 12–8–62(10)(11)(13)(20), 12–8–64(1)(M)(A)(B)(C)(D)(F)(I), 12–8–65(a)(3)(16)(21)
Checklist 98 BIF Rule	56 FR 43874	9/5/91	391–3–11—.10(3) OCGA 12–8–64(1)&(2), 12–8–65(a)(3)(16)(21), 12–8–66
Checklist 111 BIF Rule	57 FR 38558	8/25/92	391–3–11—.02(1), 391–3–11—.07(1)(2), 391–3–11—.10(1)(2)(3) OCGA 12–8–62(10)(20), 12–8–64(1)(M), 12–8–65(a)(16)(21)
Checklist 114 BIF Rule	57 FR 44999	9/30/92	391–3–11—.02(1), 391–3–11—.07(1)(2), 391–3–11—.10(1)(2)(3), OCGA 12–8–62(11)(13), 12–8–64(1)(A)(B)(C)(D)(E)(F)(I), 12–8–66

Georgia is not authorized by the Federal government to operate the RCRA program on Indian Lands; this authority remains with EPA unless provided otherwise in a future statute or regulation.

C. Decision

I conclude that Georgia's application for program revisions meets all of the

statutory and regulatory requirements established by RCRA. Accordingly, Georgia is granted final authorization to operate its hazardous waste program as revised.

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. This authorization effectively suspends the applicability of certain Federal regulations in favor of Georgia'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 waste transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and record keeping 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: August 18, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–21281 Filed 8–29–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 271

[FRL–5286–2]

Mississippi; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Mississippi has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Mississippi's revisions consist of provisions contained in RCRA Cluster III. These requirements are listed in Section B of this notice. The Environmental Protection Agency (EPA) has reviewed Mississippi's application and has made a decision, subject to public review and comment, that Mississippi's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Mississippi's hazardous waste program revisions. Mississippi's application for program revisions is available for public review and comment.

DATES: Final authorization for Mississippi's program revisions shall be effective October 30, 1995 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Mississippi's program revision application must be received by the close of business, September 29, 1995.

ADDRESSES: Copies of Mississippi's program revision application are available during 8:00am to 4:30pm at the following addresses for inspection and copying: Mississippi Department of Environmental Quality, 2380 Highway 80 West, P.O. Box 10385, Jackson, Mississippi 39209; (601) 961–5062; U.S. EPA, Region 4, Library, 345 Courtland Street, NE, Atlanta, Georgia 30365; (404) 347–4216. Written comments should be sent to Al Hanke at the address listed below.

FOR FURTHER INFORMATION CONTACT: Al Hanke, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365; (404) 347–2234 vmx 2018.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act (''RCRA'' or ''the Act''), 42 U.S.C. 6926(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 addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984, hereinafter ''HSWA'') allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive ''interim authorization'' for the HSWA requirements under Section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements. 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 260–268 and 124 and 270.

B. Mississippi

Mississippi initially received final authorization for its base RCRA program effective on June 27, 1984. Mississippi received authorization for revisions to its program on October 17, 1988, October 9, 1990, May 28, 1991, August 27, 1991, July 10, 1992, June 7, 1993, December 20, 1993, May 17, 1994, and July 31, 1995. On August 10, 1994, Mississippi submitted a program revision application for additional program approvals. Today, Mississippi is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Mississippi's application and has made an immediate final decision that Mississippi'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 Mississippi. The public may submit written comments on EPA's immediate final decision up until September 29, 1995.

Copies of Mississippi's application for these program revisions are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice. Approval of Mississippi's program revisions shall become effective October 30, 1995, unless an adverse comment pertaining to the State's revisions 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.

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 will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Mississippi is today seeking authority to administer the following Federal requirements promulgated on July 1, 1992–June 30, 1993, for RCRA III.

Federal requirement	FR reference	FR promulgation date
Checklist 107:		
Oil Filter Exclusion	57 FR 29220	7/1/92
Checklist 108:		
Toxicity Characteristic Revision; Technical Correction	57 FR 30657	7/10/92
Checklist 109:		
Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris	57 FR 37194	8/18/92
Checklist 110:		
Coke By-Products Listing	57 FR 37284	8/18/92
Checklist 112:		
Recycled Used Oil Management Standards	57 FR 41566	9/10/92
Checklist 113:		
Consolidated Liability Requirements	53 FR 33938	9/1/88
	56 FR 30200	7/1/91
	57 FR 42832	9/16/92
Checklist 115:		
Reportable Quantity Adjustment, Chlorinated Toluene Production Wastes	57 FR 47376	10/15/92
Checklist 118:		
Liquids in Landfills	57 FR 54452	11/18/92
Checklist 119:		
Toxicity Characteristic Revision; Correction	57 FR 55114	11/24/92
	58 FR 6854	2/2/93
Checklist 120:		
Wood Preserving; Technical Amendment	57 FR 61492	12/24/92
Checklist 122:		
Recycled Used Oil Management Standards; Technical Amendments	58 FR 26420	5/3/93
Checklist 124:		
Land Disposal Restrictions for Ignitable and Corrosive Characteristic Wastes	58 FR 29860	5/24/93

Mississippi's application for these program revisions meet all of the statutory and regulatory requirements established by RCRA. Accordingly, Mississippi is granted final authorization to operate its hazardous waste program as revised.

Mississippi now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application and previously approved authorities. Mississippi also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Section 3008, 3013, and 7003 of RCRA.

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. This authorization effectively suspends the applicability of certain Federal regulations in favor of Mississippi'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: August 18, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–21279 Filed 8–29–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 721

[OPPTS–50622; FRL–4926–2]

RIN 2070–AB27

Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for certain chemical substances which were the subject of premanufacture notices (PMNs) and subject to TSCA section 5(e) consent orders issued by EPA. Today's action requires persons who intend to manufacture, import, or process these substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing of the substance for a use designated by this SNUR as a significant new use. The required notice will provide EPA with the opportunity to evaluate the intended use, and if necessary, to prohibit or limit that activity before it occurs. EPA is promulgating this SNUR using direct final procedures.

DATES: The effective date of this rule is October 30, 1995. This rule shall be

promulgated for purposes of judicial review at 1 p.m. Eastern Standard Time on September 13, 1995. If EPA receives notice before September 29, 1995 that someone wishes to submit adverse or critical comments on EPA's action in establishing a SNUR for one or more of the chemical substances subject to this rule, EPA will withdraw the SNUR for the substance for which the notice of intent to comment is received and will issue a proposed SNUR providing a 30–day period for public comment.

ADDRESSES: Each comment or notice of intent to submit adverse or critical comment must bear the docket control number OPPTS–50622 and the names of the chemical substances subject to the comment. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460. All comments which are claimed confidential must be clearly marked as such. Three additional sanitized copies of any comments containing confidential business information (CBI) must also be submitted. Nonconfidential versions of comments on this rule will be placed in the rulemaking record and will be available for public inspection.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPPTS–50622. No CBI should be submitted through e-mail. Electronic comments on this final rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit X. of this document.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551, e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This SNUR will require persons to notify EPA at least 90 days before commencing manufacturing or processing a substance for any activity designated by this SNUR as a significant new use. The supporting rationale and background to this rule are more fully set out in the preamble to EPA's first direct final SNURs published in the **Federal Register** of April 24, 1990 (55 FR 17376). Consult that preamble for further information on the objectives, rationale, and procedures for the rules and on the basis for significant new use designations including provisions for developing test data.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.10.

II. Applicability of General Provisions

General provisions for SNURs appear at 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and 5(d)(1), the exemptions authorized by section 5(h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Such persons must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707.

III. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for the following chemical substances under 40 CFR part 721, subpart E. In this unit, EPA provides a brief description for each substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the action taken by EPA in the section 5(e) consent order or as a non-section 5(e) SNUR for the substance (including the statutory citation and specific finding), toxicity concern, and the CFR citation assigned in the regulatory text of this rule. The specific uses which are designated as significant new uses are cited in the regulatory text of this document by reference to 40 CFR part 721, subpart B where the significant new uses are described in detail. Certain new uses, including production limits and other uses designated in the rule are claimed as CBI. The procedure for obtaining confidential information is set out in Unit VII. of this preamble.

Where the underlying section 5(e) order prohibits the PMN submitter from exceeding a specified production limit without performing specific tests to determine the health or environmental effects of a substance, the tests are described in this unit. As explained further in Unit VI. of this preamble, the SNUR for such substances contains the same production limit, and exceeding the production limit is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a significant new use notice (SNUN) at least 90 days in advance. In addition, this unit describes tests that are recommended by EPA to provide sufficient information to evaluate the substance, but for which no production limit has been established in the section 5(e) order. Descriptions of recommended tests are provided for informational purposes.

Data on potential exposures or releases of the substances, testing other than that specified in the section 5(e) order for the substances, or studies on analogous substances, which may demonstrate that the significant new uses being reported do not present an unreasonable risk, may be included with significant new use notification. Persons submitting a SNUN must comply with the same notice requirements and EPA regulatory

procedures as submitters of PMNs, as stated in 40 CFR 721.1(c), including submission of test data on health and environmental effects as described in 40 CFR 720.50.

EPA is not publishing SNURs for P–93–1231, P–93–1315, P–94–212, P–94–343/344, P–94–506/507/508/509, P–94–615/616, P–94–697 through P–94–895, P–94–919, P–94–1080, P–94–1484, P–94–1561/1562/1563/1564, P–94–1634/1635/1636/1637/1638/1639, P–94–1705, and P–94–1771, which are subject to a final TSCA 5(e) consent order. The 5(e) consent orders for these substances are derived from an exposure finding based solely on substantial production volume and significant or substantial human exposure and/or release to the environment of substantial quantities. For these cases there were limited or no toxicity data available for the PMN substances. In such cases, EPA regulates the new chemical substances under section 5(e) by requiring certain toxicity tests. For instance, chemical substances with potentially substantial releases to surface waters would be subject to toxicity testing of aquatic organisms and chemicals with potentially substantial human exposures would be subject to health effects testing for mutagenicity, acute effects, and subchronic effects. However, for these substances, the short-term toxicity testing required by the 5(e) order is usually completed within 1 to 2 years of notice of commencement. EPA's experience with exposure-based SNURs requiring short-term testing is that the SNUR is often revoked within 1 to 2 years when the test results are received. Rather than issue and revoke SNURs in such a short span of time, EPA will defer publication of exposure-based SNURs until either a Notice of Commencement (NOC) or data demonstrating risk are received unless the toxicity testing required is long-term. EPA is issuing this explanation and notification as required in 40 CFR 721.160(a)(2) as it has determined that SNURs are not needed at this time for these substances which are subject to a final 5(e) consent order under TSCA.

On March 29, 1994, EPA received a SNUN, P–94–1218, for 1,1,1-trifluoroethane which is subject to a SNUR at 40 CFR 721.4390. The submitter was notifying EPA that it intended to exceed the production volume limit for the substance. EPA allowed the 90–day review period to expire without taking any action. EPA is in the process of revoking the SNUR based on toxicity testing received for the substance. EPA is issuing this explanation and notification as required in section 5(g) of TSCA as it has not initiated any action to prohibit or limit manufacture, process, distribute in commerce, use, or dispose of 1,1,1-trifluoroethane with respect to which notification or data was required by the SNUR.

The designation L–91–87 for the substance with the generic name ''substituted phenol'' denotes a low-volume exemption which is an exemption to premanufacture requirements of section 5(a)(1)(A) of TSCA. The terms and requirements are described in § 723.50.

PMN Number P–85–619

Chemical name: (generic) Tetrasubstituted aminocarboxylic acid.
CAS number: Not available.
Effective date of section 5(e) consent order: August 4, 1994.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health and the environment.
Toxicity concern: Test data on substances similar in structure to the PMN substance have been shown to cause carcinogenicity and mutagenicity in test animals and toxicity to aquatic organisms.
Recommended testing: EPA has determined that the results of a 2–year two-species rodent bioassay (40 CFR 798.3300) would help characterize the carcinogenic effects of the PMN substance. A 96–hour bioassay in algae (40 CFR 797.1050) and a 96–hour LC50 study in fish (40 CFR 797.1400) would help to characterize the environmental effects of the substance.
CFR citation: 40 CFR 721.2089.

PMN Number P–85–941

Chemical name: (generic) Substituted alkylamine salt.
CAS number: Not available.
Basis of action: The PMN substance will be used as described in the PMN. Based on test data on the substance, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 70 ppb (parts per billion) of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters above a concentration of 70 ppb. EPA has determined that other uses of the substance may result in releases to surface waters which exceed the concern concentration. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(i).
Recommended testing: EPA has determined that a chronic 60–day fish early life stage toxicity test in rainbow trout (40 CFR 797.1600) and a 21–day chronic daphnid toxicity test would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.562.

PMN Number P–86–1491

Chemical name: (generic) 3-Hydroxy-1,1-dimethylbutyl derivative.
CAS number: Not available.
Effective date of section 5(e) consent order: January 21, 1987.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health.
Toxicity concern: Test data on substances similar in structure to the PMN substance have been shown to cause carcinogenicity in test animals.
Recommended testing: EPA has determined that the results of a 2–year two-species rodent bioassay (40 CFR 798.3300) would help characterize the carcinogenic effects of the PMN substance
CFR citation: 40 CFR 721.4466.

PMN Number P–87–1036

Chemical name: (generic) Substituted 1,6-dihydroxynaphthalene.
CAS number: Not available.
Effective date of section 5(e) consent order: October 30, 1987.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i), (ii)(I), and (ii)(II) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health and that this substance is expected to be produced in substantial quantities and that there may be significant or substantial human exposure.
Toxicity concern: Test data on substances similar in structure to the PMN substance have been shown to cause carcinogenicity and reproductive effects in test animals.
Recommended testing: EPA has determined that the results of a 90–day subchronic dermal study (40 CFR 798.2650) and a 2–year two-species rodent bioassay (40 CFR 798.3300) would help characterize the health effects of the PMN substance. The PMN submitter has agreed not to exceed the production volume limit without performing the 90–day subchronic study.
CFR citation: 40 CFR 721.5192.

PMN Numbers P–88–998/999

Chemical name: (generic) Fluorene-containing diaromatic amines.
CAS number: Not available.

Basis of action: The PMN substances will be used as matrix resins. Based on data on the PMN substances, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 1 ppb of the PMN substances in surface waters. EPA determined that use of the substances as described in the PMN did not present an unreasonable risk because the substances did not exceed a concentration of 1 ppb when released to surface waters. EPA has determined that other uses may result in releases to surface waters above 1 ppb. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(i).
Recommended testing: EPA has determined that a chronic 60–day fish early life stage toxicity test in rainbow trout (40 CFR 797.1600) and a 21–day chronic daphnid toxicity test would help characterize the environmental effects of the PMN substances.
CFR citation: 40 CFR 721.3760.

PMN Number P–91–818

Chemical name: (generic) Alkyldi(alkyl oxyhydroxypropyl) derivative, phosphoric acid esters, potassium salts.
CAS number: Not available.
Basis of action: The PMN substance will be used as a mining chemical. Based on data on the PMN substance, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 30 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance did not exceed a concentration of 30 ppb when released to surface waters. EPA has determined domestic manufacture or consumer use may result in releases to surface waters above 30 ppb. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(i).
Recommended testing: EPA has determined that a chronic 60–day fish early life stage toxicity test in rainbow trout (40 CFR 797.1600) and a 21–day chronic daphnid toxicity test would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.6110.

PMN Number P–93–633

Chemical name: (generic) Aliphatic ester.
CAS number: Not available.
Effective date of section 5(e) consent order: September 28, 1994.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Similar chemicals have been shown to cause liver and developmental toxicity in test animals.
Recommended testing: The Agency has determined that the results of a 90–day subchronic toxicity (40 CFR 798.2650) and developmental toxicity (oral route) (40 CFR 798.4900) studies would help characterize liver and developmental effects.
CFR citation: 40 CFR 721.2815.

PMN Number P–93–955

Chemical name: (generic) Formaldehyde, polymer with substituted phenols, glycidyl ether.
CAS number: Not available.
Effective date of section 5(e) consent order: June 16, 1994.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health and the environment.
Toxicity concern: The PMN substance has been shown to cause systemic effects in test animals. Similar chemicals have been shown to cause systemic toxicity, reproductive toxicity, mutagenicity, and oncogencity in test animals. Similar chemicals have been shown to cause toxicity to aquatic organisms.
Recommended testing: A 90–day subchronic (oral) toxicity test with special attention to the testes will help to characterize the systemic and reproductive effects. The PMN submitter has agreed not to exceed the production volume limit without performing this test. A 2-year, two-species rodent (oral) bioassay study (40 CFR § 798.3300) would be required to evaluate the potential oncogenic effects of the PMN substance. A 96–hour bioassay in algae (40 CFR 797.1050), a 48–hour LC50 test in daphnia (40 CFR 797.1300), and a 96–hour LC50 test in freshwater fish (40 CFR 797.1400) would be required to evaluate the environmental effects which may be caused by the PMN substance. The algal test should be conducted with static conditions and measured concentrations.

The remaining tests should be conducted with flow-through conditions and measured concentrations. To evaluate worker exposure from the potential dusting of the PMN substance, simulation of shipping and handling conditions using the following 2-step set of tests from the current version of the American Society of Testing and Materials (ASTM) guidelines would be required. Drop tests for the PMN substance in their shipping containers should be conducted according to ASTM Method D959—Drop test for Filled Bags and ASTM Method D997—Drop Test for Loaded Cylindrical Containers. The PMN substance in the bags or containers in the studies above should be tested using ASTM Method D999—Vibration Testing of Shipping Containers.

After the 2-step set of tests is complete, the particle size distribution of the PMN substance from the shipping containers should be measured using ASTM Method D 1921—Standard Test Methods for Particle Size (Sieve Analysis) of Plastic Materials, using wire-cloth sieves meeting the requirements of ASTM D11—Standard Specifications for Wire-Cloth Sieves for Testing Purposes.
CFR citation: 40 CFR 721.7046.

PMN Number P–93–987

Chemical name: (generic) Mixture of nitrated alkylated phenols.
CAS number: Not available.
Basis of action: The PMN substance will be used as a polymerization inhibitor. Based on test data on the substance, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 1 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters above a concentration of 1 ppb. EPA has determined that other uses of the substance may result in releases to surface waters which exceed the concern concentration. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(i).
Recommended testing: EPA has determined that a chronic 60–day fish early life stage toxicity test in rainbow trout (40 CFR 797.1600) and a 21–day chronic daphnid toxicity test would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.5769.

PMN Number P–93–1649

Chemical name: (generic) Alkylated urea.
CAS number: Not available.
Effective date of section 5(e) consent order: August 25, 1994.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health.
Toxicity concern: Similar chemicals have been shown to cause neurotoxicity

and developmental toxicity in test animals.
Recommended testing: A dermal developmental toxicity study (40 CFR 798.4900) and a 90–day dermal subchronic study (40 CFR 798.2250 and NTIS: PB91-154617) would help characterize the potential adverse neurotoxic and developmental effects of this substance. The consent order contains two production volume limits. The PMN submitter has agreed not to exceed the first production volume limit without performing the dermal developmental toxicity study. The PMN submitter has also agreed not to exceed the second production volume limit without performing the 90–day dermal subchronic study.
CFR citation: 40 CFR 721.9892.

PMN Number P–94–24

Chemical name: Ethanaminium, *N*-ethyl-2-hydroxy-*N*,*N*-bis(2-hydroxyethyl)-, diester with C_{12-18} fatty acids, ethyl sulfates (salts).
CAS number: Not available.
Effective date of section 5(e) consent order: April 24, 1994.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i), (ii)(I), and (ii)(II), of TSCA based on findings that this substance may present an unreasonable risk of injury to the environment, is expected to be produced in substantial quantities, and may reasonably be expected to enter the environment in substantial quantities.
Recommended testing: EPA has also determined that a modified SCAS test (semicontinuous activated sludge procedure), a soil sediment adsorption isotherm test (40 CFR 796.2750), a fish acute toxicity study modified with humic acid (40 CFR 797.1400), a fish acute toxicity study (40 CFR 797.1400), a daphnid acute toxicity study (40 CFR 797.1300), and an algal acute toxicity study (40 CFR 797.1050) would help characterize possible environmental effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.3152.

PMN Number P–94–47

Chemical name: (generic) Polyurethane polymer.
CAS number: Not available.
Effective date of section 5(e) consent order: August 3, 1994.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health.
Toxicity concern: Similar chemicals have been shown to cause respiratory and dermal sensitization in test animals.
Recommended testing: EPA has determined that a dermal sensitization study (40 CFR 798.4100), a pulmonary sensitization study (Karol method or equivalent), and a 90–day subchronic inhalation study (40 CFR 798.2450) will help characterize the health effects of the PMN substance. The PMN submitter has agreed not to exceed the production volume limit without performing these studies.
CFR citation: 40 CFR 721.8090.

PMN Number P–94–1042

Chemical name: (generic) Methylenebis benzotriazolyl phenols.
CAS number: Not available.
Effective date of section 5(e) consent order: September 1, 1994.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health.
Toxicity concern: Similar chemicals have been shown to cause systemic and reproductive toxicity in test animals.
Recommended testing: A 90–day gavage study in rats (40 CFR § 798.2650) to help characterize systemic and reproductive effects. The PMN submitter has agreed not to exceed the production volume limit without performing this test.
CFR citation: 40 CFR 721.5763.

PMN Number P–94–1453

Chemical name: (generic) Hydrochloro fluorocarbon.
Basis of action: The PMN substance will be used as an intermediate. Based on analogy to similar substances, the PMN substance may cause cancer and cardiac sensitization. EPA has determined that persons exposed to the PMN substance through inhalation may be at risk for these toxic effects. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because there were no significant worker exposures from use as an intermediate. EPA has determined that worker exposures from use other than an intermediate may result in significant exposures. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(C) and (b)(3)(ii).
Recommended testing: EPA has determined that a cardiac sensitization study in dogs and a 2–year two-species oral bioassay (40 CFR 798.3300) will help to characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.4463.

PMN Number P–94–1487

Chemical name: (generic) Thiaalkanethiol.
CAS number: Not available.
Basis of action: The PMN substance will be used as an surfactant. Based on analogy to anionic surfactants, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 20 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters. EPA has determined that domestic manufacture of the substance may result in releases to surface waters. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that an algal acute toxicity study (40 CFR 797.1050), a chronic 60–day fish early life stage toxicity test in rainbow trout (40 CFR 797.1600), a 21–day chronic daphnid toxicity test, a ready biodegradability test, and a modified SCAS test would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.9656.

PMN Numbers P–89–1125, L–91–87, P–92–41, P–92–511, P–94–1527, and P–94–1755

Chemical name: (generic) Substituted phenol.
CAS number: Not available.
Basis of action: The PMN substance has been the subject of six different PMN notices. Based on test data on the PMN substance and by analogy to phenols, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 1 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in several of the PMNs did not present an unreasonable risk because the substance did not exceed a concentration of 1 ppb when released to surface waters. The only PMN where releases over 1 ppb were expected has been withdrawn. EPA has determined that other uses and increased production volume may result in releases to surface waters above 1 ppb. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(i).
Recommended testing: EPA has determined that an algal acute toxicity study (40 CFR 797.1050), a chronic 60–day fish early life stage toxicity test in rainbow trout (40 CFR 797.1600), and a 21–day chronic daphnid toxicity test would help characterize the

environmental effects of the PMN substance.
CFR citation: 40 CFR 721.5867.

PMN Number P–94–1631

Chemical name: (generic) Thiadiazole derivative.
CAS number: Not available.
Basis of action: The PMN substance will be used as a coloring agent. Based on analogy of the substance to neutral organic substances, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 90 ppb of the PMN substance in surface waters. Based on analogy of the substance to other thiadiazoles, EPA is concerned for developmental toxicity to exposed workers. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters above a concentration of 90 ppb and significant worker exposure would not occur because the substance was used in an enclosed process, was not manufactured domestically, and was not used as a powder. EPA has determined that other uses of the substance may result in significant worker exposure and releases to surface waters which exceed the concern concentration. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii) and (b)(3)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400), a daphnid acute toxicity study (40 CFR 797.1300), and an algal acute toxicity study (40 CFR 797.1050) would help characterize the environmental effects of the PMN substance. EPA has determined that a developmental toxicity study (40 CFR 708.4900) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.9658.

PMN Number P–94–1810

Chemical name: (generic) Amine aldehyde condensate.
CAS number: Not available.
Basis of action: The PMN substance will be used as a fuel additive. Based on analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 1 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters. EPA has determined that other uses of the substance may result in releases to surface waters which exceed the concern concentration. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400), a daphnid acute toxicity study (40 CFR 797.1300), and an algal acute toxicity study (40 CFR 797.1050) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.639.

PMN Number P–94–1864

Chemical name: (generic) Dialkylamido imidazoline.
CAS number: Not available.
Basis of action: The PMN substance will be used as a site-limited intermediate. Based on analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 6 ppb of the PMN substance in surface waters. EPA determined that use of the substance as a site-limited intermediate did not present an unreasonable risk because the substance would not exceed the concern concentration when released to surface waters. EPA has determined that other uses of the substance may result in releases to surface waters which exceed the concern concentration. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400), a daphnid acute toxicity study (40 CFR 797.1300), and an algal acute toxicity study (40 CFR 797.1050) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.4473.

PMN Number P–94–2166

Chemical name: Sodium perthiocarbonate.
CAS number: Not available.
Basis of action: The PMN substance will be used as an oil well additive. Based on test data on a structurally similar substance, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 20 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters. EPA has determined that other uses of the substance may result in releases to surface waters which exceed the concern concentration. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400), a daphnid acute toxicity study (40 CFR 797.1300), and an algal acute toxicity study (40 CFR 797.1050) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.9526.

PMN Number P–94–2177

Chemical name: (generic) Trisodium chloro[(trisubstituted heteromonocycleamino) propylamino] triazinylaminohydroxyazo naphthalenetrisulfonate.
CAS number: Not available.
Basis of action: The PMN substance will be used as a fiber-reactive dye. Based on toxicity data for the substance, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 100 ppb of the PMN substance in surface waters. Based on toxicity data for the substance, EPA is concerned for neurological effects, kidney toxicity, and liver toxicity to exposed workers. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters above a concentration of 100 ppb and significant worker exposure would not occur because the substance was not manufactured domestically. EPA has determined that domestic manufacture of the substance may result in releases to surface waters which exceed the concern concentration and significant worker exposure. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(i) and (b)(3)(i).
Recommended testing: EPA has determined that a chronic 60–day fish early life stage toxicity test in rainbow trout (40 CFR 797.1600) and a 21–day chronic daphnid toxicity test would help characterize the environmental effects of the PMN substance and a 90–day subchronic oral study in rats (40 CFR 798.2650) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.5282.

PMN Number P–94–2230

Chemical name: (generic) Polyglycerin mono(4-nonyl phenyl) ether.
CAS number: Not available.
Basis of action: The PMN substance will be employed in a contained use. Based on analogy to nonionic surfactants and alcohol ethoxylates, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 400 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be

released to surface waters. EPA has determined that other uses, increased production volume, and domestic manufacture of the substance may result in releases to surface waters which exceed the concern concentration. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400), a daphnid acute toxicity study (40 CFR 797.1300), and an algal acute toxicity study (40 CFR 797.1050) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.3486.

PMN Number P–95–17

Chemical name: Benzene, 2-bromo-1,4-dimethoxy-.
CAS number: 25245–34–5.
Basis of action: The PMN substance will be used as an intermediate. Based on analogy to neutral organic compounds, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 200 ppb of the PMN substance in surface waters. Based on analogy to halogenated aromatic compounds, EPA is concerned that the substance may cause liver and kidney toxicity to exposed workers. EPA determined that use of the substance as an intermediate did not present an unreasonable risk because the substance would not be released to surface waters and significant worker exposure would not occur. EPA has determined that other uses of the substance may result in releases to surface waters which exceed the concern concentration and significant worker exposure. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii) and (b)(3)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400), a daphnid acute toxicity study (40 CFR 797.1300), and an algal acute toxicity study (40 CFR 797.1050) would help characterize the environmental effects of the PMN substance and a 90–day subchronic oral study in rats (40 CFR 798.2650) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.1193.

PMN Number P–95–85

Chemical name: (generic) Substituted naphthalenesulfonic acid, alkali salt.
CAS number: Not available.
Basis of action: The PMN substance will be used as a reactive textile dye. Based on analogy to similar substances, EPA is concerned that respiratory sensitization will occur in exposed workers. EPA determined that use of the substance did not present an unreasonable risk because significant worker exposure would not occur because the substance was not manufactured domestically. EPA has determined that domestic manufacture of the substance may result in significant worker exposure. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a respiratory sensitization study (Sarlo, K. and Clark, E.D., A Tier Approach for Evaluating the Respiratory Allergenicity of Low Molecular Weight Chemicals, *Fundamental and Applied Toxicology* 18:107-114 (1992)) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.5278.

PMN Number P–95–86

Chemical name: (generic) Benzenesulfonic acid, amino substituted phenylazo-.
CAS number: Not available.
Basis of action: The PMN substance will be used as a textile dye. Based on analogy of the azo reduction products to a similar substance, EPA is concerned that developmental, reproductive, and kidney toxicity will occur in exposed workers. EPA determined that use of the substance did not present an unreasonable risk because the substance would not be manufactured as a powder and significant worker exposure would not occur. EPA has determined that manufacture of the substance as a powder may result in significant worker exposure. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(iii).
Recommended testing: EPA has determined that a 90–day subchronic oral study in rats (40 CFR 798.2650), a two-generation reproduction study (40 CFR 798.4700), and a developmental toxicity study (40 CFR 708.4900) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.1643.

IV. Objectives and Rationale of the Rule

During review of the PMNs submitted for the chemical substances that are subject to this SNUR, EPA concluded that for 9 of the 26 substances regulation was warranted under section 5(e) of TSCA, pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the substances. The basis for such findings is outlined in Unit III. of this preamble. Based on these findings, section 5(e) consent orders requiring the use of appropriate controls were negotiated with the PMN submitters; the SNUR provisions for these substances designated herein are consistent with the provisions of the section 5(e) orders.

In the other 17 cases for which the proposed uses are not regulated under a section 5(e) order, EPA determined that one or more of the criteria of concern established at 40 CFR 721.170 were met.

EPA is issuing this SNUR for specific chemical substances which have undergone premanufacture review to ensure that: EPA will receive notice of any company's intent to manufacture, import, or process a listed chemical substance for a significant new use before that activity begins; EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use; when necessary to prevent unreasonable risks EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that substance occurs; and all manufacturers, importers, and processors of the same chemical substance which is subject to a section 5(e) order are subject to similar requirements. Issuance of a SNUR for a chemical substance does not signify that the substance is listed on the TSCA Inventory. Manufacturers, importers, and processors are responsible for ensuring that a new chemical substance subject to a final SNUR is listed on the TSCA Inventory.

V. Direct Final Procedures

EPA is issuing these SNURs as direct final rules, as described in 40 CFR 721.160(c)(3) and 721.170(d)(4). In accordance with 40 CFR 721.160(c)(3)(ii), this rule will be effective [insert date 60 days after date of publication in the **Federal Register**], unless EPA receives a written notice by [insert date 30 days after date of publication in the **Federal Register**] that someone wishes to make adverse or critical comments on EPA's action. If EPA receives such a notice, EPA will publish a notice to withdraw the direct final SNUR for the specific substance to which the adverse or critical comments apply. EPA will then propose a SNUR for the specific substance providing a 30–day comment period.

This action establishes SNURs for a number of chemical substances. Any person who submits a notice of intent to submit adverse or critical comments must identify the substance and the new use to which it applies. EPA will not

withdraw a SNUR for a substance not identified in a notice.

VI. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require developing any particular test data before submission of a SNUN. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. In cases where a section 5(e) order requires or recommends certain testing, Unit III. of this preamble lists those recommended tests.

However, EPA has established production limits in the section 5(e) orders for several of the substances regulated under this rule, in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the substances. These production limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by these substances. Under recent consent orders, each PMN submitter is required to submit each study at least 14 weeks (earlier orders required submissions at least 12 weeks) before reaching the specified production limit. Listings of the tests specified in the section 5(e) orders are included in Unit III. of this preamble. The SNURs contain the same production volume limits as the consent orders. Exceeding these production limits is defined as a significant new use.

The recommended studies may not be the only means of addressing the potential risks of the substance. However, SNUNs submitted for significant new uses without any test data may increase the likelihood that EPA will take action under section 5(e), particularly if satisfactory test results have not been obtained from a prior submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on:

(1) Human exposure and environmental release that may result from the significant new use of the chemical substances.

(2) Potential benefits of the substances.

(3) Information on risks posed by the substances compared to risks posed by potential substitutes.

VII. Procedural Determinations

EPA is establishing through this rule some significant new uses which have been claimed as CBI. EPA is required to keep this information confidential to protect the CBI of the original PMN submitter. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI. This procedure appears in 40 CFR 721.1725(b)(1) and is similar to that in § 721.11 for situations where the chemical identity of the substance subject to a SNUR is CBI. This procedure is cross-referenced in each of these SNURs.

A manufacturer or importer may request EPA to determine whether a proposed use would be a significant new use under this rule. Under the procedure incorporated from § 721.1725(b)(1), a manufacturer or importer must show that it has a *bona fide* intent to manufacture or import the substance and must identify the specific use for which it intends to manufacture or import the substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or import the substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.1725(b)(1) with that under § 721.11 into a single step.

If a manufacturer or importer is told that the production volume identified in the *bona fide* submission would not be a significant new use, i.e. it is below the level that would be a significant new use, that person can manufacture or import the substance as long as the aggregate amount does not exceed that identified in the *bona fide* submission to EPA. If the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use. EPA is considering whether to adopt a special procedure for use when CBI production volume is designated as a significant new use. Under such a procedure, a person showing a *bona fide* intent to manufacture or import the substance, under the procedure described in § 721.11, would automatically be informed of the production volume that would be a significant new use. Thus the person would not have to make multiple *bona fide* submissions to EPA for the same substance to remain in compliance with the SNUR, as could be the case under the procedures in § 721.1725(b)(1).

VIII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant ''new'' use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have recently undergone premanufacture review. Section 5(e) orders have been issued for nine substances and notice submitters are prohibited by the section 5(e) orders from undertaking activities which EPA is designating as significant new uses. In cases where EPA has not received a Notice of Commencement (NOC) and the substance has not been added to the Inventory, no other person may commence such activities without first submitting a PMN. For substances for which an NOC has not been submitted at this time, EPA has concluded that the uses are not ongoing. However, EPA recognizes in cases when chemical substances identified in this SNUR are added to the Inventory prior to the effective date of the rule, the substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this rule before the effective date of the rule. However, 23 of the 26 substances contained in this rule have CBI chemical identities, and since EPA has received a limited number of post-PMN *bona fide* submissions, the Agency believes that it is highly unlikely that any of the significant new uses described in the following regulatory text are ongoing.

As discussed in the **Federal Register** of April 24, 1990 (55 FR 17376), EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of publication rather than as of the effective date of the rule. Thus, persons who begin commercial manufacture, import, or processing of the substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance under § 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between

publication and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers, importers, and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the public record for this rule (OPPTS–50622).

X. Rulemaking Record

A record has been established for this rulemaking under docket number OPPTS–50622 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

XI. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines a ''significant regulatory action'' as an action likely to lead to a rule:

(1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (''also referred to as economically significant'').

(2) Creating serious inconsistency or otherwise interfering with an action taken or planned by another agency.

(3) Materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

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

Pursuant to the terms of this Executive Order, it has been determined that this rule is not ''significant'' and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has determined that approximately 10 percent of the parties affected by this rule could be small businesses. However, EPA expects to receive few SNUNs for these substances. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act.

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and has assigned OMB control number 2070–0012. Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch (2131), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' The final rule will respond to any OMB or public comments on the information requirements contained in this final rule.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: August 21, 1995.

Frank D. Kover,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.562 to subpart E to read as follows:

§ 721.562 Substituted alkylamine salt.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a substituted alkylamine salt (PMN P–85–941) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (where n = 70).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

3. By adding new § 721.639 to subpart E to read as follows:

§ 721.639 Amine aldehyde condensate.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as an amine aldehyde condensate (PMN P–94–1810) is subject to reporting under this section for the

significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

4. By adding new § 721.1193 to subpart E to read as follows:

§ 721.1193 Benzene, 2-bromo-1,4-dimethoxy-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as benzene, 2-bromo-1,4-dimethoxy- (PMN P–95–17, CAS No. 25245–34–5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

5. By adding new § 721.1643 to subpart E to read as follows:

§ 721.1643 Benzenesulfonic acid, amino substituted phenylazo-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a benzenesulfonic acid, amino substituted phenylazo- (PMN P–95–86) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(w)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

6. By adding new § 721.2089 to subpart E to read as follows:

§ 721.2089 Tetrasubstituted aminocarboxylic acid.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a tetrasubstituted aminocarboxylic acid (PMN P–85–619) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (f), (g)(1)(vii), (g)(2)(iii), (g)(3)(ii), (g)(4)(ii), (g)(4)(iii), and (g)(5).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (h) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

7. By adding new § 721.2815 to subpart E to read as follows:

§ 721.2815 Aliphatic ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as an aliphatic ester (PMN P–93–633) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(iv), (g)(1)(ix), and (g)(5). In addition, the following human health and environmental hazard and precautionary statements shall appear on each label as specified in § 721.72(b) and the material safety data sheet (MSDS) as specified in § 721.72(c): This substance may not be used for any application that generates a dust, mist, or aerosol. Avoid inhalation and ingestion.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(y)(1) and (y)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (f), (g), (h), and (i), are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

8. By adding new § 721.3152 to subpart E to read as follows:

§ 721.3152 Ethanaminium, *N*-ethyl-2-hydroxy-*N,N*-bis(2-hydroxyethyl)-, diester with C_{12-18} fatty acids, ethyl sulfates (salts).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance ethanaminium, *N*-ethyl-2-hydroxy-*N,N*-bis(2-hydroxyethyl)-, diester with C_{12-18} fatty acids, ethyl sulfates (salts) (P–94–24) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health or the environment the employer must incorporate this new information, and any information on methods for protecting against such risk, into a material safety data sheet (MSDS) as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an

MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive, or who have received, this substance from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (1,900,000 kg).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

9. By adding new § 721.3486 to subpart E to read as follows:

§ 721.3486 Polyglycerin mono(4-nonylphenyl) ether.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a polyglycerin mono(4-nonylphenyl) ether (PMN P–94–2230) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

10. By adding new § 721.3760 to subpart E to read as follows:

§ 721.3760 Fluorene-containing diaromatic amines.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as fluorene-containing diaromatic amines (PMN P–88–998 and P–88–999) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (where n = 1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

11. By adding new § 721.4463 to subpart E to read as follows:

§ 721.4463 Hydrochlorofluorocarbon.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a hydrochlorofluorocarbon (PMN P–94–1453) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial and consumer activities.* Requirements as specified in § 721.80(g).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

12. By adding new § 721.4466 to subpart E to read as follows:

§ 721.4466 3-Hydroxy-1,1-dimethylbutyl derivative.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a 3-hydroxy-1,1-dimethylbutyl derivative (PMN P–86–1491) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), (g)(2)(i), (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1) and (a)(2).

(v) *Release to water.* Requirements as specified in § 721.90(a)(3).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

13. By adding new § 721.4473 to subpart E to read as follows:

§ 721.4473 Dialkylamidoimidazoline.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as dialkylamidoimidazoline (PMN P–94–1864) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(h).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

14. By adding new § 721.5192 to subpart E to read as follows:

§ 721.5192 Substituted 1,6-dihydroxy naphthalene.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted 1,6-dihydroxy naphthalene (PMN P–87–1036) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vi), (g)(1)(vii), (g)(2)(i), (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (q).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1) and (a)(2).

(v) *Release to water.* Requirements as specified in § 721.90(a)(3).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

15. By adding new § 721.5278 to subpart E to read as follows:

§ 721.5278 Substituted naphthalenesulfonic acid, alkali salt.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a substituted naphthalenesulfonic acid, alkali salt (PMN P–95–85) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

16. By adding new § 721.5282 to subpart E to read as follows:

§ 721.5282 Trisodium chloro [(trisubstituted heteromonocycle amino) propylamino]triazinylamino hydroxyazo naphthalenetrisulfonate.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a trisodium chloro[(trisubstituted heteromonocycleamino) propylamino]triazinyl aminohydroxyazo naphthalenetrisulfonate (PMN P–94–2177) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

17. By adding new § 721.5763 to subpart E to read as follows:

§ 721.5763 Methylenebisbenzotriazolyl phenols.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as methylenebisbenzotriazolyl phenols (P–94–1042) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(6)(i), (b)(concentration set at 1.0 percent) and (c). Requirements as specified in § 721.63(a)(5)(i) apply during manufacture of the PMN substance. Requirements as specified in § 721.63(a)(5)(iii) through (a)(5)(vii) apply during use of the PMN substance.

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(iv), (g)(1)(vi), (g)(2)(iii), (g)(2)(iv), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l) and (q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a) through (d) and (f) through (i) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

18. By adding new § 721.5769 to subpart E to read as follows:

§ 721.5769 Mixture of nitrated alkylated phenols.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as a mixture of nitrated alkylated phenols (PMN P–93–987) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (where n = 1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

19. By adding new § 721.5867 to subpart E to read as follows:

§ 721.5867 Substituted phenol.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a substituted phenol (PMN P–89–1125, L–91–87, P–92–41, P–92–511, P–94–1527, P–94–1755) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (where n = 1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

20. By adding new § 721.6110 to subpart E to read as follows:

§ 721.6110 Alkyldi(alkyloxyhydroxypropyl) derivative, phosphoric acid esters, potassium salts.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as an alkyldi(alkyloxyhydroxypropyl) derivative, phosphoric acid esters, potassium salts (PMN P–91–818) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (o).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

21. By adding new § 721.7046 to subpart E to read as follows:

§ 721.7046 Formaldehyde, polymer with substituted phenols, glycidyl ether.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as formaldehyde, polymer with substituted phenols, glycidyl ether (P–93–955) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(6)(i), (b) (concentration set at 0.1 percent), and (c). Requirements as specified in § 721.63 (a)(5)(i) apply during manufacturing only. Requirements as specified in § 721.63(a)(5)(i) through (a)(5)(vii) apply during processing for workers exposed greater than 17 days per year or during use.

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(vi), (g)(1)(vii), (g)(2)(i) through (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), (g)(4)(iii), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(b), (l), and (q).

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

22. By adding new § 721.8090 to subpart E to read as follows:

§ 721.8090 Polyurethane polymer.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a polyurethane polymer (P–94–47) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(viii) through (a)(5)(xi), (a)(6)(ii), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(i), (g)(1)(ii), (g)(2)(i) through (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

23. By adding new § 721.9526 to subpart E to read as follows:

§ 721.9526 Sodium perthiocarbonate.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as sodium perthiocarbonate (PMN P–94–2166) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

24. By adding new § 721.9656 to subpart E to read as follows:

§ 721.9656 Thiaalkanethiol.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a thiaalkanethiol (PMN P–94–1487) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The

provisions of § 721.185 apply to this section.

25. By adding new § 721.9658 to subpart E to read as follows:

§ 721.9658 Thiadiazole derivative.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as a thiadiazole derivative (PMN P–94–1631) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(a), (c), (f), (v)(1), (w)(1), and (x)(1).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (where n = 90).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

26. By adding new § 721.9892 to subpart E to read as follows:

§ 721.9892 Alkylated urea.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as an alkylated urea (PMN P–93–1649) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(iii), (g)(1)(ix), (g)(2)(i), (g)(2)(iii), (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l) and (q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

[FR Doc. 95–21519 Filed 8–29–95; 8:45 am]

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–17

RIN: 3090–AD42

[FPMR Temp. Reg. D–76, Suppl. 4]

Federal Property Management: Public Buildings and Space; Space Utilization and Assignment

AGENCY: Public Buildings Service, General Services Administration (GSA).

ACTION: Temporary rule.

SUMMARY: This supplement extends the expiration date of FPMR Temporary Regulation D–76 to November 26, 1995. Temporary Regulation D–76 provides procedures governing the assignment and utilization of space in Federal or leased facilities under the custody and control of the General Services Administration.

DATES: Effective Date: August 30, 1995.

Expiration Date: November 26, 1995.

ADDRESSES: Comments should be submitted to the General Services Administration, (PG) Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Stanley C. Langfeld, Director, Real Property Policy Division, Office of Governmentwide Real Property Policy, at (202–501–1737).

SUPPLEMENTARY INFORMATION: The purpose of this regulation is to extend Temporary Regulation D–76 until such time as the Final Rule which will supersede it is approved for publication.

The General Services Administration (GSA) has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866.

This rule is written to ensure maximum benefits to Federal agencies. This Governmentwide management regulation will have little or no cost effect on society. Therefore, the rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (U.S.C. 601 *et seq.*).

List of Subjects in 41 CFR Part 101–17

Administrative practices and procedures, Federal buildings and facilities, Government real property management.

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

In 41 CFR Chapter 101, FPMR Temp. Reg. D–76, Supplement 4 is added to the appendix at the end of Subchapter D to read as follows:

August 25, 1995.

Federal Property Management Regulations Temporary Regulation D–76 Supplement 4

To: Heads of Federal Agencies

Subject: Assignment and Utilization of Space

1. *Purpose.* This supplement extends the expiration date of FPMR Temporary Regulation D–76.

2. *Effective date.* This regulation is effective upon publication in the Federal Register.

3. *Expiration of change.* This supplement expires November 26, 1995.

4. *Explanation of change.* The expiration date in Temporary Regulation D–76 is revised to November 26, 1995.

Roger W. Johnson,

Administrator of General Services.

[FR Doc. 95–21510 Filed 8–29–95; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 442, 486, and 493

[BPD–840–CN]

Medicaid and Medicare Programs; Technical Amendatory Language Changes; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rules; correction.

SUMMARY: This notice corrects errors made in three final rules. These rules concern survey, certification, and enforcement of skilled nursing facilities and nursing facilities for the mentally retarded; technical amendments of regulations on providers and suppliers of specialized services; and categorization of tests and personnel modifications.

EFFECTIVE DATE: These regulations are effective on July 1, 1995 for item A below, February 8, 1995 for item B below, and April 24, 1995 for item C below.

FOR FURTHER INFORMATION CONTACT: Julie Brown, (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Background

On November 10, 1994 (59 FR 56116), January 9, 1995 (60 FR 2325), and April 24, 1995 (60 FR 20035), we published final rules with an error in each one. The errors are in three items of amendatory language that need to be changed to ensure consistency in one case and to reestablish text that was inadvertently deleted in the other two cases.

Correction of publications

Accordingly:

A. The publication on November 10, 1994, of the final regulation that was the subject of FR Doc. 94–27703 is corrected as follows:

§ 442.30 [Corrected]

Page 56235, column 3: In the amendatory language to item 10, the word ''and'' is inserted before ''(a)(4)'' in line 2 and the words ''introductory paragraph'' are inserted before ''(a)(7)'' in line 3.

B. The publication on January 9, 1995, of the final regulation that was the subject of FR Doc. 95–485 is corrected as follows:

PART 486

Subparts C and D [Corrected]

Page 2329, column 2: The amendatory language of item 2 is revised to read as follows:

2. In newly designated subparts C and D, in the following sections, the section heading is amended to change the dash to a colon, capitalize the first word after the colon, and replace the word ''Conditions'' (in the two places it appears) with the word ''Condition'': §§ 486.100, 486.102, 486.104, 486.106, 486.108, 486.110, 486.153, 486.155, 486.157, and 486.161.

C. The publication on April 24, 1995, of the final regulation that was the subject of FR Doc. 9953 is corrected as follows:

§ 493.2001 [Corrected]

Page 20051, column 3: In the amendatory language to item 56, the word ''introductory'' is inserted before the word ''paragraph'' in line 1.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774, Medicare—Supplementary Medical Insurance Program; and Program No. 93.778, Medical Assistance Program)

Dated: August 22, 1995.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 95–21543 Filed 8–29–95; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 216 and 229

[Docket No. 950605147–5209–02; I.D. 052395C]

RIN 0648–AH33

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Authorization for Commercial Fisheries

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the new management regime for the unintentional taking of marine mammals incidental to commercial fishing operations established by section 118 of the Marine Mammal Protection Act of 1972 (MMPA) as amended by the MMPA Amendments of 1994. Section 118 provides for limited exemptions from the MMPA's general prohibition on the take of marine mammals, for the unintentional incidental take of marine mammals by commercial fishers in the course of commercial fishing, and requires NMFS to authorize such incidental takes by a commercial fisher upon the receipt of certain information and provided certain other conditions are met. This rule requires commercial fishers to annually register for an Authorization Certificate by filing specified information, provides for the issuance by NMFS of such certificates, requires commercial fishers to report to NMFS the incidental mortality and injury of any marine mammals in the course of commercial fishing, and requires commercial fishers to comply with certain other requirements. In order to allow commercial fishers time to comply with the new section 118 registrations and reporting requirements which become effective on September 1, 1995, NMFS by this notice also announces transition policies from the old section 114 regime which expires on September 1, 1995.

EFFECTIVE DATES: September 1, 1995 except § 229.6, which becomes effective January 1, 1996.

ADDRESSES: Copies of NOAA Administrative Order 216–100, the MMPA, as amended in 1994, and the Environmental Assessment (EA) prepared for the proposed rule in aggregate or summary form may be obtained by writing to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. A copy of the EA may also be obtained by accessing the NMFS ''Home Page'' on the World Wide Web at http://kingfish.ssp.nmfs.gov:80/home-page.html.

FOR FURTHER INFORMATION CONTACT: Robyn Angliss, Office of Protected Resources, 301–713–2322; Douglas Beach, Northeast Region, 508–281–9254; Charles Oravetz, Southeast Region, 813–570–5301; James Lecky, Southwest Region, 310–980–4015; Brent Norberg, Northwest Region, 206–526–6140; Steve Zimmerman, Alaska Region, 907–586–7235.

SUPPLEMENTARY INFORMATION:

Section 118 of the MMPA, as added by the MMPA Amendments of 1994, establishes a new regime to govern interactions between marine mammals and commercial fisheries. Proposed regulations implementing section 118 and a proposed list of fisheries (LOF) for 1996 were published on June 16, 1995 (60 FR 31666). An EA was prepared concurrently and was made available when the proposed regulations were published. The public comment period for the proposed regulations ended on July 31, 1995; the public comment period for the proposed LOF ends September 14, 1995. This final rule addresses only the public comments on the proposed rule. Comments addressing the proposed LOF will be published in the **Federal Register** with the final LOF.

History of the Proposed Rule Implementing Section 118

Section 118 of the MMPA, as amended in 1994, replaces section 114 which exempted, on an interim basis, commercial fishers who comply with certain requirements from the general prohibition on the taking of marine mammals. The process used to develop the proposed and final rule included many opportunities for public involvement.

A **Federal Register** notice (59 FR 45263) announcing proposed changes to the LOF and different options for new fishery classification criteria was published on September 1, 1994.

Comments were received and were taken into consideration when preparing draft proposed regulations. Informal working sessions to discuss the draft proposed regulations were held in Silver Spring, MD, on November 30, 1994, and in Seattle, WA, on December 1, 1994. These working sessions provided interested parties the opportunity to participate in discussions of how to revise the draft regulations.

The ''MMPA Bulletin'', a new publication of the Office of Protected Resources, is designed to increase public awareness of and participation in the regulatory process. The first edition, published in September, 1994, included a description of the 1994 Amendments to the MMPA, and subsequent editions have focused on NMFS' efforts to implement the amendments. The ''MMPA Bulletin'' has been sent to approximately 1,600 interested parties, including fishers, members of the environmental community, marine mammal scientists, state and Federal agencies dealing with protected species issues, Native American groups, public display facilities, and Congressional staff.

The proposed rule was published on June 16, 1995, in combination with the proposed LOF (60 FR 31666). NMFS issued a press release announcing the availability of the proposed rule and summarizing the major issues contained in the proposed rule. Information included in this press release was published in several newspapers. A summary of the proposed rule was also included on the front page of the June/July issue of the ''MMPA Bulletin'', along with major changes proposed in the LOF. NMFS circulated a ''Regulatory Alert'' to its ''MMPA Bulletin'' mailing list summarizing the proposed rule and listing dates for public hearings. Regional public hearings were held in Danvers, MA; Oceanville, NJ; Silver Spring, MD; Ocean City, MD; Long Beach, CA; Ronkonkoma, NY; Anchorage, AK; Beaufort, NC; and Seattle, WA. Each hearing was attended by between 2 and 20 people, and between 0 and 10 people provided public comments.

On July 19, 1995, a correction was published (60 FR 37043) in the **Federal Register**. The correction identified errors and omissions in the proposed LOF and clarified the status of certain stocks of marine mammals identified in the proposed LOF.

Transition from Section 114 Regime to the Section 118 Regime

While the MMPA requires that section 114 expire on September 1, 1995, or when final section 118 implementing regulations become effective, whichever is earlier, no transition procedures are specified. In order to allow fishers time to comply with the new section 118 registration and reporting requirements which become effective on September 1, 1995, NMFS announces the following transition policies:

Registration: Those owners of vessels holding valid Exemption Certificates issued under section 114 will be deemed to have registered under section 118 through December 31, 1995. Fishers participating in Category I or II fisheries as identified in the current LOF who are not currently registered must register with the nearest NMFS regional office before participating in such Category I or II fisheries. Registration procedures for obtaining Authorization Certificates in 1996 will be published concurrently with the final LOF for 1996.

Reporting: NMFS is in the process of developing the reporting form that fishers will use after January 1, 1996. A draft of this reporting form will be published in the **Federal Register** and will be available for public comment. Commercial fishers are requested to report all injuries and mortalities to the nearest NMFS regional office until these forms are available.

Incidental taking of species listed as endangered or threatened under the Endangered Species Act: Under section 101(a)(5)(E) of the MMPA, NMFS is required to issue permits for the incidental taking of threatened or endangered species listed under the Endangered Species Act (ESA), if it can be determined that (1) mortality and serious injury incidental to commercial fisheries would have a negligible impact on the affected species or stock,(2) a recovery plan for that species or stock has been developed or is being developed, and (3) where required under section 118, a monitoring program has been established, vessels are registered, and a take reduction plan has been developed or is being developed. NMFS expects to publish an interim final LOF that have met these conditions by September 1, 1995. Comments on the list will be accepted for 45 days from the date of publication of the list, after which time a final list will be published. Inclusion of a fishery on the list constitutes authorization for that fishery to incidentally take marine mammals from the specified threatened or endangered species or stocks. Fisheries may be authorized to have incidental takes of some species or stocks listed as threatened or endangered, but not others. Participants in fisheries that are not included on the list will not receive permits and will remain subject to the ESA prohibition against taking marine mammals from endangered or threatened stocks.

Responses to Comments

During July 1995, NMFS held 10 public hearings at various locations throughout the country to receive comments on the proposed rule and LOF. A total of 86 individuals attended these hearings, 28 of whom submitted oral comments on the proposed rule, LOF or both. NMFS also received 54 written comments during the comment period for the proposed rule. Many comments also addressed aspects of the LOF. Since the comment period for the LOF remains open until September 14, 1995, all comments related to the LOF will be addressed during publication of the final LOF in October 1995. Comments were received from fishers, fishing industry groups, environmental groups, animal rights groups, state departments of fisheries, other executive branch departments, and members of the general public.

Approximately 15 letters were general in nature, expressing support for the MMPA and opposition to any measures that might weaken the MMPA. Most comments from fishers, industry groups, and environmental groups expressed general support for NMFS's two-tiered approach to classifying fisheries based on Potential Biological Removal (PBR) levels; however, many raised specific concerns about the dividing lines established to separate Category I, II and III fisheries. Many of the comments are lengthy and raise many points of concern. Key issues and concerns are summarized and responded to as follows:

Comments on the Goals and Purpose of the Section 118 Regulations

Several comments addressed the Zero Mortality Rate Goal (ZMRG) definition in the proposed rule. The final rule does not contain a definition for this goal. NMFS is still considering what would be an appropriate definition for the goal. Specific comments on the goal will be addressed when a final definition is published in the **Federal Register**. Other comments about the goals and purpose of this action are summarized and responded to as follows.

Comment 1: The goal of restoring all populations to optimum levels is short-sighted and ignores the competition between species for habitat and prey. There are always natural and complementary increases and decreases of competing marine mammal stocks. Therefore, NMFS should use an ecosystem approach to marine mammal

management rather than a species by species approach.

Response: The MMPA (section 2(2)) states that marine mammal species and stocks ''should not be permitted to diminish beyond the point at which they cease to be a significant functioning element in the ecosystem of which they are a part, and consistent with this major objective, they should not be permitted to diminish below their optimum sustainable population (OSP).'' NMFS recognizes that complex relationships may exist between different marine mammals and their prey populations. However, many marine mammal species are depleted and, in some cases, threatened or endangered. The return of these stocks to OSP will allow them to continue as a functioning part of the ecosystem. The implementing regulations promulgated under the MMPA must endeavor to allow those species and stocks to return to OSP.

Comment 2: NMFS should use incidental take as a barometer of marine mammal population health. If you have lots of takes you have a strong population.

Response: A high incidence of serious injury and mortality incidental to commercial fishing operations could be due to several different factors. The type of gear used in a fishery, the geographic location of a fishery, the season during which a fishery operates, the distribution and behavior of marine mammals in a particular area, and other factors affect the frequency of marine mammal serious injury and mortality incidental to commercial fishing operations. In addition, there are fisheries which operate in areas with relatively high levels of marine mammals, yet which do not have high levels of incidental removals. Thus, having a high level of incidental take does not necessarily mean that a population is strong.

Comment 3: We need to reassess our values that place marine mammals above human concerns.

Response: A primary purpose of section 118 of the MMPA is to provide an exemption for commercial fisheries so they may accidentally seriously injure or kill marine mammals incidental to their commercial fishing operations so long as the level of serious injury and mortality does not severely impact marine mammal populations. Without this exemption, fishers could not legally take marine mammals incidental to their fishing operations. This rulemaking is not the appropriate mechanism for reassessing societal valuation of marine mammals. That issue should be addressed, if appropriate, by Congress.

Comments on Definitions of Fisheries in the List of Fisheries

Comment 4: NMFS should define fisheries based on the effect on marine mammal stocks, not artificial criteria such as state boundaries.

Response: NMFS will, whenever possible, define fisheries the way they are defined in federal, regional, or state fishery management programs. This will (1) help which NMFS fulfill its statutory obligations by coordinating registration under the MMPA with existing fishery management programs, (2) provide a ''common name'' for a fishery that can be used by NMFS, fishers, and state and regional fishery managers, and (3) allow NMFS to more easily collect information on fishery statistics, such as the number of participants, target species, length of fishing season, etc.

Comments on Fishery Classification Criteria

Many public comments were received requesting clarification on how fishery classification criteria were applied. A brief discussion of the two-tier approach is provided, followed by specific comments.

The regulations implementing section 118 include a new fishery classification scheme. The fishery classification criteria consist of a two-tiered, stock-specific approach that first addresses the total impacts of all fisheries on each marine mammal stock and then addresses the impacts of individual fisheries on each stock. Tier 1 considers the additive fishery mortality and serious injury for a particular stock, while Tier 2 considers fishery-specific mortality for a particular stock. This approach is based on the rate, in numbers of animals per year, of serious injuries and mortalities due to commercial fishing relative to a stock's PBR level. A more extensive explanation of NMFS' two-tiered approach is found in the EA for the proposed rule.

Tier 1: If the total annual mortality and serious injury across all fisheries that interact with a stock is less than or equal to 10 percent of the PBR level of such a stock, then all fisheries interacting with this stock (and no other stocks that do not fit this criteria) would be placed in Category III. Otherwise, these fisheries are subject to the next tier to determine their classification.

Tier 2—Category I: Annual mortality and serious injury of a stock in a given fishery is greater than or equal to 50 percent of the stock's PBR level.

Tier 2—Category II: Annual mortality and serious injury is greater than 1 percent and less than 50 percent of the stock's PBR level.

Tier 2—Category III: Annual mortality and serious injury is less than or equal to 1 percent of the PBR level.

The threshold between Tier 1 and Tier 2 was set at 10 percent of the PBR level based on the recommendation of individuals at a PBR Workshop held in La Jolla, California in June 1994. The Workshop Report indicated that if the total annual incidental serious injury and mortality level for a particular stock did not exceed 10 percent of the PBR level, the amount of time necessary for that population to achieve OSP would only increase by 10 percent. Thus, 10 percent of the PBR level for a particular stock was equated to ''biological insignificance.''

The threshold between Category II and III was set at 1 percent of PBR. This threshold resulted from working group discussions that supported the Tier 1 threshold to be 10 percent or less. Because there are situations where as many as 10 fisheries may be responsible for serious injuries and mortalities from the same marine mammal stock, 1 percent was used as the threshold between Category II and III fisheries.

The threshold between Category I and Category II fisheries was set at 50 percent of the PBR level. Although the working session recommended 30 percent as the threshold, during the preparation of the proposed rule NMFS determined that 30 percent was more conservative than required. The proposed threshold was then increased to 50 percent.

Example: Suppose Fishery A, B, and C have annual mortality and serious injury levels of 1 percent, 8 percent, and 12 percent of the PBR level for a particular stock, respectively, and these fisheries do not interact with any other stocks of marine mammals. Because the additive percent take relative to the PBR level for all three fisheries is 21 percent, all three fisheries would meet the Tier 1 criteria and be subject to classification under Tier 2. Under the Tier 2 criteria, Fishery A would be placed in Category III, and Fisheries B and C would be placed in Category II.

Comment 5: The dividing line between Category I and II fisheries should be changed to 30 percent of the PBR level. The more conservative 30 percent dividing line is warranted because there are only a few fisheries where both PBR level and estimated fishing mortality are known with some degree of confidence and because reductions in NMFS appropriations are likely to severely hamper research and

implementation, further confounding NMFS's ability to gather accurate estimates of PBR levels and total fishing mortality. In all other cases NMFS must use logbooks and anecdotal information which represent only a minimum indication of total removal levels. The more conservative 30 percent dividing line will guarantee that marginal fisheries are included in Category I where observation of such fisheries are a greater priority.

Response: The 2–tier approach to classifying fisheries first considers combined fisheries impacts on a marine mammal stock and then considers the contribution of each individual fishery impacting a stock. If the combined impact of all fisheries on a particular stock are below 10 percent of the PBR level then that stock is placed in Tier 1. All fisheries impacting Tier 1 stocks receive a Category III classification regardless of whether their individual impacts are above 1 percent of the PBR level. If the combined impact of all fisheries on a particular stock is above 10 percent of the PBR level then that stock is placed in Tier 2. Only those fisheries impacting Tier 2 stocks are required to meet the 1 percent of the PBR level threshold in order to receive a Category III classification. Under this 2–tier approach, the biological significance level of 10 percent of PBR is the first standard used to classify fisheries. Consequently, fisheries are not required to meet the Tier 2 Category III threshold of 1 percent of the PBR level unless the combined fishery-related impacts on the marine mammal stock are above the biological significance level of 10 percent of the PBR level.

Comment 6: The 50 percent of the PBR level dividing line between Category I and II fisheries is appropriate because there are already enough conservative assumptions built into the Category I classification.

Response: NMFS agrees. The threshold between Category I and II fisheries has been retained at 50 percent.

Comment 7: Five percent of the PBR level is a more reasonable and practical dividing line between Categories II and III fisheries. In the EA for the proposed rule there is little discussion about the need for so strict a standard and no justification for dismissing an alternative threshold of 5 percent of PBR. A June 1994 NMFS workshop on the PBR level has already concluded that fishery takes from a marine mammal stock should be considered insignificant if they are less than 10 percent of the PBR level.

Response: The dividing line chosen for the proposed rule was based, in part, on information from the Seattle Working Session where it was discussed that the cumulative fishery incidental serious injuries and mortalities should be under 10 percent and individual fishery takes should be under 1 percent. Also see general description of the two-tiered scheme at the beginning of this section of the preamble.

Comment 8: In many Category II fisheries with high levels of fishing effort, the low levels of marine mammal take shown in the EA suggest random accidents. In some instances, fisheries make hundreds of thousands of sets and still take less than one marine mammal per year. An extreme level of disruption may be required for some of these fisheries to reach take levels below 1 percent of the PBR level. In some cases, it may even be impossible to reach the 1 percent of the PBR level where fisheries interact with marine mammal stocks with low PBR levels.

Response: The fishery classification criteria in the final rule consider the incidental serious injury and mortality of marine mammals in commercial fisheries on a stock-specific basis to allow for management of marine mammal takes using a ''weakest stock'' approach. The population level and status of each marine mammal stock that interacts with fisheries is specific to that stock. Thus, the level of take each marine mammal population can withstand, while still allowing the population to attain OSP, is also stock-specific. For instance, because the minimum population size of North Atlantic right whales is 295 animals, the number of animals that can be removed from this population by commercial fishing while allowing the population to attain OSP is 0. In addition, because the minimum population size of harbor seals (Oregon/Washington coast stock) is 28,322, the number of animals that can be removed from this population by commercial fishing while allowing the population to attain OSP, is 1,699. Thus, a small take of right whales (<= 1 per year) would have a significant negative effect on the population, whereas a similar take of the Oregon/Washington coastal stock of harbor seals would not. The chosen approach allows NMFS to focus management actions where fishery interactions have a significant negative effect on the population.

Comment 9: If the 1 percent dividing line between Category II and Category III fisheries is used, ridiculously low levels of takes (less than one per year) will shift some otherwise non-interacting fisheries from Category III to Category II. Therefore, fisheries with takes below some absolute threshold, such as one animal per year, should be considered Category III fisheries and to have met the ZMRG as long as their take does not exceed the 10 percent of the PBR insignificant take level established in the rule. Classifying fisheries that have average takes below one animal per year as Category II draw government attention and resources away from real concerns with Category I and legitimately classified Category II fisheries.

Response: See response to Comment 8 regarding the significance a low level of take may have on a marine mammal population. NMFS recognizes that there are some marine mammal populations that are so small in size (e.g., right whales) that serious injury and mortality of one animal every two years would still have a significant impact on the population.

The definitions of Category II and III fisheries in the final rule include qualitative criteria that allow the Assistant Administrator for Fisheries, NOAA (Assistant Administrator) to place a fishery into Category II or III after public notice and opportunity for public comment. In the absence of reliable information, this qualitative criteria will allow the Assistant Administrator to take into consideration cases where the PBR level for a particular stock is very low and/or where the level of incidental interaction with commercial fisheries is low and not likely to delay the population's attainment of OSP.

Comment 10: The classification system should be modified so that fisheries with a high frequency of marine mammal mortality and serious injury across several stocks are included in Category I, even if the mortality rate for each individual stock is below 50 percent of the PBR level.

Response: In order to address fisheries with a high frequency of marine mammal mortality and serious injury across several stocks, the fishery classification criteria would need to be a combination of those under the old section 114 and the new criteria. This option was considered in the EA. The EA examined hypothetical fishery classification criteria which would be based on per-vessel takes of all marine mammals per 20 days and on annual take of a specific stock relative to the PBR level.

To use this approach, NMFS would need fairly good estimates of fishing effort, marine mammal population sizes, and annual and per–20 day levels of incidental serious injuries and mortalities. Because the MMPA Amendments have eliminated logbooks from the requirements for Category I and II fisheries, fishing effort in unobserved

fisheries will no longer be quantified on a daily basis and a per-vessel per 20-day take rate for all marine mammals would be difficult to calculate.

While some fisheries have takes of many different species or stocks of marine mammals, NMFS believes that limited agency resources should be directed towards those fisheries that have ''biologically significant'' takes of particular stocks of marine mammals. Accordingly, this approach was rejected.

Comment 11: The fishery classification criteria should be made more flexible by including examinations of both the number of serious injuries and mortalities relative to the PBR level and the rate of serious injuries and mortalities per vessel, per day.

Response: This approach is addressed in the EA. The primary difficulty with adopting any fishery classification criteria which depends on a per-vessel/per-day rate is NMFS' inability to collect effort data from commercial fisheries.

Under section 114 of the MMPA, logbooks were completed by commercial fishers in Category I and II fisheries. These logbooks provided NMFS with a rough estimate of the level of effort for each fishery. NMFS was also able to use landings data in a number of state/federal fisheries to calculate effort under section 114. Under section 118, fishers must only report injury and mortality of marine mammals, but not effort. While observers in Category I and II fisheries may record effort data, in many fisheries, the sample size is so small that the information is inadequate to allow NMFS to compute a per vessel, per day take rate for the fishery as a whole.

Comment 12: The proposed classification system could allow a fishery to be moved from Category I to Category II by subdividing it into two or more fisheries.

Response: Although a subdivision could potentially move a fishery from Category I to II, because of the stringent criteria for Category III fisheries, it is unlikely that dividing a fishery could place part of that fishery in Category III. Moreover, the practical differences between Category I and II fisheries are small; fishers in both categories must register, carry observers if requested by NMFS, and comply with take reduction plans.

NMFS could decide to subdivide a fishery if available information indicates that some part of the fishery has a higher frequency of marine mammal incidental serious injury and mortality. This would have a beneficial impact in that it would focus management actions on that part of the fishery that has the greatest impact on a marine mammal stock.

Comment 13: NMFS should clarify how it will classify fisheries where the PBR level for a marine mammal stock incidentally taken in a fishery is zero or not available.

Response: In general, fisheries were classified based on the marine mammal stock with the highest number of mortalities and serious injuries relative to the PBR level. If takes of a marine mammal stock occurred for a stock with a zero PBR level, that stock was placed in Category I (> 50 percent of the PBR level). If takes of a marine mammal stock occurred for a stock where the PBR level was not available, the stock with the highest number of takes relative to a known PBR level was used to classify the fishery.

Comment 14: The Category III fishery definition should be amended to allow observer monitoring of Category III fisheries in order to see whether further reductions in marine mammal kills can be made by these fisheries.

Response: Section 118 of the MMPA does not allow NMFS to allow observer monitoring of Category III fisheries unless the Assistant Administrator believes the incidental mortality and serious injury of marine mammals occurring in the fishery will have a immediate and significant adverse impact on a species listed under the ESA, emergency regulations have been published, and a determination has been made regarding whether the fishery should be included in a Take Reduction Plan. By their classification in Category III, NMFS believes that, generally, further reductions in marine mammal mortality are not necessary.

Comment 15: The Category III fishery definition should be restricted to fisheries in which the collective take with all other fisheries is less than 10 percent of a stock's PBR level ''and'' that fishery by itself is responsible for the removal of 1 percent or less of that stock's PBR level.

Response: NMFS has determined that the definition of Category III fishery should include ''or'' rather than ''and''. This will allow fisheries with marine mammal incidental serious injury and mortality of under 1 percent of the PBR level to be placed in Category III.

Comment 16: NMFS should not automatically place a fishery into Category II when a stock status or fishery serious injury or mortality information is lacking. This places an additional registration burden on these fisheries. NMFS still has the authority to mandate observer coverage for Category III fisheries if there is a suspected problem. In addition, NMFS may reclassify fisheries into a different Category if there is a suspected problem.

Response: NMFS may only place observers on vessels participating in a Category III fisheries in certain emergency circumstances (see response to Comment 14). Because of this limitation and in order for NMFS to be allowed the opportunity to obtain information needed to most accurately categorize a commercial fishery, new commercial fisheries without reliable marine mammal take statistics will be placed in Category II until enough information is collected to warrant reclassification.

Comment 17: It is reasonable to place any fishery not specified in the LOF in the Category II classification until the next LOF is published as this will allow NMFS to obtain registration data and place observers in these fisheries if more information is needed.

Response: NMFS agrees. Section 229.2 has been modified to provide guidelines for the classification of fisheries in cases where data do not exist or are not reliable.

Comment 18: The definition for both Category II and III fisheries contain qualitative and vague criteria. Using the term ''by analogy'' without further guidance is ambiguous and contrary to the process NMFS outlines in the preamble. Therefore, the definition of Category II and III fisheries should be changed to read as follows: ''In making the determination of the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, the Assistant Administrator may determine whether the taking is 'occasional' by using observer data extrapolated to estimate a total annual kill log book or other reports by fishers, examination of stranded animals, or by analogy with other fisheries occurring in similar locations or times or having similar gear types or methods for which observer or logbook information exists including consideration of the distribution of marine mammals in the areas.''

Response: NMFS agrees. The definition is changed to delete the term ''analogy'' and specify the types of qualitative criteria that may be used to classify fisheries.

Comment 19: In fisheries with low rates of observer coverage, the extrapolation of data highlights the need for exceptionally competent observers. A single misstep or improper species identification can adversely impact a fishery. As a case in point, a single observed pilot whale take was used to re-categorize the pelagic long-line fishery. Some believe the observer mis-

identified the animal which could have been a false orca.

Response: NMFS observers are well-trained in species identification and, although may mistakes occur, they are rare. Questions such as the pilot whale/false killer whale example may be verified by examining the location of the take; false killer whales occur in the Northern Gulf of Mexico but are rare in the North Atlantic, where the majority of the effort in the longline fishery occurs. In addition, observers undergo extensive debriefing when they return to port to ensure that the observer has correctly identified all species with which the fishing vessel interacted.

Comment 20: NMFS should include a new definition, that of ''high level of mortality and serious injury across a number of stocks,'' which would relate to the seriousness of a fishery's interaction with all stocks. The following definition is proposed: '' High level of mortality and serious injury across a number of stocks means a Category I fishery which has an annual incidental mortality and serious injury rate that exceeds or equals 30 percent of two or more marine mammal stocks' PBR level.''

Response: The phrase ''high level of mortality and serious injury across a number of stocks'' appears in section 118(f)(1) of the MMPA and was used in the preamble of the proposed rule when discussing statutory guidelines for Take Reduction Teams. Because this term will not be used in regulatory text until subpart C of part 229 is developed, it is not necessary to define this term at this time.

Comment 21: If observer coverage is focused on those few fisheries that currently have high rates of marine mammal interactions, how will it ever be determined that there is a potential problem in another fishery? Because interactions between marine mammals and fisheries tend to fluctuate from year to year, the potential is there for a fishery not having much marine mammal interaction today but have many interactions in the future.

Response: In addition to traditional observer programs and fisher's reports, NMFS may also use stranding data, alternate observer programs that utilize platforms such as aircraft and non-fishing vessels, and other sources of information to determine the level of serious injury and mortality in fisheries, to prioritize observer placement, and to collect information on incidental interactions between commercial fisheries and marine mammals. The observer program will be modified to include both Category I and II fisheries where reliable observer data are not currently available.

Comment 22: Using PBR levels to classify fisheries has several management advantages, but it is only as accurate as the data being used in the PBR level calculations. To establish PBR levels for marine mammals, NMFS assumes its population estimates are accurate. How current are the data NMFS is using to determine population estimates? How is NMFS planning to update population estimates for different stocks, particularly strategic stocks? How often will NMFS update its population estimates for strategic stocks?

Response: NMFS recognizes that the regime established under section 118 must be one that minimizes risk to marine mammals. Establishing and maintaining extensive banks of information regarding marine mammal populations and mortality is necessary to minimize restrictions on fishing opportunity. The MMPA directs NMFS to update information on a regular basis, and NMFS has implemented an assessment program that will be as extensive as Congressional appropriations allow.

The assessment program provides information on an annual basis; therefore, some estimates are no more than a year old, whereas other estimates are more than 5 years old. Abundance and mortality estimates are supported based upon the perceived need for information based upon known or suspected status of the population and level of mortality, as well as the age and quality of existing information. Because funding levels cannot be predicted in advance, NMFS cannot give a specific interval for updating information on marine mammals populations status.

Comment 23: Commercial passenger fishing vessels should be included in the definition of commercial fishing operations. Many of these vessels routinely sell their catch in addition to receiving a fee for hire.

Response: NMFS agrees. Commercial passenger fishing vessels are already included in the definition of ''commercial fishing operations'' in § 229.2.

Comment 24: It appears that marine mammals taken by foreign vessels fishing in proximity to U.S. stocks will be considered as ''uncontrollable mortality'' and will come ''off the top'' before NMFS sets PBR levels. American fishermen will again be forced to bear the burden of stock restoration while our foreign counterparts fish unrestricted. These regulations may give our foreign competitors a real incentive to announce large numbers of marine mammal takes because they would then benefit by minimizing or eliminating U.S. competition in the global marketplace.

Response: The calculation of a PBR level for trans-boundary marine mammal stocks was considered on a case-by-case basis. General guidelines for migratory and non-migratory stocks were developed, but were not applied in those instances where the guidelines were inconsistent with what is known about the biology of the marine mammal stock of concern. For migratory stocks, PBR level calculations are generally based upon the portion of a stock found (or proportion of a year that a migratory stock spends) in waters under U.S. jurisdiction, and mortalities from foreign fisheries were generally included in the estimate of total mortality but not in the estimate of fishing mortality. For non-migratory stocks, the PBR level was calculated based on the abundance estimate of the stock residing in waters under U.S. jurisdiction. Restricting PBR calculations in such a manner was necessary because NMFS can only regulate incidental mortality and serious injury only within waters under U.S. jurisdiction. Because mortality and serious injury incidental to foreign fishing operations outside the U.S. EEZ do not affect the status of the stock (strategic vs. non-strategic) or the estimate of fishing mortality, the PBR approach will not effect the ability of U.S. fishers to compete with foreign fishers.

Comments on the Prohibition on Intentional Lethal Take

Comment 25: Some fisheries are facing increasing loss of gear and catch because they are no longer able to shoot at marine mammals to deter them. The law should be changed so that fishermen can again protect their catch and gear.

Response: The MMPA, as amended in 1994, prohibits intentional lethal taking for protection of gear and catch; however, non-lethal means of deterring predation by marine mammals are permissible, provided they are consistent with guidelines issued by NMFS pursuant to section 101(a)(4).

Comment 26: Where exclusion of previously documented levels of intentional lethal taking results in placing a fishery in a lower category than under the interim exemption program, NMFS should monitor the fishery sufficiently to detect and respond to any illegal intentional taking until such time as is justification for concluding that little, if any, illegal taking is occurring.

Response: NMFS will monitor fisheries to the extent possible given appropriations limits and consistent with the priorities for observer coverage mandated by section 118(d)(3) and (4) of the MMPA.

Comment 27: NMFS should clarify whether it believes that the prohibition on intentional lethal taking will result in a reduction of an elimination of intentional lethal taking. If only a reduction in taking is expected, NMFS should indicate whether and how such taking will be considered when classifying fisheries.

Response: Section 118 requires NMFS to classify fisheries based solely on incidental serious injury and mortality. Since Congress specifically provided for incidental serious injury and mortality in section 118 but at the same time prohibited intentional lethal taking, NMFS concludes that Congress did not intend for intentional lethal taking to be considered a form of incidental serious injury or mortality. Thus, for purposes of classifying fisheries based on incidental serious injury or mortality, NMFS will not consider intentional lethal taking when classifying fisheries under section 118.

Comments on the Requirements for Category I and II Fisheries

Comment 28: In § 229.4(b)(4) of the proposed rule, it is unclear whether the ''fisher'' is the owner or the operator or both. This should be clarified in the final rule.

Response: ''Fisher'' is defined in § 229.2 as the vessel owner or operator; thus, fisher may mean both owner and operator. In general, ''fisher'' is a gender-neutral term that applies to any person who fishes.

Comment 29: Section 229.4(b)(5) of the proposed rule requires the owner of a vessel to give the time, duration and location of any Category I and II fishery he/she will be participating in during the year. Unfortunately, few if any fisheries lend themselves to this type of detail, except in very general terms. The timing of many openings and closures are totally dependent on how quickly quotas are taken or how quickly prohibited species caps are reached. Through no fault of the owner, the information provided when registering for an Authorization Certificate may be highly inaccurate. Given NMFS's ability to revoke or suspend Certificates, this puts owners at great risk. NMFS should reconsider the need for this provision or more precisely specify the level of detail needed to comply.

Response: This information requirement is specified in the MMPA. The term ''approximate'' that precedes ''time, duration, and location of such fishery operations'' in the regulatory text provides flexibility for fishers that may not know the precise detail of his/her fishing operations in the coming year. The LOF which will be published each year by NMFS provides a general descriptive title (e.g., ''Prince William Sound set gill net'' or ''U.S. coastal mid-Atlantic gill net'') for each fishery which may assist fishers in meeting the information requirements of registration. When registering for an Authorization Certificate, fishers should review the LOF and use the descriptive titles of the Category I or II fisheries in which they plan to participate. The fisher should provide NMFS with the best estimate of information on the time and duration of the fishing effort if precise details are unknown.

Comment 30: It is unclear whether the Authorization Certificates and decal requirements (§ 229.4(f)) are directed toward owners, vessels or both. The relationship between vessel and owner with respect to the Certificates should be clarified.

Response: The Authorization Certificate and decal requirements apply to the owners or operators of the vessels engaged in the fishery. In nonvessel fisheries, they apply to the owners or operators of the gear. For purposes of § 229, the term ''fisher'' is used as a gender-neutral term which means the vessel owner or operator or, in nonvessel fisheries, the owner or operator of the gear.

Comment 31: The language in the proposed § 229.4 should be modified to indicate the statutory directive that NMFS ''shall'' integrate and coordinate registration under section 118 of the MMPA with existing state and Federal fishery management systems. For some fisheries (e.g., those in Alaska), all aspects of incidental take management should be coordinated with existing programs. Assurance should be provided that effective coordination will occur.

Response: NMFS agrees. The language in § 229.4 has been modified to reflect the statutory language.

While NMFS is under statutory obligation to coordinate registration systems with existing fishery management programs when possible, no similar obligation exists for reporting of takes, observer programs, or enforcement.

NMFS Regional Offices are in the process of coordinating registration under the MMPA with existing state and Federal fishery management programs. NMFS recognizes that each region and each state will likely proceed with the coordination process at a different rate. When coordination in any one area is achieved, a notice to this effect will be published in the **Federal Register** accompanied by instructions regarding how and with whom fishers will be required to register.

Comment 32: NMFS should clarify that registration covers only those fisheries in Category I and II identified in the registration form or added to the authorization later. NMFS should also explain how and where vessels should register if they intend to participate in several fisheries.

Response: One registration per vessel would be required and would cover all Category I and II fisheries in which the vessel participates during the calendar year. The registration will cover only those fisheries in Category I and II identified in the registration form (§ 229.4(b)(4)) or later added to the authorization (§ 229.4(f)(4)). Regardless of where they live and unless otherwise instructed, fishers should register with the NMFS region where the fishery occurs.

Comment 33: NMFS should clarify that a renewal form must be submitted prior to engaging in a Category I or II fishery.

Response: Pursuant to § 229.4(e), Authorization Certificates will be renewed annually, after receipt of an updated registration form, required fee, and statement (yes/no) regarding whether any marine mammals were injured or killed during the previous calendar year.

Comment 34: NMFS should clarify that vessels participating in Category III fisheries would be required to report incidental injuries and mortalities even though they are not required to register. The timing requirements of section 118(e) are applicable to vessels participating in Category III fisheries; thus, reports must be submitted to NMFS with 48 hours of the end of the fishing trip during which the take occurred.

Response: Pursuant to § 229.6(a), all commercial fishers must report marine mammal incidental mortalities and injuries regardless of which fishery they participate in.

Comment 35: NMFS should eliminate any ambiguity that marine mammal takes other than mortalities and injuries need to be reported.

Response: If an interaction between a marine mammal and commercial fishing operations does not result in a mortality or an injury as defined in § 229.2, the fisher need not report the interaction.

Comments on the Definitions of Fishing Trip and Fishing Vessel

Comment 36: In the proposed rule, fishing trip is defined as ''any time spent away from port actively engaged in commercial fishing operations. The end of a fishing trip will be the time of a fishing vessel's return to port.'' This definition may not cover nonvessel commercial fishing operations such as set gillnet, trap, beach seine, weir, ranch and pen fisheries. Section 229.6 of the proposed rule stipulates that ''nonvessel fisheries, [must report] within 48 hours of an occurrence of an incidental mortality or serious injury.'' Based on this requirement, the following text should be added to the definition of fishing trip: ''The end of a fishing trip will be the time of a fishing vessel's return to port or the return of a fisher from tending gear in a nonvessel fishery.''

Response: Section 229.2 has been modified to clarify the definition of fishing trip as applied to nonvessel fisheries.

Comment 37: NMFS should include two important elements in the definition of fishing vessel that were included in the draft document. These elements are: (1) All vessels that have valid fishing permits issued in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), and (2) all vessels aiding or assisting one or more vessels at sea in the performance of any activity related to fishing.

First, it is important, where possible, for the definitions in the MMPA to be consistent with the Magnuson Act. Second, the MMPA states that NMFS is not required to place an observer on a Category I or II vessel if statistically reliable information can be obtained from observers on processing vessels to which Category I or II harvesting vessels deliver a catch that has not been taken onboard the harvesting vessel. While it is clear that the harvesting vessel has taken a marine mammal and therefore must be registered and have an Authorization Certificate, it is not clear whether the act of a processing vessel ''taking on board'' a marine mammal as part of the catch of the harvesting vessel constitutes a ''take'' under this section. It stands to reason that if NMFS intends to place observers on processing vessels, those vessels should be registered and included in the definition of a ''fishing vessel''.

Response: The proposed rule would define ''fishing vessel'' as ''any vessel, boat, or other craft that is used for, equipped to be used for, or of a type normally used for fishing.'' This definition is broad enough to include vessels that have valid fishing permits issued under section 204(b) of the Magnuson Act. The definition of ''fishing vessel'' is carried forward from the proposed rule unchanged.

Comments on Reporting Requirements and the Definition of Injury

Comment 38: The requirement that all entanglements must be reported as injuries is excessive and unnecessarily burdensome. What standards will NMFS use to determine whether a reported entanglement will be considered a serious injury and be counted as a lethal take?

Response: The regulatory text has been modified such that entanglements in fishing gear are not by themselves considered injuries. The regulatory text instead states that marine mammals released trailing gear will be considered injured.

Section 118 of the MMPA as amended in 1994 includes both the term ''injury'' and the term ''serious injury''. These terms are used in different portions of section 118. According to the MMPA, fishers must report the occurrence of an injury to a marine mammal incidental to commercial fishing operation, whereas fisheries must be classified based on the number of occurrences of incidental mortalities and serious injuries.

''Injury'' is defined in great detail because the fisher must be provided with objective criteria in order to determine whether an incidental interaction with a marine mammal constitutes an injury and, hence, whether a report of interaction needs to be submitted to NMFS. The fisher will be asked to describe the injury on the reporting form using the different descriptions of injury included in the definition.

''Serious injury'' is defined more generally to recognize that not all incidental injuries to marine mammals incurred during the course of commercial fishing are likely to result in a mortality. Injuries reported by fishers will be analyzed, taking into consideration the type of fishing gear and the marine mammal species affected, to determine which are indeed serious injuries. For instance, hooking a baleen whale in its mouth may not produce a serious injury, yet hooking a harbor porpoise in this manner may produce a serious injury. The number of incidental serious injuries of marine mammals in a fishery would then be combined with the number of incidental mortalities to determine total removal levels for each fishery.

Comment 39: Expand the preamble to indicate how NMFS will determine whether an injury is serious.

Response: NMFS is currently developing guidelines for determining whether a reported injury constitutes a serious injury. NMFS expects that this will be done on a fishery-by-fishery, case-by-case basis.

Comment 40: There is a discrepancy between the definition of serious injury in the proposed rule and in the proposed deterrence regulations that needs to be addressed. The deterrence regulations imply that serious injuries include anything that breaks the skin or is directed at the head or eyes of a marine mammal.

Response: The proposed deterrence guidelines published in the **Federal Register** on May 5, 1995 (60 FR 22345) detailed methods of deterrence that NMFS believes can be used safely, without risk of causing serious injury or death to a marine mammal. In the proposed guidelines, methods such as prodding an animal with blunt poles, herding them with plywood, or canvas, or using some light explosives, should not break the skin of an animal or be directed toward an animal's head or eyes. The intent there was to avoid, to the extent possible, deterrence activities that could result in the serious injury or death of a marine mammals.

The proposed deterrence guidelines do not imply that anything that breaks the skin or is directed at the head of a marine mammal, constitutes a ''serious injury.'' To the contrary, the approach taken in the guidelines is consistent with the proposed delineation between the definition of ''injury'' and ''serious injury'' in this rulemaking. The guidelines conservatively seek to restrict activities that could lead to a serious injury or death, and breaking an animal's skin or poking at its head or eyes are thought to pose risk of ''injury'' that could very well result in serious injury or death.

Comment 41: What standards will NMFS use to review anecdotal reports?

Response: Under the final rule, in the absence of other information, anecdotal reports may be used to classify commercial fisheries. These reports will be reviewed by the NMFS Regional Offices to determine reliability. Reports will be considered a source of reliable information if (1) two or more individuals witnessed the interaction, (2) a NMFS employee or contractor witnessed the interaction, or (3) a single, reliable person is willing to have his/her name affiliated with the report. Unverified rumors will not be used to categorize a fishery.

Comment 42: It is appropriate for NMFS to require the reporting of all injuries and entanglements because fishers cannot always differentiate whether an animal is injured or seriously injured, especially an animal that is trailing gear.

Response: NMFS agrees.

Comment 43: The system of incentives established by defining any entanglement as injury could result in more marine mammal mortalities, not less, since reports of marine mammal entanglement will be used to classify fisheries. As a consequence, fishers will know that any animal they release alive will ''count against'' them as surely as one that is killed. They will also know that the same marine mammal they release alive in good condition today may come back to ''count against'' them again tomorrow. Under those conditions, there is little incentive for a fisherman to bear any risk of personal injury to release a marine mammal alive.

Response: The definition of ''injury'' has been revised in this final rule so that entanglements with gear are not considered an injury, except when other signs of injury are present. However, NMFS may request that fishers voluntarily provide information on entanglement to aid in NMFS management of marine mammal interactions with commercial fisheries. This information will not be used in the calculation of annual serious injury and mortality rates.

Comment 44: The definition of injury should be amended to include any animal that is released with fishing gear entangling, trailing or perforating any part of the body.

Response: NMFS agrees. The definition if ''injury'' was revised to reflect this concern.

Comment 45: The provision under § 229.7(b)(1) in the proposed rule reads: ''Record incidental mortality and injury, or bycatch of other target species.'' However, the provision as stated in section 118(d)(2)(A) of the MMPA uses the term ''nontarget species''. NMFS should change the provision in the final rule from ''target'' to ''nontarget'' to mirror the language of the MMPA.

Response: NMFS agrees. Section 229.7(b)(1) has been modified to reflect the statutory language.

Comment 46: The logbook requirement should not be dropped from the new regulations because logbooks provide NMFS with important management data to track kills of marine mammals by fishing vessels.

Response: The MMPA, as amended in 1994, no longer requires fishers to submit logbooks as previously mandated for participants in Category I or II fisheries under the Interim Exemption Program. However, all fishers are required to report any mortality or injury that occurs incidental to commercial fishing operations. Although these reports do not provide information on day-to-day fishing effort, they will provide information on marine mammal removal levels incidental to each fishery.

Comment 47: The new postcard method of reporting takes and injuries of marine mammals is preferable to the old method of requiring fishers to maintain a marine mammal log. Most fishers already complete fishing logbooks for NMFS or state fisheries agencies. These agencies should be able to share the effort data currently requested in the marine mammal logs.

Response: NMFS agrees. NMFS Science Centers are currently using information on fishery effort obtained from fishing logbooks, and will expand this capability as more logbooks become available.

Comment 48: NMFS should provide an identification key to help fishers identify marine mammal species and report interactions more accurately.

Response: NMFS is currently preparing region-specific guides to aid in the identification of marine mammals and will make them available to fishers.

Comment 49: Self reporting on postcards will fail. Fishers recognize that NMFS only uses data to their detriment. Therefore, few if any, takes will be voluntarily reported.

Response: All fishers are required by the MMPA to report, within 48 hours of returning to port, any injury or mortality of a marine mammal that occurred incidental to commercial fishing operations. If a fisher in a Category I or II fishery fails to report an incidental injury or mortality, the Assistant Administrator is required to suspend or revoke the fisher's authorization to take marine mammals. If a fisher does not have a valid authorization and a marine mammal take occurs, the fisher may be subject to civil or criminal penalties.

Comment 50: The proposed rule states that NMFS may determine that a stock is strategic if it is declining and likely to be listed under the ESA. NMFS should expand this discussion to provide guidance as to when listing under the ESA would be considered likely.

Response: Whether a listing of a marine mammal stock under the ESA is likely depends on the circumstances specific to each situation and must therefore be analyzed on a case-by-case basis. It is therefore not possible to be more specific at this time.

Comments on Authorization Certificates

Comment 51: The Authorization Certificate section of part 229 should be amended so that Authorization Certificates may specify the terms and conditions of such authorized incidental taking, including any document that modifies the certificate. Examples may be the terms and conditions necessary to implement take reduction plans or emergency regulations (e.g., time/area closures, permits, or fishery specific limits on incidental mortality). This is important as fishers should be aware of any such restrictions.

Response: There is no authority under the MMPA, as amended in 1994, to specify terms and conditions in the Authorization Certificate. Restrictions such as time/area closures and fishery specific limits on incidental mortality will be established through the take reduction plans and their implementing regulations. Fishers will be made aware of any such restrictions through announcements in the *Federal Register*, letters, press releases, and other forms of notification.

Comments on Observer Coverage Requirements

Comment 52: Section 229.7(c)(2) of the proposed rule gives authority to the ''designated contractor'' to tell a vessel owner that they require an observer and § 229.7(c)(3) allows the ''designated contractor'' to waive the observer requirement. These regulations appear to give extraordinary authority to a ''designated contractor'', yet do not identify the types of entities who might be contractors or specify how NMFS will designate contractors. Does NMFS intend to designate states or the Coast Guard as contractors, or will private consultants be used? Where does NMFS derive the authority to give contractors the power anticipated by this regulation? At a minimum, NMFS should specify in the rule the guidelines under which contractors will operate, as well as which entity within NMFS will hire them.

Response: Section 112(c) of the MMPA authorizes NMFS to ''Enter into such contracts * * * or other transactions as may be necessary to carry out the purposes of this title * * * and on such terms as it deems appropriate with any Federal or state agency, public or private institution or other person.''

The extent of contractor involvement in observer programs varies considerably among regions and observed fisheries. Some observer programs are operated completely ''in-house'' by Federal or state agencies. In other programs, responsibilities are

shared between contractors and the managing agency. Finally, in some observer programs, a private contractor may handle virtually all aspects of the program, including monitoring program design, hiring and training of observers, analysis of data and production of reports. In programs operated primarily by contractors, the contractor must have the ability to place observers as necessary to allow for the collection of unbiased and accurate data. In all cases where contractors have been authorized to assign or waive observer coverage for specific vessels, the contractors are bound by the same laws and regulations as the agency, and prohibited from discriminating among vessels. NMFS is currently preparing national guidelines for the hiring of contractors and the placement of observers by contractors.

Comment 53: NMFS must obtain more male observers for vessels with little or no accommodations for females aboard. This is primarily a problem for small vessels which may not be able to provide private sleeping and toilet facilities for female observers.

Response: NMFS is aware of the unique living conditions and lack of privacy aboard many fishing vessels at sea. However, Federal law prohibits discrimination based on gender, age, national origin, religion or race. NMFS does not discriminate on the basis of sex in either the hiring or the placement of observers. Vessel owners, operators, and crews are expected to reasonably accommodate the needs of female observers. Special circumstances such as the small size of a vessel may mean a different level of accommodation than on a large vessel.

Comment 54: Moving observers from one vessel to another at sea is very dangerous without special boarding equipment that many small vessels may not have. Vessels and their crews also face risks if they must come along side at sea for the purpose of transferring observers. Transfers at sea should not be left to the discretion of the observers, many of whom may be inexperienced at sea. Rather, the practice should be discouraged or prohibited. If NMFS allows the practice to continue, the government should provide liability coverage for both the vessels and observers.

Response: Observer and vessel safety is a primary concern of all NMFS observer programs, and safety at-sea is one of the most important elements in all observer training programs. However, because conditions and practices within U.S. fisheries vary greatly from region to region, guidelines for observer safety and conduct must be tailored to specific fisheries. It is currently the responsibility of program managers to establish safety guidelines for observers, including guidelines for such practices such as at-sea transfers which are discouraged except under limited conditions. NMFS is preparing national guidelines to address a variety of safety concerns such as at-sea transfers.

Comment 55: The requirement that vessel owners or operators must notify the observer program 5 days prior to sailing impacts the fisher's need to be flexible with regard to weather patterns and other fishing conditions. Also, fishers have found that despite giving 5-days notice, observers are not always available at sailing time.

Response: NMFS recognizes the uncertain scheduling inherent in many fisheries. However, advance notification is essential in order for program managers to be able to randomly place observers on vessels.

Comment 56: Many vessel owners and operators are concerned with potential liability for carrying observers. NMFS should resolve the liability issue and use a ''willful misconduct'' standard against which vessels owners or masters will be measured in the case of injury to an observer.

Response: Section 114(e)(7) provided that an observer on a vessel that was ill, disabled, injured, or killed from their service as an observer on that vessel could not bring a civil action under any law of the United States for that illness, disability, injury, or death against the vessel or vessel owner, unless the claim arose from the vessel owner's ''willful misconduct.'' That expiring statutory provision was implemented in NMFS' section 114 regulations at 50 CFR 229.6(c)(3)(vi).

New section 118, which is being implemented by this rulemaking, replaces section 114. Section 118 does not contain a limitation of liability provision similar to the one in section 114(e)(7). Thus, there is no longer a statutory limit in the MMPA on claims that can be made by observers against vessel owners. Therefore, NMFS has no legal authority to include a limitation of liability provision in this rule. Vessel owners concerned about liability for claims made by observers should consider obtaining liability insurance. The lack of any such coverage is not a basis under the MMPA for refusing to carry an observer if requested by NMFS.

Comments on the Prioritization of Observer Coverage

Comment 57: The prioritization scheme for allocation of observer programs among commercial fisheries should be included in the regulations. At the minimum, NMFS should specify in the regulations that it will assign observers in accordance with the statutory priorities.

Response: Because the prioritization scheme is clearly outlined in section 118(d)(4)(A) - (C) and is not open to NMFS discretion, it is not necessary to repeat the scheme in the regulations.

Comments on the Formation of Take Reduction Teams

Comment 58: NMFS should clarify the time line for the formation of take reduction teams.

Response: Take reduction teams must be established and a notice must be published in the **Federal Register** indicating the team's establishment, the names of the team's appointed members, the full geographic range of the stock, and a list of all commercial fisheries that cause incidental mortality and serious injury of marine mammals from the stock within 30 days of the publication of the final Stock Assessment Reports. After establishment of a take reduction team, the time line depends on whether the human-caused mortality and serious injury from a strategic stock is equal to or greater than the PBR level or is less than the PBR level.

Teams addressing takes of marine mammals in a strategic stock where the level of take is greater than or equal to the PBR level must submit draft take reduction plans to NMFS within 6 months of the establishment of the team. Within 60 days of receiving the draft take reduction plan, NMFS must publish in the **Federal Register** the plan proposed by the team, any changes proposed by NMFS, and proposed regulations to implement the plan. These proposed regulations will have a public comment period of up to 90 days. NMFS must issue final regulations not later than 60 days after the end of the public comment period. If the take reduction team does not submit a draft plan to NMFS within 6 months, NMFS must publish a proposed take reduction plan and implementing regulations within 8 months of the establishment of the take reduction team.

Teams addressing takes of marine mammals in a strategic stock where the level of take is greater than or equal to the PBR level must submit draft take reduction plans to NMFS within 11 months of the establishment of the team. Within 60 days of receiving the draft take reduction plan, NMFS must publish in the **Federal Register** the plan proposed by the team, any changes proposed by NMFS, and proposed regulations to implement the plan. These proposed regulations will have a

public comment period of up to 90 days. NMFS must issue final regulations not later than 60 days after the end of the public comment period. If the take reduction team does not submit a draft plan to NMFS within 11 months, NMFS must publish a proposed take reduction plan and implementing regulations within 13 months of the establishment of the take reduction team.

Comments on Technical Changes to the Publication of the List of Fisheries

Comment 59: Modify the preamble and regulatory text so it is clear that each instance where a fisher engaged in a Category I or II fishery without having registered would constitute a violation of the Act regardless of whether marine mammals were incidentally taken. Add the phrase ''or to engage lawfully in any such fishery'' to § 229.4(a) after ''in a Category I or II fishery * * *.''

Response: The MMPA authorizes commercial fishers to incidentally take marine mammals subject to compliance with these regulations, but does not authorize commercial fishers to fish. This interpretation is supported in section 118(c)(3)(A) by such phrases as ''[a]n owner of a vessel engaged in any fishery in Category I or II shall, in order to engage in the lawful incidental taking of marine mammals in a commercial fishery * * * '' register with NMFS, display a decal, report takes of marine mammals, and comply with take reduction plans. This language is in marked contrast to the language it replaced in section 114(b)(3)(A), which said ''each owner of a vessel engaged in any fishery [in Category I or II] shall, in order to engage lawfully in that fishery * * * '' register, display a decal, and report. This interpretation is supported by the limited legislative history of section 118. Thus, a violation of the MMPA requirement to comply with section 118 of the MMPA would not subject fishers to charges of illegal fishing under the MMPA. Rather, the fishers would be subject to violating the MMPA if they illegally incidentally took a marine mammal, and for failing to register, report, carry observers, and comply with take reduction plans. Section 229.4(b) was modified to clarify that all participants in Category I and II fisheries must register and receive Authorization Certificates.

Comment 60: Incidental mortality and serious injury data should be summarized and included in the proposed and final LOF.

Response: This requirement is not included in the MMPA, as amended in 1994. Although the most recent data are used when revising the LOF on an annual basis, inclusion of this data in the LOF would be cumbersome and unnecessary. This information is generally provided in the preamble accompanying the proposed and final LOF. Current information on take rates is provided in the EA.

Comments on Penalties

Comment 61: The penalty process described in the preamble to the proposed rule would violate the due process rights of Certificate holders. In addition, the preamble and proposed rule are inconsistent on the remedies NMFS may seek if a Certificate holder fails to submit a required report. The preamble states that NMFS would be able to suspend or revoke a Certificate or deny a Certificate renewal without notice or an opportunity for a hearing if the Certificate holder fails to file a report or fails to take an observer on board as requested. However, § 229.10(g)(1) of the proposed rule provides that the Assistant Administrator shall suspend, revoke or deny renewal of a Certificate in accordance with 15 CFR part 904 in connection with either of those violations.

15 CFR part 904 contains notice and hearing requirements associated with civil penalty and permit sanction actions for MMPA violations, hence, the inconsistency between the preamble and proposed rule. In addition, the NOAA Alaska Regional Counsel prepared a legal analysis on the topic of due process and ''reward fisheries''. This legal analysis supports these due process requirements for fisheries regulations. NMFS should therefore assure that all permit sanction and penalty actions are conducted in accordance with the notice and hearing requirements of 15 CFR 904.30.

Response: The inconsistency between the preamble to the proposed rule and § 229.10(g)(1) had been resolved in this final rule so that compliance with 15 CFR 90 is required.

Comments on the Exclusion of Treaty Tribe Fisheries

Comment 62: Several commenters objected to the exclusion of Treaty Indian Fisheries from the LOF and the registration requirements contained in these regulations. The commenters felt that the by-catch of marine mammals during treaty fishing activities should not be considered part of the treaty right to hunt and fish and that tribal fisheries and the incidental takes of marine mammals during tribal fishing should be regulated and monitored to conserve marine mammal species.

Response: NMFS is issuing these regulations to authorize the otherwise prohibited taking of marine mammals during commercial fishing operations. However, the rights to fish and hunt are already secured separately for the Northwest Indian tribes pursuant to their treaties with the United States. NMFS reviewed the relationship of the Northwest Indian treaties to the MMPA and did not find clear evidence that Congress intended to abrogate treaty Indian rights. Section 14 of the Amendments to the MMPA (Pub. L. No. 103–238) states ''Nothing in this Act, including any amendments to the Marine Mammal Protection Act of 1972 made by this Act—alters or is intended to alter any treaty between the United States and one or more Indian tribes.'' This provision clarifies that existing treaty Indian fishing rights are not affected by the amendments to the MMPA. Therefore, tribal fisheries are conducted under the authority of the Indian treaties rather than the MMPA, and the MMPA's mandatory registration systems do not apply to treaty Indian fishers operating in their usual and accustomed fishing areas. Since inclusion of the treaty Indian fisheries in the LOF would also establish an obligation to obtain an MMPA registration under section 118, NMFS has deleted reference to tribal fisheries in the LOF. The registration requirement for Category I or II fisheries will not apply to treaty Indian tribes.

In recent years, tribal governments have developed regulations for the management of tribal fishing under the treaties. NMFS and other fisheries regulatory agencies have participated with the tribes during this regulatory development. Several northwest tribes have implemented and others are in the process of developing regulations for the management of tribal activities with respect to marine mammals. The tribes have cooperated, and indicate that they will continue to cooperate with NMFS in gathering and submitting data on interactions of their fisheries with marine mammals so that the health of affected stocks can be monitored.

Comment 63: Several commenters indicated that tribal fisheries kill depleted species and therefore should be regulated by the government. They cite species listed in previous NMFS LOF as the source of this information.

Response: The NMFS LOF, prepared under the Interim Exemption Program, included all species known to be in the area where a fishery is operating, not just species killed in the fishery. The LOF were intended to provide an indication of a potential for involvement but were not intended to imply mortality or confirmation of incidental takes. The LOF for 1996 will indicate

which species are known to interact with fishing gear in the various fisheries based on data collected during the interim program.

There is no indication that tribal fisheries are killing depleted species. In the event that this occurs, the treaty rights principle of ''conservation necessity'' can be considered, and the Department of Commerce will consult with the Department of Interior regarding the exercise of regulatory authority in order to protect marine mammals.

Comments on Emergency Regulations

Comment 64: The proposed rule allows NMFS to implement emergency actions immediately for up to 180 days. How will NMFS notify fisheries participants, especially those who may be at sea at the time of the emergency action?

Response: When emergency regulations are implemented, NMFS regional offices generally publicize them to the greatest extent practicable through such means as press releases to the media and affected industry organizations, faxes, computer bulletin boards and radio announcements, in addition to publication in the **Federal Register**. NMFS believes that these means of notification are sufficient to reach participants who may be at sea at the time of the emergency action.

Comment 65: The closure authority in the proposed rule is too great. How can any fisher survive a closure of up to 9 months?

Response: NMFS recognizes that the closure authority provided by section 118(g) is considerable. However, section 118(g)(2) requires NMFS to consult with the Marine Mammal Commission, all appropriate regional fishery management councils, state fishery managers, and the appropriate take reduction team (if established) before it may take any action under section 118(g)(2). Moreover, any emergency regulation issued under 118(g) must ''take into account the economics of the fishery concerned and the availability of existing technology to prevent or minimize incidental taking of marine mammals.'' Any emergency regulations issued must, to the maximum extent practicable, avoid interfering with existing state or regional fishery management plans. These consultation requirements will ensure that participants in a fishery will be impacted only when that fishery has severe adverse effects on a marine mammal species.

Comments on the Section 118 Rulemaking Process

Comment 66: The Regulatory Flexibility Act finding in the preamble to the proposed rule states that there will be no significant economic impact as a result of these regulations on a substantial number of small entities. This analysis only looks at the fees charged for Authorization Certificates and does not consider any impacts fishers may face in meeting the ZMRG. There are likely to be significant economic impacts in many fisheries if they are forced to shut down or undergo drastic restrictions to meet the ZMRG.

Response: The analysis was limited to the direct costs of the industry compliance with the proposed rule for several reasons. First, the section 118 regulations implement a program relieving fishers from the MMPA's prohibition on the taking of marine mammals. Without the section 118 regulations, fishers would face civil and criminal penalties for every incidental take of marine mammals.

Second, fisheries which have significant removals of strategic stocks of marine mammals will be addressed by take reduction teams. These teams, consisting of members of the fishing industry, environmental community, NMFS, and others as outlined in section 118(f)(6)(C), will work together to develop a plan for reducing bycatch in a manner that is acceptable to all parties. The teams are likely to recommend changes in fishing techniques, time-area closures, or deterrence methods; full closure of a fishery or drastic restrictions in fishing effort would likely be a last resort. Any regulations adopted as a result of take reduction plans would be subject to both E.O. 12866 review and the requirements of the Regulatory Flexibility Act.

Comment 67: The period for public comment and public hearings corresponded with the busiest fishing periods for fishers when they are away from home and regular mail service.

Response: Because the interim exemption program is scheduled to expire September 1, 1995, NMFS was forced to accelerate the rulemaking schedule in order to have a new management regime in place to govern interactions between commercial fisheries and marine mammals before that date. NMFS regrets that some fishers were not able to attend one of the public hearings, and hopes they took the opportunity to submit written comments on the proposed rule.

Comment 68: Why are there no public hearings south of North Carolina in the Atlantic nor any in the Gulf of Mexico? Fisheries from those regions are covered under the regulations and should have an opportunity to comment on the proposed regulations.

Response: Hearing locations and dates were scheduled by NMFS managers at regional offices and science centers throughout the country. Because there is no appreciable effort by Category I or II fisheries in the Gulf of Mexico, hearings were concentrated in other regions where fishers will be more directly impacted by the rule. In any event, fishers from all regions of the United States were encouraged to submit written comments during the 45 day comment period for the proposed rule.

Comment 69: NMFS' notice of public hearings was inadequate. Many fishers received 2 days notice of the closest hearing, which was still some 300 to 500 miles away.

Response: See responses to comments 67 and 68.

Comment 70: Longliners are most active when the moon is full and fishing is best. Therefore, public hearings involving longliners should only be scheduled during the dark half of the moon.

Response: See response to comment 67.

Comments on Takes of Threatened and Endangered Marine Mammals

Comment 71: Section 229.20(a)(3)(i) should require that all vessels interacting with threatened or endangered marine mammals be subject to observer coverage regardless of fishery category.

Response: There is no authority in the MMPA, as amended, to require full coverage regardless of fishery category. However, the highest priority for allocation of observers are those fisheries that have incidental mortality or serious injury of marine mammals listed as threatened or endangered under the ESA.

Comment 72: It is unclear from the proposed rule how NMFS proposes to make the determination whether ''the incidental mortality and serious injury from commercial fisheries will have a negligible impact on such species or stock (§ 229.20(a)(1)). Is NMFS considering a quantifiable biological level of incidental mortality and serious injury relative to the PBR level?

Response: NMFS is considering both quantitative and qualitative factors in its approach. There will be a quantitative threshold based on serious injuries and mortalities relative to the PBR level. If serious injuries and mortalities of a particular marine mammal stock are over that threshold, a qualitative

assessment of the level of take relative to that threshold will then be conducted. Factors that NMFS will consider in a qualitative manner may include, but will not be limited to, confidence in the marine mammal population estimate and the resulting PBR level, confidence in the status of the marine mammal population, confidence in the level of marine mammal take in a fishery, and the cumulative impact of all fishery takes on a stock.

Comment 73: NMFS should not allow incidental takes of threatened or endangered marine mammal species because it will be too easy to claim that deliberate or careless taking of these species was merely ''incidental''.

Response: The MMPA, as amended, provides NMFS with the authority to issue permits to fishers for taking in specific fisheries of species listed under the ESA as long as (1) takes have a negligible impact on the marine mammal stock, (2) a recovery plan has been developed or is being developed, and (3) where required under section 118, a monitoring program is established, vessels engaged in such fisheries are registered, and a take reduction plan has been developed or is being developed. Each fishery that has takes of ESA-listed species or stocks will be carefully scrutinized by NMFS to determine whether the takes can be considered negligible.

Comment 74: NMFS should clarify that, in addition to being able to modify, suspend, or revoke the incidental take authority for endangered and threatened species when the level of taking is more than negligible, NMFS may also invoke section 101(a)(5)(E)(ii), which allows NMFS to use the emergency authority of section 118 to protect the species or stock.

Response: Pursuant to §§ 229.20(e) and 229.9, NMFS may use emergency regulations in addition to being able to modify, suspend, or revoke the incidental take authority for endangered and threatened species when the level of take is later found to be more than negligible.

Comment 75: The information upon which negligible impact findings under section 101(a)(5)(E) will be made is not provided in sufficient detail for informed comments to be made. Therefore, NMFS should publish a notice that clearly describes the stocks and fisheries for which it proposes to make a finding of negligible impact and explain the basis for the proposed determinations.

Response: NMFS agrees that information included in the proposed rule and EA was insufficient to promote informed comments. However, NMFS was unable to provide a complete analysis of stocks listed as endangered or threatened under the ESA on a fishery-by-fishery basis in a time frame that would not delay publication of the proposed rule. Therefore, NMFS will publish a separate interim final notice that includes a list of fisheries that have met the criteria listed under section 101(a)(5)(E)(i) of the MMPA and that will explain, in greater detail, the process by which negligible impact determinations have been made. The public will have an opportunity to comment on the list of fisheries that will be authorized to take endangered and threatened species, as well as the process used for determining that serious injuries and mortalities due to commercial fishing are indeed negligible. NMFS expects to publish this interim final rule in the *Federal Register* by September 1, 1995.

Comments Recommending Technical Changes to the Regulatory Text

Comment 76: NMFS should clarify in § 229.1(c) that the taking of species listed as depleted under the MMPA, as well as those listed as threatened or endangered under the ESA, are governed by section 101(a)(5)(E)(i) of the MMPA.

Response: NMFS does not agree. Section 101(a)(5)(E)(i) of the MMPA applies only to a species designated as depleted because of its listing as threatened or endangered under the ESA. Thus, species listed as depleted through the procedures in section 115 of the MMPA, but not also listed as threatened or endangered under of section 4 of the ESA are not subject to the requirements of section 101(a)(5)(E)(i) of the MMPA and are only subject to the requirements of section 118.

Comment 77: NMFS should add mention of the short-term goal to § 229.1(g) to reflect the statutory goals to reduce mortality and serious injury to below PBR.

Response: NMFS agrees. The regulatory text was modified to this effect.

Comment 78: NMFS should further clarify the definition of ''interaction'' by specifying that the marine mammal must come into contact with gear or catch.

Response: NMFS agrees. The regulatory text was modified to this effect.

Comment 79: The definition of take reduction teams in § 229.2 should be modified to include the word ''recommend'' instead of ''review'' to better reflect the purpose of the teams.

Response: NMFS agrees. The regulatory text was modified to this effect.

Comment 80: Expand § 229.3(b) regarding the prohibition on interfering with observers to include attempted interference. This could be completed by rephrasing the second sentence to ''This prohibition includes, but is not limited to, any action that interferes with or attempts to interfere with an observer's ability to carry out his or her responsibilities * * * ''

Response: NMFS agrees. The regulatory text was modified to this effect.

Comment 81: In § 229.4(b), NMFS should include a statement to the effect that the specified information must be submitted in a particular format.

Response: NMFS agrees. The regulatory text was modified to this effect.

Comment 82: In § 229.4(b)(3), NMFS should ask registrants to supply their radio call signs.

Response: NMFS has no authority to require fishers to supply this information when submitting a registration form.

Comment 83: Modify the language in § 229.4(b)(4) to indicate that fishers should list all fisheries they ''may engage in'' or ''intend to engage in'' during the calendar year, as the fisher may not necessarily know all fisheries that they will be engaged in during the upcoming year.

Response: NMFS agrees. The regulatory text was modified to this effect.

Comment 84: In § 229.4(e), NMFS should specify that renewal of an Authorization Certificate will be contingent upon compliance with other provisions of the incidental take regime, e.g., the reporting requirements, the requirement to carry an observer when requested, etc. Such requirements should also be included in this provision.

Response: NMFS agrees. The regulatory text was modified to this effect.

Comment 85: Modify § 229.4(j)to clarify that a fisher may only deter a marine mammal if that marine mammal interacts with the fisher's gear or catch, not just any gear or catch.

Response: NMFS agrees. Only the owner and/or operator of a commercial fishing vessel or gear in nonvessel fisheries or the designee of the owner/operator may deter a marine mammal if that marine mammal interacts with the owner/operator's gear or catch.

Comment 86: Modify § 229.6(a)(4) to require that fishers provide a description of the marine mammal on

the reporting form if the species is uncertain.

Response: This provision is already included in § 229.6(a)(4).

Comment 87: Modify § 229.6(b) to replace the word ''include'' with the word ''provide''.

Response: NMFS agrees. The regulatory text was modified to this effect.

Comment 88: Modify § 229.7(b)(1) to replace the word ''or'' with the word ''and''.

Response: NMFS agrees. The regulatory text was modified to this effect.

Comment 89: Modify § 229.7(c)(4)(vi) and (vii) to allow observers to collect biological samples from all protected species and not just marine mammals.

Response: NMFS agrees. The regulatory text was modified to this effect.

Comment 90: Modify § 229.7(c)(4)(viii) to remove the word ''commercial'' before ''fishing operations'' so that experimental or other types of fishing will not be excluded.

Response: Section 118 of the MMPA, by its terms, applies only to ''commercial fishing operations''.

Comment 91: Modify § 229.7(c)(5) to replace the word ''aboard'' with ''onboard''.

Response: In this context, NMFS interprets the terms ''aboard'' and ''onboard'' to have the same meaning.

Comment 92: Modify § 229.7(d)(2) to indicate that the vessel owner and/or operator must comply with the requirements of § 229.7(c).

Response: NMFS agrees. The regulatory text was modified to this effect.

Comment 93: Modify § 229.8(b)(1) to replace the word ''for'' with the word ''of''.

Response: NMFS agrees. The regulatory text was modified to this effect.

Comment 94: Modify § 229.10(a) to clarify that ''any person who violates any regulation under this Part or any provision of section 118 of the MMPA shall be subject to the penalties set forth in the Act.''

Response: NMFS agrees. The regulatory text was modified to this effect.

Comment 95: Modify § 229.10(c) to state that up to $100 could be fined for each offense.

Response: The language in § 229.10(c) is clear as it stands.

Comment 96: Modify § 229.10(e) to indicate that, in addition to fishers being subject to suspension, revocation, or denial of their Authorization Certificate until the requirements have been satisfied, they are also subject to other penalties, such as fines, for the failure to report.

Response: NMFS agrees. The regulatory text has been modified to this effect.

Other Changes from the Proposed Rule

The following is a list of other changes from the proposed rule that were not previously mentioned in the preamble or response to comments section, or were not made for editorial consistency:

Section 229.1(a) - Replaced ''exceptions from the Act's moratorium on the taking of marine mammals incidental to certain commercial fishing operation'' with ''for exceptions for the taking of marine mammals incidental to certain commercial fishing operation from the Act's general moratorium on the taking of marine mammals'' to more precisely state the purpose of section 118 of the MMPA.

Section 229.1(c) - Deleted ''this part'' and replaced with ''Subpart B'' to make it clear that this section refers to Subpart B of the section 118 implementing regulations.

Section 229.2 - Deleted ''annual'' from the last sentence in the definition of a Category II fishery. This will allow NMFS to reclassify a fishery categorized by default into Category II at times other than at the annual review and publication of the list of fisheries.

Section 229.3(f) - Deleted ''(f) It is prohibited to willfully discard any fishing gear at sea, in whole or in part.'' Coast Guard regulations already prohibit the discarding of fishing gear at sea.

Section 229.3(g) - Renumbered this provision as 229.3(f). Add ''or any provision of section 118 of the Act'' to the end of the existing provision.

Section 229.4(a) - Deleted ''may'' and replace with ''shall'' so the sentences reads as follows: ''The granting and administration of authorizations under this part 229 shall be integrated and coordinated with existing fishery license, registration, or permit systems and related programs, wherever possible.''

Section 229.4(d) - Added ''the NMFS Regional Office in the region where the fishery occurs. The addresses of the NMFS Regional Offices are given below:'' to specify that fishers should request registration forms and submit completed registration forms to the region in which their fishery occurs.

Section 229.9(c)(1) - Deleted ''will take effect immediately upon publication in * * * '' and added ''Shall be published in * * *'' to allow agency discretion as to when an emergency rule will take effect.

Section 229.10(e) - Added ''will subject such persons to the penalties of sections 105 and 107, and may subject them to section 106, of the Act'' to make this section read: ''requirements to carry an observer, will subject such persons to the penalties of sections 105 and 107, and may subject them to section 106, of the Act and will result in suspension, * * *.'' This change is necessary to parallel § 229.10(f), so that it is clear that fisheries in all categories will be subject to the penalties of sections 105 and 107, and possibly section 106, of the Act for failure to report, carry observers, display an annual decal, and comply with take reduction plans.

Section 229.10(f) - Replaced ''to the full penalties'' with ''to the penalties of sections 105 and 107, and may subject them to section 106, * * *.''

Section 229.20(c) - Added ''can be made'' to make this sentence complete.

Section 229.20(f) - Delete ''temporarily'' and add ''pursuant to the provisions of 15 CFR Part 904'' so the first sentence of this parts reads as follows: ''The Assistant Administrator may, pursuant to the provisions of 15 CFR Part 904, suspend or revoke a permit granted under this section if the Assistant Administrator determines that the conditions or limitations set forth in such permit are not being complied with.''

Classification

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Small Business Administration that, as proposed, this rule would not have a significant economic impact on a substantial number of small entities. The rule establishes a process for issuance of authorizations for the incidental taking of marine mammals while conducting commercial fishing in the U.S. territorial seas, the EEZ and the high seas. Without these authorizations, the taking of marine mammals is prohibited and fishers could be subject to civil and criminal penalties when takings occur in the course of commercial fishing operations. The payment of a fee set to recover the costs of certificate issuance is required to obtain an Authorization Certificate. While the amount of such fee has not yet been determined, it would cost no more than approximately $30. Approximately 20,000 fishers are currently required to register under the old interim exemption regime and pay

a similar fee. This number is not expected to increase under the new regime.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

This final rule contains collection-of-information requirements subject to the provisions of the Paperwork Reduction Act. These collections have been approved by OMB under OMB control numbers 0648–0224 and 0648–0225.

The average reporting burden for these collections is estimated to be approximately 0.25 hours for each of approximately 20,000 fishers to register each year and 0.17 hours for each report of marine mammal injury or mortality. Because fishers are required by section 118(e) of the MMPA to submit a report for marine mammal injuries or mortalities at the end of each fishing trip, there may be multiple reports required per fisher.

The Assistant Administrator finds that it is unnecessary to delay for 30 days the effective date of most of the provisions of this final rule, because under 5 U.S.C. 553(d), this rule relieves a restriction, constitutes statements of agency policy, or good cause exists to waive the 30 day delay because a delay would be contrary to the public interest.

Without this rule, all takes of marine mammals incidental to commercial fishing operations would subject fishers to civil or criminal penalties as of Sept. 1, 1995. This rule provides for the authorization of such takes, relieving a restriction that would otherwise be imposed on commercial fishers. The provisions of sections 229.1 (Purpose and Scope) and 229.2 (Definitions) are statements of agency policy and/or related to relieving a restriction. Delay in their effective date is unnecessary in that it would serve no useful purpose. Section 229.3 (Prohibitions) in large part repeats statutory prohibitions or restates existing prohibitions under earlier regulations. Delay in its effective date is unnecessary in that it would serve no useful purpose; moreover, good cause exists for waiving the 30– day delay, because delay would be contrary to the public interest. Sections 229.4 (Requirements for Category I and II fisheries) and 229.5 (Requirements for Category III fisheries) relieve a restriction since they authorize fishers in Category I, II, and III fisheries to lawfully incidentally take marine mammals during commercial fishing operations. Section 229.6 (Reporting) does not become effective until January 1, 1996. Section 229.7 (Monitoring of incidental mortalities and serious injuries) in large part restates provisions in earlier regulations or repeats statutory requirements. Further, it is directly related to relieving a restriction because the statutory language makes relief dependent on the section's requirements. Section 229.8 (Publication of list of fisheries) is procedural and under 5 U.S.C. 553(d) is not subject to a delay in effective date. Further, in large part it only governs internal agency procedures.

Good cause exists for waiving the 30-day delayed effective date for sections 229.9 (Emergency regulations) and 229.10 (Penalties), since a delay would be contrary to the public interest because the agency would be unable to respond to emergency situations involving alarming numbers of takes of marine mammals and would be unable to assess penalties against persons who violate the provisions of the MMPA. Sections 229.11 (Confidential fisheries data) and 229.12 (Consultation with the Secretary of the Interior) repeat statutory text and state agency policy; a delay in their effective date is unnecessary because it would serve no useful purpose. Section 229.20 (Issuance of permits) authorizing the take of endangered or threatened marine mammals is procedural and, to the effect it is substantive, is related to relieving a restriction by providing a mechanism for authorizing takes of endangered or threatened marine mammals incidental to commercial fishing operations, which would otherwise be prohibited.

National Environmental Policy Act

The Assistant Administrator for Fisheries, NOAA has determined, based upon an EA prepared in conjunction with the proposed rule under the National Environmental Policy Act, that implementation of these regulations would not have a significant impact on the human environment. As a result of this determination, an environmental impact statement is not required. A copy of the EA is available upon request (see **ADDRESSES**).

List of Subjects

50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine Mammals, Penalties, Reporting and recordkeeping requirements, Transportation

50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: August 24, 1994.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR parts 216 and 229 are amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. Section 216.24 is amended by removing the phrase, under the Note to § 216.24: ''for the period from June 17, 1994, through September 1, 1995''.

3. Part 229 is revised to read as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

Subpart A—General Provisions

Sec.

229.1 Purpose and scope.
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Subpart B—Takes of Endangered and Threatened Marine Mammals

229.20 Issuance of permits.

Subpart C—Take Reduction Plan Regulations and Emergency Regulations [Reserved]

Authority: 16 U.S.C. 1361 *et seq.*

Subpart A—General Provisions

§ 229.1 Purpose and scope.

(a) The regulations in this part implement sections 101(a)(5)(E) and 118 of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1371(a)(5)(E) and 1387) that provide for exceptions for the taking of marine mammals incidental to certain commercial fishing operations from the Act's general moratorium on the taking of marine mammals.

(b) Section 118 of the Act, rather than sections 103 and 104, governs the

incidental taking of marine mammals in the course of commercial fishing operations by persons using vessels of the United States, other than vessels fishing for yellowfin tuna in the eastern tropical Pacific Ocean purse seine fishery, and vessels that have valid fishing permits issued in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)).

(c) The regulations of Subpart B also govern the incidental taking by commercial fishers of marine mammals from species or stocks designated under the Act as depleted on the basis of their listing as threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

(d) The regulations of this part do not apply to the incidental taking of California sea otters or to Northwest treaty Indian tribal members exercising treaty fishing rights.

(e) Authorizations under subpart A of this part are exemptions only from the taking prohibitions under the Act and not those under the Endangered Species Act of 1973. To be exempt from the taking prohibitions under the Endangered Species Act, specific authorization under subpart B of this part is required.

(f) Authorizations under this part do not apply to the intentional lethal taking of marine mammals in the course of commercial fishing operations.

(g) The purposes of the regulations in this part are to: (1) Reduce the incidental mortality or serious injury of marine mammals occurring in the course of commercial fishing operations below the potential biological removal level for a particular stock, and

(2) Reduce the incidental mortality or serious injury of marine mammals occurring in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate by the statutory deadline of April 30, 2001.

§ 229.2 Definitions.

In addition to the definitions contained in the Act and § 216.3 of this chapter, and unless the context otherwise requires, in this part 229:

Act or *MMPA* means the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*).

Authorization Certificate means a document issued by the Assistant Administrator, or designee, under the authority of section 118 of the Act that authorizes the incidental, but not intentional, taking of marine mammals in Category I or II fisheries.

Category I fishery means a commercial fishery determined by the Assistant Administrator to have frequent incidental mortality and serious injury of marine mammals. A commercial fishery that frequently causes mortality or serious injury of marine mammals is one that is by itself responsible for the annual removal of 50 percent or more of any stock's potential biological removal level.

Category II fishery means a commercial fishery determined by the Assistant Administrator to have occasional incidental mortality and serious injury of marine mammals. A commercial fishery that occasionally causes mortality or serious injury of marine mammals is one that, collectively with other fisheries, is responsible for the annual removal of more than 10 percent of any marine mammal stock's potential biological removal level and that is by itself responsible for the annual removal of between 1 and 50 percent, exclusive, of any stock's potential biological removal level. In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, the Assistant Administrator will determine whether the taking is ''occasional'' by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator. Eligible commercial fisheries not specifically identified in the list of fisheries are deemed to be Category II fisheries until the next list of fisheries is published.

Category III fishery means a commercial fishery determined by the Assistant Administrator to have a remote likelihood of, or no known incidental mortality and serious injury of marine mammals. A commercial fishery that has a remote likelihood of causing incidental mortality and serious injury of marine mammals is one that collectively with other fisheries is responsible for the annual removal of:

(1) Ten percent or less of any marine mammal stock's potential biological removal level, or

(2) More than 10 percent of any marine mammal stock's potential biological removal level, yet that fishery by itself is responsible for the annual removal of 1 percent or less of that stock's potential biological removal level. In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, the Assistant Administrator will determine whether the taking is ''remote'' by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area or at the discretion of the Administrator.

Commercial fishing operation means the catching, taking, or harvesting of fish from the marine environment (or other areas where marine mammals occur) that results in the sale or barter of all or part of the fish harvested. The term includes licensed commercial passenger fishing vessel (as defined in § 216.3 of this chapter) activities and aquaculture activities.

Depleted species means any species or population that has been designated as depleted under the Act and is listed in § 216.15 of this chapter or part 18, subpart E of this title, or any endangered or threatened species of marine mammal.

Fisher means the vessel owner or operator or owner or operator of gear in a nonvessel fishery.

Fishery has the same meaning as in section 3 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802).

Fishing trip means any time spent away from port actively engaged in commercial fishing operations. The end of a fishing trip will be the time of a fishing vessel's return to port or the return of a fisher from tending gear in a nonvessel fishery.

Fishing vessel or *vessel* means any vessel, boat, ship, or other craft that is used for, equipped to be used for, or of a type normally used for, fishing.

Incidental, but not intentional, take means the non-intentional or accidental taking of a marine mammal that results from, but is not the purpose of, carrying out an otherwise lawful action.

Incidental mortality means the non-intentional or accidental death of a marine mammal that results from, but is not the purpose of, carrying out an otherwise lawful action.

Injury means a wound or other physical harm. Signs of injury to a marine mammal include, but are not limited to, visible blood flow, loss of or damage to an appendage or jaw, inability to use one or more appendages, asymmetry in the shape of the body or body position, noticeable swelling or hemorrhage, laceration, puncture or rupture of eyeball, listless appearance or inability to defend itself, inability to swim or dive upon release from fishing

gear, or signs of equilibrium imbalance. Any animal that ingests fishing gear, or any animal that is released with fishing gear entangling, trailing or perforating any part of the body will be considered injured regardless of the absence of any wound or other evidence of an injury.

Interaction means coming in contact with fishing gear or catch. An interaction may be characterized by a marine mammal entangled, hooked, or otherwise trapped in fishing gear, regardless of whether injury or mortality occurs, or situations where marine mammals are preying on catch. Catch means fish or shellfish that has been hooked, entangled, snagged, trapped or otherwise captured by commercial fishing gear.

List of Fisheries means the most recent final list of commercial fisheries published in the **Federal Register** by the Assistant Administrator, categorized according to the likelihood of incidental mortality and serious injury of marine mammals during commercial fishing operations.

Minimum population estimate means an estimate of the number of animals in a stock that:

(1) Is based on the best available scientific information on abundance, incorporating the precision and variability associated with such information; and

(2) Provides reasonable assurance that the stock size is equal to or greater than the estimate.

Negligible impact has the same meaning as in § 228.3 of this chapter.

Net productivity rate means the annual per capita rate of increase in a stock resulting from additions due to reproduction, less losses due to mortality.

Nonvessel fishery means a commercial fishing operation that uses fixed or other gear without a vessel, such as gear used in set gillnet, trap, beach seine, weir, ranch, and pen fisheries.

NMFS means the National Marine Fisheries Service.

Observer means an individual authorized by NMFS, or a designated contractor, to record information on marine mammal interactions, fishing operations, marine mammal life history information, and other scientific data, and collect biological specimens during commercial fishing activities.

Potential biological removal level means the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. The potential biological removal level is the product of the following factors:

(1) The minimum population estimate of the stock;

(2) One-half the maximum theoretical or estimated net productivity rate of the stock at a small population size; and

(3) A recovery factor of between 0.1 and 1.0.

Regional Fishery Management Council means a regional fishery management council established under section 302 of the Magnuson Fishery Conservation and Management Act.

Serious injury means any injury that will likely result in mortality.

Strategic stock means a marine mammal stock:

(1) For which the level of direct human-caused mortality exceeds the potential biological removal level;

(2) Which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973 within the foreseeable future;

(3) Which is listed as a threatened species or endangered species under the Endangered Species Act of 1973; or

(4) Which is designated as depleted under the Marine Mammal Protection Act of 1972, as amended.

Take Reduction Plan means a plan developed to reduce the incidental mortality and serious injury of marine mammals during commercial fishing operations in accordance with section 118 of the Marine Mammal Protection Act of 1972, as amended.

Take Reduction Team means a team established to recommend methods of reducing the incidental mortality and serious injury of marine mammals due to commercial fishing operations, in accordance with section 118 of the Marine Mammal Protection Act of 1972, as amended.

Vessel owner or operator means the owner or operator of:

(1) A fishing vessel that engages in a commercial fishing operation; or

(2) Fixed or other commercial fishing gear that is used in a nonvessel fishery.

Vessel of the United States has the same meaning as in section 3 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802).

§ 229.3 Prohibitions.

(a) It is prohibited to take any marine mammal incidental to commercial fishing operations except as otherwise provided in part 216 of this chapter or in this part 229.

(b) It is prohibited to assault, harm, harass (including sexually harass), oppose, impede, intimidate, impair, or in any way influence or interfere with an observer, or attempt the same. This prohibition includes, but is not limited to, any action that interferes with an observer's responsibilities, or that creates an intimidating, hostile, or offensive environment.

(c) It is prohibited to provide false information when registering for an Authorization Certificate, applying for renewal of the Authorization Certificate, reporting the taking of any marine mammal, or providing information to any observer.

(d) It is prohibited to tamper with or destroy observer equipment in any way.

(e) It is prohibited to intentionally lethally take any marine mammal in the course of commercial fishing operations unless imminently necessary in self-defense or to save the life of a person in immediate danger, and such taking is reported in accordance with the requirements of § 229.6.

(f) It is prohibited to violate any regulation in this part or any provision of section 118 of the Act.

§ 229.4 Requirements for Category I and II fisheries.

(a) *General.* For a vessel owner or crew members to lawfully incidentally take marine mammals in the course of commercial fishing operations in a Category I or II fishery, the owner or authorized representative of a fishing vessel or nonvessel fishing gear must annually register for and receive an Authorization Certificate. The granting and administration of authorizations under this part shall be integrated and coordinated with existing fishery license, registration, or permit systems and related programs, wherever possible. These programs may include, but are not limited to, state or interjurisdictional fisheries programs. If the administration of authorizations is integrated into an existing program, NMFS will publish a notice in the **Federal Register** of where to register, and efforts will be made to contact affected fishers via other appropriate means of notification.

(b) *Registration.* Owners of vessels or, for nonvessel fisheries, gear, must register for and receive an Authorization Certificate. To register, owners must submit the following information, using a format specified by NMFS:

(1) Name, address, and phone number of owner;

(2) Name, address, and phone number of operator, if different from owner, unless the name of the operator is not known or has not been established at the time the registration is submitted;

(3) Vessel name, length and home port; U.S. Coast Guard documentation number, or state registration number,

and state commercial vessel license number;

(4) A list of all Category I and II fisheries in which the fisher may actively engage during the calendar year;

(5) The approximate time, duration, and location of each such fishery operation, and the general type and nature of use of the fishing gear and techniques used; and

(6) A certification, signed and dated by the vessel owner or authorized representative, as follows: ''I hereby certify that I am the owner of the vessel, that I have reviewed all information contained on this document, and that it is true and complete to the best of my knowledge.''

(c) *Fee.* A check or money order made payable to NMFS in the amount specified in the notice of the final List of Fisheries must accompany each registration submitted to NMFS. The amount of this fee will be based on recovering the administrative costs incurred in granting an authorization. The Assistant Administrator may waive the fee requirement for good cause upon the recommendation of the Regional Director.

(d) *Address.* Unless the granting and administration of authorizations under part 229 is integrated and coordinated with existing fishery licenses, registrations, or related programs pursuant to paragraph (a) of this section, requests for registration forms and completed registration forms should be sent to the NMFS Regional Offices are given:

(1) Alaska Region, NMFS, P.O. Box 21668, 709 West 9th Street, Juneau, AK 99802; telephone: 907–586-7235;

(2) Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070; telephone: 206–526-4353;

(3) Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213; telephone: 310–980–4001;

(4) Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930; telephone: 508–281–9254; or

(5) Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702; telephone: 813–570–5301.

(e) *Issuance.* After receipt of a completed initial registration form and the required fee, NMFS will issue an Authorization Certificate and annual decal to the vessel owner. The Authorization Certificate will be renewed annually, and an annual decal issued, after receipt of an updated registration form, required fee, and statement (yes/no) regarding whether any marine mammals were incidentally killed or injured during the previous calendar year. The Authorization Certificate will be renewed only if the fisher has complied with the provisions of §§ 229.4, 229.6, and 229.7.

(f) *Authorization Certificate and decal requirements.* (1) The annual decal must be attached to the vessel on the port side of the cabin or, in the absence of a cabin, on the forward port side of the hull, and must be free of obstruction and in good condition. The decal must be attached to the Authorization Certificate for nonvessel fisheries.

(2) The Authorization Certificate, or a copy, must be on board the vessel while it is operating in a Category I or II fishery, or, in the case of nonvessel fisheries, the Authorization Certificate with decal attached, or copy must be in the possession of the person in charge of the fishing operation. The Authorization Certificate, or copy, must be made available upon request to any state or Federal enforcement agent authorized to enforce the Act, any designated agent of NMFS, or any contractor providing observer services to NMFS.

(3) Authorization Certificates and annual decals are not transferable. In the event of the sale or change in ownership of the vessel, the Authorization Certificate is void and the new owner must register for an Authorization Certificate and decal.

(4) An Authorization Certificate holder must notify the issuing office in writing:

(i) If the vessel or nonvessel fishing gear will engage in any Category I or II fishery not listed on the initial registration form at least 30 days prior to engaging in that fishery; and,

(ii) If there are any changes in the mailing address or vessel ownership within 30 days of such change.

(g) *Reporting.* Any Authorization Certificate holders must comply with the reporting requirements specified under § 229.6.

(h) *Disposition of marine mammals.* Any marine mammal incidentally taken must be immediately returned to the sea with a minimum of further injury, unless directed otherwise by NMFS personnel, a designated contractor or an official onboard observer, or authorized otherwise by a scientific research permit that is in the possession of the operator.

(i) *Monitoring.* Authorization Certificate holders must comply with the observer or other monitoring requirements specified under § 229.7.

(j) *Deterrence.* When necessary to deter a marine mammal from damaging fishing gear, catch, or other private property, or from endangering personal safety, vessel owners and crew members engaged in a Category I or II fishery must comply with all deterrence provisions set forth in the Act and all guidelines and prohibitions published thereunder.

(k) *Self defense.* When imminently necessary in self-defense or to save the life of a person in immediate danger, a marine mammal may be lethally taken if such taking is reported to NMFS in accordance with the requirements of § 229.6.

(l) *Take reduction plans and emergency regulations.* Authorization Certificate holders must comply with any applicable take reduction plans and emergency regulations.

(m) *Expiration.* Authorization Certificates and annual decals expire at the end of each calendar year.

§ 229.5 Requirements for Category III fisheries.

(a) *General.* Vessel owners and crew members of such vessels engaged only in Category III fisheries may incidentally take marine mammals without registering for or receiving an Authorization Certificate.

(b) *Reporting.* Vessel owners engaged in a Category III fishery must comply with the reporting requirements specified in § 229.6.

(c) *Disposition of marine mammals.* Any marine mammal incidentally taken must be immediately returned to the sea with a minimum of further injury unless directed otherwise by NMFS personnel, a designated contractor, or an official onboard observer, or authorized otherwise by a scientific research permit in the possession of the operator.

(d) *Monitoring.* Vessel owners engaged in a Category III fishery must comply with the observer requirements specified under § 229.7(f).

(e) *Deterrence.* When necessary to deter a marine mammal from damaging fishing gear, catch, or other private property, or from endangering personal safety, vessel owners and crew members engaged in a Category I or II fishery must comply with all deterrence provisions set forth in the Act and all guidelines and prohibitions published thereunder.

(f) *Self-defense.* When imminently necessary in self-defense or to save the life of a person in immediate danger, a marine mammal may be lethally taken if such taking is reported to NMFS in accordance with the requirements of § 229.6.

(g) *Emergency regulations.* Vessel owners engaged in a Category III fishery must comply with any applicable emergency regulations.

§ 229.6 Reporting requirements.

(a) Vessel owners or operators engaged in any Category I, II, or III fishery must report all incidental mortality and injury of marine mammals in the course of commercial fishing operations to the Assistant Administrator, or appropriate Regional Office, by mail or other means, such as fax or overnight mail specified by the Assistant Administrator. Reports must be sent within 48 hours after the end of each fishing trip during which the incidental mortality or injury occurred, or, for nonvessel fisheries, within 48 hours of an occurrence of an incidental mortality or injury. Reports must be submitted on a standard postage-paid form as provided by the Assistant Administrator. The vessel owner or operator must provide the following information on this form:

(1) The vessel name, and Federal, state, or tribal registration numbers of the registered vessel;

(2) The name and address of the vessel owner or operator;

(3) The name and description of the fishery, including gear type and target species; and

(4) The species and number of each marine mammal incidentally killed or injured, and the date, time, and approximate geographic location of such occurrence. A description of the animal(s) killed or injured must be provided if the species is unknown.

(b) Participants in nonvessel fisheries must provide all of the information in paragraphs (a)(1) through (4) of this section with the exception of the vessel name and registration number.

§ 229.7 Monitoring of incidental mortalities and serious injuries.

(a) *Purpose*. The Assistant Administrator will establish a program to monitor incidental mortality and serious injury of marine mammals during the course of commercial fishing operations in order to:

(1) Obtain statistically reliable estimates of incidental mortality and serious injury;

(2) Determine the reliability of reports of incidental mortality and injury under § 229.6; and

(3) Identify changes in fishing methods or technology that may increase or decrease incidental mortality and serious injury.

(b) *Observer program*. Pursuant to paragraph (a) of this section, the Assistant Administrator may place observers aboard Category I and II vessels as necessary. Observers may, among other tasks:

(1) Record incidental mortality and injury, and bycatch of other nontarget species;

(2) Record numbers of marine mammals sighted; and

(3) Perform other scientific investigations, which may include, but are not limited to, sampling and photographing incidental mortalities and serious injuries.

(c) *Observer requirements for Authorization Certificate holders*. (1) If requested by NMFS or a designated contractor providing observer services to NMFS, an Authorization Certificate holder engaged in a Category I or II fishery must take aboard an observer to accompany the vessel on fishing trips.

(2) After being notified by NMFS, or by a designated contractor providing observer services to NMFS, that the vessel is required to carry an observer, the Authorization Certificate holder must comply with the notification by providing information requested within the specified time on scheduled or anticipated fishing trips.

(3) NMFS, or a designated contractor providing observer services to NMFS, may waive the observer requirement based on a finding that the facilities for housing the observer or for carrying out observer functions are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized.

(4) The Authorization Certificate holder and crew must cooperate with the observer in the performance of the observer's duties including:

(i) Providing adequate accommodations;

(ii) Allowing for the embarking and debarking of the observer as specified by NMFS personnel or designated contractors. The operator of a vessel must ensure that transfers of observers at sea are accomplished in a safe manner, via small boat or raft, during daylight hours if feasible, as weather and sea conditions allow, and with the agreement of the observer involved;

(iii) Allowing the observer access to all areas of the vessel necessary to conduct observer duties;

(iv) Allowing the observer access to communications equipment and navigation equipment, when available on the vessel, as necessary to perform observer duties;

(v) Providing true vessel locations by latitude and longitude, accurate to the minute, or by loran coordinates, upon request by the observer;

(vi) Sampling marine mammal or other protected species specimens, upon request by NMFS personnel;

(vii) Sampling, retaining and storing mammal or other protected species specimens, upon request by NMFS personnel, designated contractors, or the observer aboard, if adequate facilities are available and if feasible;

(viii) Notifying the observer in a timely fashion of when all commercial fishing operations are to begin and end;

(ix) Not impairing or in any way interfering with the research or observations being carried out; and

(x) Complying with other guidelines or regulations that NMFS may develop to ensure the effective deployment and use of observers.

(5) Marine mammals incidentally killed during fishing operations and which are readily accessible to crew members, must be brought onboard the vessel as biological specimens and retained for the purposes of scientific research if feasible and requested by NMFS personnel, designated contractors, or the aboard observer. Marine mammals so collected and retained as biological specimens must, upon request by NMFS personnel, designated contractors, or the observer aboard, be retained in cold storage on board the vessel, if feasible, until removed at the request of NMFS personnel, designated contractors, or the observer aboard, retrieved by authorized personnel of NMFS, or released by the observer for return to the ocean. Such biological specimens may be transported on board the vessel during the fishing trip and back to port under this authorization.

(6) Any marine mammal incidentally taken may be retained only if authorized by NMFS personnel, designated contractors or an official observer aboard, or by a scientific research permit that is in the possession of the operator.

(d) *Observer requirements for Category III fisheries*. (1) The Assistant Administrator may place observers on Category III vessels if the Assistant Administrator:

(i) Believes that the incidental mortality and serious injury of marine mammals from such fishery may be contributing to the immediate and significant adverse impact on a species or stock listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*); and

(ii) Has complied with § 229.9(a)(3)(i) and (ii); or

(iii) Has the consent of the vessel owner.

(2) If an observer is placed on a Category III vessel, the vessel owner and/or operator must comply with the requirements of § 229.7(c).

(e) *Alternative observer program*. The Assistant Administrator may establish

an alternative observer program to provide statistically reliable information on the species and number of marine mammals incidentally taken in the course of commercial fishing operations. The alternative observer program may include direct observation of fishing activities from vessels, airplanes, or points on shore.

§ 229.8 Publication of List of Fisheries.

(a) The Assistant Administrator will publish in the **Federal Register** a proposed revised List of Fisheries on or about July 1 of each year for the purpose of receiving public comment. Each year, on or about October 1, the Assistant Administrator will publish a final revised List of Fisheries, which will become effective January 1 of the next calendar year.

(b) The proposed and final revised List of Fisheries will:

(1) Categorize each commercial fishery based on the definitions of Category I, II, and III fisheries set forth in § 229.2; and

(2) List the marine mammals that interact with commercial fishing operations and the estimated number of vessels or persons involved in each commercial fishery.

(c) The Assistant Administrator may publish a revised List of Fisheries at other times, after notification and opportunity for public comment. The revised final List of Fisheries will become effective no sooner than 30 days after publication in the **Federal Register**.

§ 229.9 Emergency regulations.

(a) If the Assistant Administrator finds that the incidental mortality or serious injury of marine mammals from commercial fisheries is having, or is likely to have, an immediate and significant adverse impact on a stock or species, the Assistant Administrator will:

(1) In the case of a stock or species for which a take reduction plan is in effect—

(i) Prescribe emergency regulations that, consistent with such plan to the maximum extent practicable, reduce incidental mortality and serious injury in that fishery; and

(ii) Approve and implement on an expedited basis, any amendments to such plan that are recommended by the Take Reduction Team to address such adverse impact;

(2) In the case of a stock or species for which a take reduction plan is being developed—

(i) Prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery; and

(ii) Approve and implement, on an expedited basis, such plan, which will provide methods to address such adverse impact if still necessary;

(3) In the case of a stock or species for which a take reduction plan does not exist and is not being developed, or in the case of a Category III fishery that the Assistant Administrator believes may be contributing to such adverse impact,

(i) Prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery, to the extent necessary to mitigate such adverse impact;

(ii) Immediately review the stock assessment for such stock or species and the classification of such commercial fishery under this section to determine if a take reduction team should be established; and

(iii) Where necessary to address such adverse impact on a species or stock listed as a threatened species or endangered species under the Endangered Species Act (16 U.S.C. 1531 *et seq.*), place observers on vessels in a Category III fishery if the Assistant Administrator has reason to believe such vessels may be causing the incidental mortality and serious injury to marine mammals from such stock.

(b) Prior to taking any action under § 229.9(a)(1) through (3), the Assistant Administrator will consult with the Marine Mammal Commission, all appropriate Regional Fishery Management Councils, state fishery managers, and the appropriate take reduction team, if established.

(c) Any emergency regulations issued under this section:

(1) Shall be published in the **Federal Register** and will remain in effect for no more than 180 days or until the end of the applicable commercial fishing season, whichever is earlier, except as provided in paragraph (d) of this section; and

(2) May be terminated by notification in the **Federal Register** at an earlier date if the Assistant Administrator determines that the reasons for the emergency regulations no longer exist.

(d) If the Assistant Administrator finds that incidental mortality and serious injury of marine mammals in a commercial fishery is continuing to have an immediate and significant adverse impact on a stock or species, the Assistant Administrator may extend the emergency regulations for an additional period of not more than 90 days or until reasons for the emergency regulations no longer exist, whichever is earlier.

§ 229.10 Penalties.

(a) Except as provided for in paragraphs (b) and (c) of this section, any person who violates any regulation under this part or any provision of section 118 of the MMPA shall be subject to all penalties set forth in the Act.

(b) The owner or master of a vessel that fails to comply with a take reduction plan shall be subject to the penalties of sections 105 and 107 of the Act, and may be subject to the penalties of section 106 of the Act.

(c) The owner of a vessel engaged in a Category I or II fishery who fails to ensure that a decal, or other physical evidence of such authorization issued by NMFS, is displayed on the vessel or is in possession of the operator of the vessel shall be subject to a penalty of not more than $100.

(d) Failure to comply with take reduction plans or emergency regulations issued under this part may result in suspension or revocation of an Authorization Certificate, and failure to comply with a take reduction plan is also subject to the penalties of sections 105 and 107 of the Act, and may be subject to the penalties of section 106 of the Act.

(e) For fishers operating in Category I or II fisheries, failure to report all incidental injuries and mortalities within 48 hours of the end of each fishing trip, or failure to comply with requirements to carry an observer, will subject such persons to the penalties of sections 105 and 107 and may subject them to the penalties of section 106 of the Act, which will result in suspension, revocation, or denial of an Authorization Certificate until such requirements have been fulfilled.

(f) For fishers operating in Category III fisheries, failure to report all incidental injuries and mortalities within 48 hours of the end of each fishing trip will subject such persons to the penalties of sections 105 and 107, and may subject them to section 106, of the Act.

(g) *Suspension, revocation or denial of Authorization Certificates.* (1) Until the Authorization Certificate holder complies with the regulations under this part, the Assistant Administrator shall suspend or revoke an Authorization Certificate or deny an annual renewal of an Authorization Certificate in accordance with the provisions in 15 CFR part 904 if the Authorization Certificate holder fails to report all incidental mortality and serious injury of marine mammals as required under § 229.6; or fails to take aboard an observer if requested by NMFS or its designated contractors.

(2) The Assistant Administrator may suspend or revoke an Authorization Certificate or deny an annual renewal of an Authorization Certificate in

accordance with the provisions in 15 CFR part 904 if the Authorization Certificate holder fails to comply with any applicable take reduction plan, take reduction regulations, or emergency regulations developed under this subpart or subparts B and C of this part or if the Authorization Certificate holder fails to comply with other requirements of these regulations;

(3) A suspended Authorization Certificate may be reinstated at any time at the discretion of the Assistant Administrator provided the Assistant Administrator has determined that the reasons for the suspension no longer apply or corrective actions have been taken.

§ 229.11 Confidential fisheries data.

(a) Proprietary information collected under this part is confidential and includes information, the unauthorized disclosure of which could be prejudicial or harmful, such as information or data that are identifiable with an individual fisher. Proprietary information obtained under part 229 will not be disclosed, in accordance with NOAA Administrative Order 216–100, except:

(1) To Federal employees whose duties require access to such information;

(2) To state employees under an agreement with NMFS that prevents public disclosure of the identity or business of any person;

(3) When required by court order; or

(4) In the case of scientific information involving fisheries, to employees of Regional Fishery Management Councils who are responsible for fishery management plan development and monitoring.

(5) To other individuals or organizations authorized by the Assistant Administrator to analyze this information, so long as the confidentiality of individual fishers is not revealed.

(b) Information will be made available to the public in aggregate, summary, or other such form that does not disclose the identity or business of any person in accordance with NOAA Administrative Order 216–100 (see **ADDRESSES**). Aggregate or summary form means data structured so that the identity of the submitter cannot be determined either from the present release of the data or in combination with other releases.

§ 229.12 Consultation with the Secretary of the Interior.

The Assistant Administrator will consult with the Secretary of the Interior prior to taking actions or making determinations under this part that affect or relate to species or population stocks of marine mammals for which the Secretary of the Interior is responsible under the Act.

Subpart B—Takes of Endangered and Threatened Marine Mammals

§ 229.20 Issuance of permits.

(a) *Determinations*. During a period of up to 3 consecutive years, NMFS will allow the incidental, but not the intentional, taking by persons using vessels of the United States or foreign vessels that have valid fishing permits issued by the Assistant Administrator in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)), while engaging in commercial fishing operations, of marine mammals from a species or stock designated as depleted because of its listing as an endangered species or threatened species under the Endangered Species Act of 1973 if the Assistant Administrator determines that:

(1) The incidental mortality and serious injury from commercial fisheries will have a negligible impact on such species or stock;

(2) A recovery plan has been developed or is being developed for such species or stock pursuant to the Endangered Species Act of 1973; and

(3) Where required under regulations in subpart A of this part:

(i) A monitoring program has been established under § 229.7; (ii) Vessels engaged in such fisheries are registered in accordance with § 229.4; and

(iii) A take reduction plan has been developed or is being developed for such species or stock in accordance with regulations at subpart C of this part.

(b) *Procedures for making determinations*. In making any of the determinations listed in paragraph (a) of this section, the Assistant Administrator will publish an announcement in the **Federal Register** of fisheries having takes of marine mammals listed under the Endangered Species Act, including a summary of available information regarding the fisheries interactions with listed species. Any interested party may, within 45 days of such publication, submit to the Assistant Administrator written data or views with respect to the listed fisheries. As soon as practicable after the end of the 45 days following publication, NMFS will publish in the **Federal Register** a list of the fisheries for which the determinations listed in paragraph (a) of this section have been made. This publication will set forth a summary of the information used to make the determinations.

(c) *Issuance of authorization*. The Assistant Administrator will issue appropriate permits for vessels in fisheries that are required to register under § 229.4 and for which determinations under the procedures of paragraph (b) of this section can be made.

(d) *Category III fisheries*. Vessel owners engaged only in Category III fisheries for which determinations are made under the procedures of paragraph (b) of this section will not be subject to the penalties of this Act for the incidental taking of marine mammals to which this subpart applies, as long as the vessel owner or operator of such vessel reports any incidental mortality or injury of such marine mammals in accordance with the requirements of § 229.6.

(e) *Emergency authority*. During the course of the commercial fishing season, if the Assistant Administrator determines that the level of incidental mortality or serious injury from commercial fisheries for which such a determination was made under this section has resulted or is likely to result in an impact that is more than negligible on the endangered or threatened species or stock, the Assistant Administrator will use the emergency authority of § 229.9 to protect such species or stock, and may modify any permit granted under this paragraph as necessary.

(f) *Suspension, revocation, modification and amendment*. The Assistant Administrator may, pursuant to the provisions of 15 CFR part 904, suspend or revoke a permit granted under this section if the Assistant Administrator determines that the conditions or limitations set forth in such permit are not being complied with. The Assistant Administrator may amend or modify, after notification and opportunity for public comment, the list of fisheries published in accordance with § 229.21(b) whenever the Assistant Administrator determines there has been a significant change in the information or conditions used to determine such a list.

(g) *Southern sea otters*. This subpart does not apply to the taking of Southern (California) sea otters.

Subpart C—Take Reduction Plan Regulations and Emergency Regulations [Reserved]

[FR Doc. 95–21552 Filed 8–25–95; 2:46 pm]

BILLING CODE 3510–22–F

50 CFR Part 625

[Docket No. 950206038–5038; I.D. 082395B]

Summer Flounder Fishery; Commercial Quota Transfer

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

ACTION: Commercial quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is transferring 7,229 lb (3,279 kg) of commercial summer flounder quota to the State of New Jersey. NMFS adjusted the quotas and announces the revised commercial quota for each state involved.

EFFECTIVE DATE: August 24, 1995.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, 508–281–9221.

SUPPLEMENTARY INFORMATION: Regulations implementing Amendment 2 to the Fishery Management Plan for the Summer Flounder Fishery (FMP) are found at 50 CFR part 625. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 625.20.

The commercial quota for summer flounder for the 1995 calendar year was set equal to 14,690,407 lb (6,663,569 kg), and the allocations to each state were published February 16, 1995 (60 FR 8958). At that time, North Carolina was allocated a quota of 4,031,905 lb (1,828,841 kg), and New Jersey was allocated a quota of 2,456,969 lb (1,114,462 kg).

The final rule implementing Amendment 5 to the FMP was published December 17, 1993 (58 FR 65936), and allows two or more states, under mutual agreement and with the concurrence of the Director, Northeast Region, NMFS (Regional Director) to transfer or combine summer flounder commercial quota. The Regional Director is required to consider the criteria set forth in § 625.20(f)(1), in the evaluation of requests for quota transfers or combinations.

North Carolina has agreed to transfer 7,229 lb (3,279 kg) of commercial quota to New Jersey. The Regional Director has determined that the criteria set forth in § 625.20(f) have been met, and publishes this notification of quota transfers. The revised quotas for the calendar year 1995 are: North Carolina, 4,024,676 lb (1,825,562 kg); and New Jersey, 2,464,198 lb (1,117,741 kg).

This action does not alter any of the conclusions reached in the environmental impact statement prepared for Amendment 2 to the FMP regarding the effects of summer flounder fishing activity on the human environment. Amendment 2 established procedures for setting an annual coastwide commercial quota for summer flounder and a formula for determining commercial quotas for each state. The quota transfer provision was established by Amendment 5 to the FMP and the environmental assessment prepared for Amendment 5 found that the action had no significant impact on the environment. Under section 6.02b.3(b)(i)(aa) of NOAA Administrative Order 216–6, this action is categorically excluded from the requirement to prepare additional environmental analyses. This is a routine administrative action that reallocates commercial quota within the scope of previously published environmental analyses.

Classification

This action is taken under 50 CFR part 625 and is exempt from review under E.O. 12866.

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

Dated: August 24, 1995.

Richard H. Schaefer,

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

[FR Doc. 95–21448 Filed 8–24–95; 4:55 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 168
Wednesday, August 30, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–47–AD]

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –15, –30, and –40 Series Airplanes, and Model KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–10, –15, –30, and –40 series airplanes, and Model KC–10A (military) airplanes. This proposal would require inspection(s) to detect cracks of the attach bolts of the front spar support fitting of each wing. This proposal would also require replacement of attach bolts of the front spar support fitting of the wing with corrosion-resistant attach bolts. This proposal is prompted by a report of failure of the attach bolts of the front spar fitting as a result of corrosion pitting. The actions specified by the proposed AD are intended to prevent such stress corrosion failure, which could lead to the failure of the attach bolts of the front spar; this situation could result in reduced structural integrity of the wing.

DATES: Comments must be received by October 25, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–47–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2–98. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: John Cecil, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (310) 627–5322; fax (301) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–47–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–47–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has reviewed a report of failure of the attach bolts of the front spar fitting on a Model DC–10 series airplane that had accumulated 59,655 total flight hours and 22,271 total flight cycles. Investigation revealed that the cause of such a failure has been attributed to corrosion pitting that penetrated the protective plating. The effects of such stress corrosion failure could lead to the failure of the attach bolts of the front spar. This condition, if not detected and corrected in a timely manner, could result in reduced structural integrity of the wing.

The FAA has received and approved McDonnell Douglas DC–10 Service Bulletin 57–126, dated October 30, 1992, which describes procedures for ultrasonic inspection(s) to detect cracks of the attach bolts of the front spar support fitting of each wing and replacement of cracked attach bolts. This service bulletin also describes procedures for replacement of all six attach bolts of the front spar support fitting of each wing with corrosion resistant attach bolts, in lieu of the repetitive ultrasonic inspections, if no cracks are detected. The service bulletin recommends that such replacement of the attach bolts be accomplished within 7 years.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require ultrasonic inspection(s) to detect cracks of the attach bolts of the front spar support fitting of each wing, and replacement of cracked attach bolts. This proposed AD would also require replacement of attach bolts of the front spar support fitting of the wing with corrosion resistant attach bolts, in lieu of the repetitive ultrasonic inspections, if no cracks are detected. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Operators should note that certain actions proposed by this rule would differ from the procedures

recommended in the referenced McDonnell Douglas service bulletin. Specifically, the proposed rule would not require replacement of all six attach bolts on each wing, if no cracks are detected (Condition 1, Option II), at the 7-year compliance time recommended in the service bulletin. Instead, this proposed rule would require, within 5 years after the effective date of the final rule, replacement of a minimum of five of the attach bolts of the front spar support fitting on each wing with corrosion-resistant attach bolts, if no cracks are detected. This proposed rule would also require, at the next pylon removal, replacement of the remaining one attach bolt of the front spar support fitting on each wing.

In developing an appropriate compliance time for this AD action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the manufacturer's recommendation as to an appropriate compliance time, the availability of required parts, and the practical aspect of installing the required modification within an interval of time that parallels regularly scheduled maintenance for the majority of affected operators. The FAA points out that the parts required for the attach bolt replacement are readily available; therefore, obtaining them within the 5 year proposed compliance time should not pose a problem for any affected operator.

Further, the FAA reviewed an analysis submitted by the manufacturer and determined that the ultimate strength of the front spar support fitting is adequate with any combination of five attach bolts. The FAA also determined that one of the six attach bolts can only be accessed by removal of the engine/pylon assembly. Therefore, the FAA finds that ''the next pylon removal'' is an appropriate compliance time for accomplishing the replacement of that one particular attach bolt.

There are approximately 420 Model DC–10–10, –15, –30, and –40 series airplanes, and Model KC–10A (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 237 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $43,000 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $10,276,320, or $43,360 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory regulation evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 95–NM–47–AD.

Applicability: Model DC–10–10, –15, –30, and –40 series airplanes, and Model KC–10A (military) airplanes; as listed in McDonnell Douglas DC–10 Service Bulletin 57–126, dated October 30, 1992; 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 reduced structural integrity of the wing, accomplish the following:

(a) Within 18 months after the effective date of this AD, perform an ultrasonic inspection to detect cracks in the 6 attach bolts of the front spar support fitting of each wing, in accordance with McDonnell Douglas DC–10 Service Bulletin 57–126, dated October 30, 1992.

(b) If no crack is detected during the inspection required by paragraph (a) of this AD, accomplish paragraphs (b)(1) and (b)(2) of this Ad.

(1) Repeat the ultrasonic inspection thereafter at intervals not to exceed 18 months until the procedures required by paragraph (b)(2) of this AD is accomplished; and

(2) Within 5 years after the effective date of this AD, replace a minimum of 5 of the attach bolts of the front spar support fitting on each wing with corrosion-resistant attach bolts, in accordance with the service bulletin. At the next pylon removal after the replacement, replace the remaining 1 attach bolt of the front spar support fitting on each wing. Accomplishment of the replacement constitutes terminating action for the repetitive inspection requirements of this AD for that attach bolt.

(c) If any crack is detected during the inspection required by paragraph (a) or (b)(1) of this AD, prior to further flight, replace the cracked attach bolt with a corrosion-resistant attach bolt, in accordance with the service bulletin. Accomplishment of such replacement constitutes terminating action for the repetitive inspection requirements of this AD for that attach bolt.

(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.

Issued in Renton, Washington, on August 24, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–21490 Filed 8–29–95; 8:45 am]

BILLING CODE 4910–13–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Regulations No. 16]

RIN 0960–AD90

Evidence of Lawful Admission for Permanent Residence in the United States (U.S.)

AGENCY: Social Security Administration.

ACTION: Proposed rule.

SUMMARY: This proposed regulation sets forth the type of documentation required for an alien to establish the status of lawfully admitted for permanent residence for eligibility purposes under the Supplemental Security Income (SSI) program. The Immigration and Naturalization Service (INS), the Agency responsible for determining alien status and issuing documents certifying alien status in the U.S., is changing its policy with regard to what constitutes definitive evidence of lawful permanent resident alien status. In this proposed SSI regulation, we are removing references to specific INS form numbers and substituting a general reference to an Alien Registration Receipt Card issued under current INS regulations. Thus, SSA's regulations will be broad enough not only to be consistent with the new INS policy when it becomes operational, but also to accommodate future INS regulatory changes regarding acceptable documentary evidence of lawful permanent resident alien status. In the future, SSA will not have to revise its regulations to conform to changes in INS policy unless the form name changes. Historically, the form name has remained the same.

DATES: To be sure that your comments are considered, we must receive them no later than October 30, 1995.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966–2830, sent by E-Mail to ''regulations@ssa.gov,'' or delivered to the Division of Regulations and Rulings, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below. If you have any comments or suggestions on the estimate shown for the Paperwork Reduction Act, write to the Social Security Administration, ATTN: Reports Clearance Officer, 1–A–21 Operations Building, Baltimore, MD 21235, and to the Office of Management and Budget, Paperwork Reduction Project (0960–0451), Washington, D.C. 20503.

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9 a.m. on the date of publication in the **Federal Register**. To download the file, modem dial (202) 512–1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect and will remain on the FBB during the comment period.

FOR FURTHER INFORMATION CONTACT: Lois Berg, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1713.

SUPPLEMENTARY INFORMATION: To be eligible for SSI benefits, an individual must be either a citizen or national of the U.S. or an alien lawfully admitted for permanent residence or otherwise permanently residing in the U.S. under color of law. Our regulation at § 416.1615(a)(1) sets forth the types of alien registration documents issued by INS which constitute valid evidence of lawful permanent residence status.

INS is responsible for determining alien status and issuing documents certifying alien status within the U.S. INS does, when necessary, revise its regulations specifying acceptable documentation of alien status.

Aliens who are lawfully admitted for permanent residence and who apply for SSI benefits are required to submit evidence of lawful permanent residence status to be eligible for benefits. Such evidence must be a valid document issued by INS under current INS policy.

On September 20, 1993, INS published a final rule at 58 FR 48775 to terminate the validity of several older versions of the Alien Registration Receipt Card and to establish the Alien Registration Receipt Card, I–551, as the exclusive alien registration card for the use of permanent resident aliens. This INS rule originally was to have been effective on September 20, 1994. However, INS subsequently published two notices in the **Federal Register** (on September 14, 1994 at 59 FR 47063 and on March 17, 1995 at 60 FR 14353, to delay the effective date of this rule. The rule is now scheduled to become effective on March 20, 1996. As a result of the INS regulatory change, lawful permanent resident aliens must replace previously issued obsolete forms, such as the I–151, AR–3, AR–3a and AR–103, with the current Alien Registration Receipt Card, Form I–551 by March 20, 1996.

SSA's current regulation on evidence of lawful permanent resident status specifies the form numbers of all currently acceptable versions of the INS Alien Registration Receipt Card. Thus, any INS policy which changes acceptable documentation of alien status, such as the change presently effective March 20, 1996, requires SSA to revise its regulation to conform to those changes. We want to ensure that our regulation not only reflects current INS policy on alien status documentation but is broad enough to encompass changes INS might make in the future.

Therefore, in this proposed regulation, we are removing references in § 416.1615(a)(1) to specific INS form numbers which will be obsolete as of the effective date of INS' new regulatory change, and substituting a single reference to the Alien Registration Receipt Card issued under current INS regulations. As revised, our regulation simply indicates that the individual must submit an Alien Registration Receipt Card which is issued by INS in accordance with that Agency's current regulations.

Regulatory Procedures

Regulatory Flexibility Act

We certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities because it only affects individuals who claim benefits under title XVI of the Social Security Act. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this proposed rule does not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, it was not subject to OMB review.

Paperwork Reduction Act

This proposed regulation revises paragraph (a)(1) of § 416.1615. Section 416.1615 of the regulations contains reporting requirements. We would normally seek approval of these requirements (under the Paperwork Reduction Act) from OMB. We are not doing so because we already have clearance from OMB to collect this information under OMB No. 0960–0451.

Public reporting burden for this collection of information is estimated to average 5 minutes per response. This includes the time it will take to read the instructions, gather the necessary facts, and provide the information. We expect approximately 234,800 claimants per year will be responding, and estimate the total burden to be 19,567 hours. If you have any comments or suggestions on this estimate, see the **Addresses** section of this document.

(Catalog of Federal Domestic Assistance Program No. 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative Practice and Procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Dated: August 23, 1995.

Shirley S. Chater,

Commissioner of Social Security.

For the reasons set forth in the preamble, subpart P of part 416 of chapter III of title 20 of the Code of Federal Regulations is amended as set forth below.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED

1. The authority citation for subpart P of part 416 is revised to read as follows:

Authority: Secs. 702(a)(5), 1614 (a)(1)(B) and (e), and 1631 of the Social Security Act; 42 U.S.C. 902(a)(5), 1382c (a)(1)(B) and (e), and 1383; sec. 502 of Pub. L. 94–241, 90 Stat. 268; sec. 302 of Pub. L. 101–649, 104 Stat. 4978.

2. Section 416.1615 is amended by revising paragraph (a)(1) to read as follows:

§ 416.1615 How to prove you are lawfully admitted for permanent residence in the United States.

(a) * * *

(1) An Alien Registration Receipt Card issued by the Immigration and Naturalization Service (INS) in accordance with that Agency's current regulations;

* * * * *

[FR Doc. 95–21496 Filed 8–29–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

Steel Erection Negotiated Rulemaking Advisory Committee

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of Committee meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (FACA), notice is hereby given of a meeting of the Steel Erection Negotiated Rulemaking Advisory Committee (SENRAC). Notice is also given of the location of the meeting. This meeting will be open to the public.

DATES: The meeting is scheduled for September 19–21, 1995. The meeting will begin at 10:00 a.m. on September 19th.

ADDRESSES: U.S. Department of Labor, DOL Academy, Room C–5321, Seminar Room 4, 200 Constitution Avenue, N.W. Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Anne Cyr, Acting Director, Office of Information and Consumer Affairs, OSHA, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, N.W., Washington, D.C. 20210; telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION: On May 11, 1994, OSHA announced that it had established the Steel Erection Negotiated Rulemaking Advisory Committee (SENRAC) (59 FR 24389) in accordance with the Federal Advisory Committee Act (FACA), the Negotiated Rulemaking Act of 1990 (NRA) and section 7(b) of the Occupational Safety and Health Act (OSH Act) to resolve issues associated with the development of a Notice of Proposed Rulemaking on Steel Erection. Appointees to the Committee include representatives from labor, industry, public interests and government agencies.

SENRAC began negotiations in mid-June, 1994, and has met nine times since. Initial meetings dealt with procedural matters, including schedules, agendas and the establishment of workgroups. The Committee established workgroups to address issues on Fall Protection, Construction Specifications and Scope. During subsequent meetings, foundations for negotiations were established and additional workgroups were formed to address more specific issues and develop a draft revision of subpart R.

The Committee last met on June 27–29 where consensus was expected to be reached on a proposed revision of subpart R. The Committee did reach agreement on major issues and most of the elements of the draft revision; however, after much deliberation, they could not come to an agreement on fall protection. OSHA determined that since the Committee made significant progress on the fall protection issue and agreed to other very important improvements to the existing standard, it would allow the Committee to convene a workgroup to resolve the fall protection issue. On July 26, a workgroup met in Philadelphia and tentatively agreed on fall protection requirements for steel erection. This recommendation will be presented to the full SENRAC Committee at the September meeting where it is expected that consensus will be reached on the complete draft proposal. OSHA will then complete the preamble and prepare the document in the proper **Federal Register** format for publication as a proposed rule.

All interested parties are invited to attend the Committee meetings at the time and place indicated above. No advanced registration is required. Seating will be available to the public on a first-come-first-served basis. Persons with disabilities, who need special accomodations, should contact the Facilitator by September 12, 1995. During the meeting, members of the general public may informally request permission to address the Committee.

Minutes of the meetings and materials prepared for the Committee will be available for public inspection at the OSHA Docket Office, N–2625, 200 Constitution Ave., N.W., Washington, D.C. 20210; telephone (202) 219–7894. Copies of these materials may be obtained by sending a written request to the Facilitator.

The Facilitator, Philip J. Harter, can be reached at Suite 404, 2301 M Street, N.W., Washington, D.C. 20037; telephone (202) 887–1033, FAX (202) 887–1036.

For an electronic copy of this **Federal Register** notice, contact the Labor News Bulletin Board, (202) 219–4784 (callers must pay any toll-call charges. 300, 1200, 2400, 9600 or 14,400 BAUD; Parity: None; Data Bits = 8; Stop Bit = 1. Voice phone (202) 219–8831); or OSHA's Webpage on Internet at http://

www.osha.gov/ and http://www.osha-slc.gov/. For news releases, fact sheets, and other documents, contact OSHA FAX at (900) 555–3400 at $1.50 per minute.

Authority: This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, pursuant to section 3 of the Negotiated Rulemaking Act of 1990, 104 Stat. 4969, Title 5 U.S.C. 561 et seq.; and Section 7(b) of the Occupational Safety and Health Act of 1970, 84 Stat. 1597, Title 29 U.S.C. 656.

Signed at Washington, D.C., this 24th day of August, 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95–21460 Filed 8–29–95; 8:45 am]

BILLING CODE 4510–26–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 further extension of public comment period.

SUMMARY: The Minerals Management Service (MMS) hereby gives notice that it is further 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. On July 27, 1995, MMS published a notice in the **Federal Register** extending the comment period on this proposed rule to September 8, 1995. MMS will further extend the comment period from September 8, 1995, to January 8, 1996.

DATES: Comments must be received by 4 p.m. mountain time on January 8, 1996.

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 fax (303) 231–3194.

Dated: August 24, 1995.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 95–21562 Filed 8–29–95; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–033–1–7037b; FRL–5276–2]

Approval and Promulgation of Implementation Plans Georgia: Approval of Revisions to Minor Source Permit Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Georgia for the purpose of establishing a Federally enforceable state operating permit (FESOP) program. In order to extend the Federal enforceability of Georgia's FESOP to hazardous air pollutants (HAP), EPA is also proposing approval of Georgia's FESOP regulations pursuant to section 112 of the Clean Air Act as amended in 1990 (CAA). In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rational for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by September 29, 1995.

ADDRESSES: Written comments should be addressed to: Yolanda Adams, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Copies of the material submitted by Georgia may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Air Protection Branch, Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Yolanda Adams, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555 x4149.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: August 3, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–21467 Filed 8–29–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MT31–1–7007b; FRL–5275–2]

Clean Air Act Approval and Promulgation of PM_{10} State Implementation Plan for Montana; Missoula Air Pollution Control Program Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State implementation plan (SIP) revisions submitted by the State of Montana with a letter dated March 3, 1995. This submittal consists of several revisions to Missoula City-County Air Pollution Control Program regulations, which were adopted by the Montana Board of Health and Environmental Sciences (MBHES) on September 16, 1994. These rules include regulations regarding emergency procedure, paving of roads, driveways, and parking lots, street sweeping, National standards of performance for new stationary sources (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAPs), and solid fuel burning

devices. Further, EPA proposes that this submittal satisfies the one remaining commitment made by the State in a previous PM_{10} SIP submittal.

In the Final Rules Section of this **Federal Register**, EPA is acting on the State's SIP revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for EPA's action is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated and the direct final rule will become effective. If EPA receives adverse comments, the direct final rule will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received in writing by September 29, 1995.

ADDRESSES: Written comments on this action should be addressed to Amy Platt, 8ART–AP, at the EPA Regional Office listed below. Copies of the State's submittal and documents relevant to this proposed rule are available for inspection during normal business hours at the following locations: Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2405; and Montana Department of Health and Environmental Sciences, Air Quality Bureau, Cogswell Building, Helena, Montana 59620–0901.

FOR FURTHER INFORMATION CONTACT: Amy Platt at (303) 293–1769.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: July 28, 1995.

Kerrigan Clough,

Acting Regional Administrator.

[FR Doc. 95–21469 Filed 8–29–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[ME–19–1–6668b; A–1–FRL–5273–6]

Approval and Promulgation of Air Quality Implementation Plans—Maine; Redesignation to Attainment and PM_{10} Contingency Measures for Presque Isle

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing full approval of Maine's request to redesignate the Presque Isle area to attainment for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}), along a maintenance demonstration and contingency plans which outline Maine's control strategy for maintenance of the PM_{10} national ambient air quality standards (NAAQS). Additionally, EPA is proposing full approval of a State Implementation Plan (SIP) revision submitted by the State of Maine to satisfy federal requirements for contingency measures for the Presque Isle initial nonattainment area. In the Final Rules Section of this **Federal Register**, EPA is approving this redesignation request and SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA does receive adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this proposal. Any parties interested in commenting on this proposal should do so at this time.

DATES: Comments must be received on or before September 29, 1995.

ADDRESSES: Comments may be mailed to Susan Studlien, Acting Director, Air, Pesticides and Toxics Management Division, EPA-New England, JFK Federal Bldg (AAA), Boston, MA 02203–2211. Copies of the State submittal and EPA's technical support document are available for public inspection by appointment during normal business hours at the Air, Pesticides and Toxics Management Division, EPA-New England, One Congress Street, 10th floor, Boston, MA and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Matthew B. Cairns, (617) 565–4982.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Authority: 42 USC 7401–7671q.

Dated: July 20, 1995.

John P. DeVillars,

Regional Administrator, EPA-New England.

[FR Doc. 95–21465 Filed 8–29–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[PP 4E4383/P627; FRL–4970–9]

RIN 2070–AC18

Norflurazon; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish a tolerance for combined residues of the herbicide norflurazon and its desmethyl metabolite in or on the raw agricultural commodity caneberries. The Interregional Research Project No. 4 (IR-4) submitted a petition requesting the proposed regulation to establish a maximum permissible level for residues of norflurazon.

DATES: Comments, identified by the document control number [PP 4E4383/P627], must be received on or before September 29, 1995.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Comments and data may also be submitted to OPP by sending electronic mail (e-mail) to:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PP 4E4383/P627]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions

can be found in the ''SUPPLEMENTARY INFORMATION'' section of this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information.'' CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783; e-mail: jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP 4E4383) to EPA on behalf of the IR-4 Agricultural Experiment Stations of Virginia and Washington. This petition requests that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), amend 40 CFR 180.356 by establishing a tolerance for residues of the herbicide norflurazon (4-chloro-5-(methylamino)-2-(*alpha*, *alpha*, *alpha*-trifluro-*m*-tolyl)-3-(2*H*) pyridazinone) and its desmethyl metabolite ((4-chloro-5-(amino)-2-*alpha*, *alpha*, *alpha*-trifluro-*m*-tolyl)-3(2*H*)-pyridazinone) in or on the raw agricultural commodity caneberries at 0.2 part per million (ppm). Caneberries are defined for tolerance purposes to include blackberries, loganberry, raspberries, and varieties and/or hybrids of these. Tolerances are already established for the combined residues of norflurazon and its desmethyl metabolite in or on blackberries at 0.1 ppm and raspberries at 0.2 ppm.

The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance include:

1. Acute oral and dermal toxicity studies were performed, placing technical norflurazon in toxicity Category IV and Category III for primary eye irritation.

2. A 6-month feeding study with dogs fed diets containing 0, 50, 150, or 450 ppm (equivalent to 0, 1.53, 5.02, or 14.27 milligrams (mg)/kilogram (kg)/day for males; 0, 1.58, 4.77, or 17.75 mg/kg/day for females) with a no-observed-effect level (NOEL) of 50 ppm, based on increased absolute and relative liver weight and increased cholesterol in both sexes at the 150-ppm dose level.

3. A developmental toxicity study in rats given oral gavage doses of 0, 100, 200, or 400 mg/kg/day with a NOEL for maternal toxicity of less than 100 mg/kg/day based on decreased body weight gain. The NOEL for developmental toxicity was established at 400 mg/kg/day. Developmental toxicity was suggested at the 400-mg/kg/day dose level in the form of an increase in bipartite thoracic vertebrae and an increase in rudimentary 14th ribs. These effects are believed to be secondary to the maternal effects observed at the 400-mg/kg/day dose level.

4. A developmental toxicity study in rabbits given oral gavage doses of 0, 10, 30, or 60 mg/kg/day with a NOEL for maternal toxicity of 30 mg/kg/day based on clinical toxicity and reduced body weight gain at the 60-mg/kg/day dose level. The NOEL for developmental toxicity was established at 30 mg/kg/day based on a statistical increase in skeletal variations at the 60-mg/kg/day dose level.

5. A three-generation reproduction study in rats fed diets containing 0, 125, 375, or 1,025 ppm (equivalent to 0, 6.25, 18.75. or 51.25 mg/kg/day) with a NOEL for reproductive toxicity of 1,025 ppm. There were no apparent effects on reproductive performance in this study.

6. A carcinogenicity study in rats fed diets containing 0, 125, 375, or 1,025 ppm (equivalent to 0, 6.25, 18.75, or 51.25 mg/kg/day) with a NOEL of 375 ppm and a lowest-effect-level (LEL) of 1,025 ppm based on increased kidney weight and accompanying microscopic pathologic changes, as well as an increase in liver weight in male and female rats, and an increase in thyroid weight in males. There were no carcinogenic effects attributable to norflurazon observed under the conditions of the study.

7. A carcinogenicity study in mice fed diets containing 0, 85, 340, or 1,360 ppm (equivalent to 0, 12.8, 58.7, or 218.8 mg/kg/day) with a NOEL for systemic effects of 85 ppm for male mice and 340 ppm for female mice. The LEL is established at 340 ppm for male mice based on the increased incidence of enlarged spleen, increased absolute and relative liver weight, and increased incidence of nephritis. The LEL for female mice is established at 1,360 ppm based on the increased incidence of enlarged liver and cystic ovaries, the increased absolute and relative liver weight, and the increased incidence of pyelonephritis, a significant positive trend in hepatocellular adenomas and in combined hepatocellular adenomas and/or carcinomas. A significant pairwise increase in hepatocellular adenomas and hepatocellular adenomas/carcinomas combined was observed at the 204 mg/kg/day dose level in males. There were no statistically significant increases in tumor incidence with incremental doses of norflurazon in females.

8. Mutagenicity assays including an in-vitro cytogenetic assay in Chinese hamster ovary cells for chromosome aberrations, negative; and an unscheduled DNA synthesis test in primary rat hepatocytes for DNA repair, negative for potential mutagenic activity.

9. In a rat metabolism study norflurazon was rapidly absorbed from the gastrointestinal tract and extensively metabolized.

Based on a weight-of-the evidence determination, EPA has classified norflurazon as a possible human carcinogen (Group C). This classification is based on the presence of benign tumors in only one sex of one species at one dose level, adequate but negative mutagenicity studies, and no finding of carcinogenicity in structurally related compounds. EPA has determined that for purposes of risk characterization the reference dose (RfD) should be used to quantify dietary risk.

Dietary risk assessments for norflurazon indicate that there is minimal risk from established tolerances and the proposed tolerance for caneberries. Dietary risk assessments for the herbicide were conducted using the Reference Dose (RfD) to assess chronic exposure and risk and the Margin of Exposure (MOE) for acute toxicity.

The RfD is calculated at 0.02 mg/kg/of body weight/day based on a NOEL of 1.53 mg/kg/day from the 6-month dog feeding study and an uncertainty factor of 100. The theoretical maximum residue contribution (TMRC) from existing tolerances and the proposed tolerance for caneberries utilize 10 percent of the RfD for the general population and 47 percent of the RfD for

nonnursing infants less than 1-year in age.

The MOE is a measure of how closely the high-end acute dietary exposure comes to the no-observed-effect (NOEL) level from the toxicity endpoint of concern. For norflurazon the MOE was calculated as a ratio of the NOEL (30 mg/kg/day) from the rabbit developmental toxicity study to dietary exposure, as estimated for the population subgroup at greatest risk (females of child-bearing age). The MOE for this subgroup is estimated at 5,000 for high-end exposure. Acute dietary margins of exposure of less than 100 are generally of concern to EPA. A MOE of 5,000 poses minimal risk.

The nature of the residues in caneberries is adequately understood for the purposes of the proposed tolerance. An adequate analytical method is available for enforcement purposes. Because of the long lead time from establishing these tolerances to publication of the enforcement method in the Pesticide Analytical Manual, Volume II, the analytical method is being made available to anyone with an interest in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protections Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5937.

No secondary residues are expected in meat, milk, poultry, or eggs since caneberries are not considered a livestock feed commodity.

There are currently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR part 180 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

A record has been established for this rulemaking under docket number [PP 4E4383/P627] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 11, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.356 [Amended]

2. In § 180.356 *Norflurazon; tolerances for residues* by amending the table therein by adding and alphabetically inserting an entry for caneberries at 0.2 part per million (ppm) and by removing the entries for blackberries and raspberries.

[FR Doc. 95–21516 Filed 8–29–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 4E4311 and 4E4358/P625; FRL–4970–7]

RIN 2070–AC18

2-(2-Chlorophenyl)Methyl-4,4-Dimethyl-3-Isoxazolidinone; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish tolerances for residues of the herbicide 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone (also referred to in this document as clomazone) in or on the raw agricultural commodities cabbage, cucumbers, and summer squash. The proposed regulation to establish maximum permissible levels

for residues of the herbicide was requested in petitions submitted by the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the document control number [PP 4E4311 and 4E4358/P625], must be received on or before September 29, 1995.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Comments and data may also be submitted to OPP by sending electronic mail (e-mail) to:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PP 4E4311 and 4E4358/P625]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in the ''SUPPLEMENTAL INFORMATION'' section of this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information.'' CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783; e-mail: Jamerson.Hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petitions (PP) 4E4311 and 4E4358 to EPA on behalf of the named Agricultural Experiment Stations. These petitions request that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), amend 40 CFR 180.425 by establishing tolerances for residues of the herbicide clomazone in or on the certain raw agricultural commodities as follows:

1. *PP 4E4311.* Petition submitted on behalf of Agricultural Experiment Stations of Arkansas, California, Florida, Georgia, Kentucky, New York, North Carolina, Oregon, Texas, Washington, and Wisconsin proposing a tolerance for cabbage at 0.05 part per million (ppm). The petition was subsequently revised to propose a tolerance for cabbage at 0.1 ppm.

2. *PP 4E4358.* Petition submitted on behalf of Agricultural Experiment Stations of Arkansas, Kentucky, Michigan, New Jersey, North Carolina, Tennessee, Virginia, Washington, and Wisconsin proposing a tolerance for cucumber and summer squash at 0.1 ppm.

The scientific data submitted in the petitions and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerances include:

1. A 1-year feeding study in dogs, which were fed diets containing 100, 500, 2,500, and 5,000 ppm, with a no-observed-effect level (NOEL) of 500 ppm (equivalent to 12.5 milligrams (mg)/kilogram (kg)/day). An increase in the absolute and relative liver weights in male and female dogs was observed at the 2,500-ppm dose level (equivalent to 62.5 mg/kg/day).

2. A development toxicity study in rats with NOEL's for maternal and developmental toxicity of 100 mg/kg/day. Maternal toxicity (decreased locomotion, genital stain, and runny eyes) and developmental toxicity (increased incidence of delayed ossification) were observed in rats at the 300-mg/kg/day dose level.

3. A developmental toxicity study in rabbits, which were given the test chemical by gavage at doses of 30, 240, and 700 ppm, with NOEL's for maternal and developmental toxicity of 240 mg/kg/day. Maternal toxicity (decrease in body weight) and developmental toxicity (increase in number of fetal resorptions) were observed in rabbits at the 700-mg/kg/day dose level.

4. A 2-year feeding/carcinogenicity study in rats, which were fed diets containing 20, 100, 500, 1,000, and 2,000 ppm, with a systemic NOEL of 100 ppm (equivalent to 4.3 mg/kg/day) based on elevated cholesterol, absolute and relative liver weights, and the incidence of liver cytomegaly. There were no carcinogenic effects observed under the conditions of the study at any dosage level tested.

5. A 2-year feeding/carcinogenicity study in mice, which were fed diets containing 20, 100, 500, 1,000 and 2,000 ppm, with a NOEL of 100 ppm (equivalent to 15 mg/kg/day) for systemic effects based on an increase in white blood cell count. The study was negative for carcinogenic effects at all dosage levels tested.

6. Mutagenic studies: including unscheduled DNA synthesis, negative; reverse mutation (two studies in Salmonella), both negative with/without activation; point mutation (CHO/HGPT), weakly positive without activation; and in vivo cytogenetic (chromosomal aberration), negative for mutagenicity.

The reference dose (RfD), based on the 2-year feeding study in rats (NOEL of 4.3 mg/kg/day) and using an uncertainty factor of 100, is calculated to be 0.043 mg/kg of body weight (bw)/day. The theoretical maximum residue contribution (TMRC) from existing tolerances and the proposed tolerances for cabbage, cucumber, and summer squash are calculated to be 0.000055 mg/kg/day, which utilizes less than 1 percent of the RfD for the U.S. population. The TMRC for nonnursing infants (the population subgroup most highly exposed) also utilizes less than 1 percent of the RfD. EPA concludes that established tolerances and the proposed tolerances for clomazone pose a negligible dietary risk to humans.

The nature of the residue in plants is adequately understood. An adequate analytical method (gas-liquid chromatography) is available for enforcement purposes. The analytical method for enforcing these tolerances has been published in the Pesticide Analytical Manual, Vol. II (PAM II). There is no reasonable expectation that secondary residues will occur in milk, eggs, or meat of livestock and poultry since there are no livestock feed items associated cabbage, cucumbers, and summer squash.

There are currently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 would protect the public health. Therefore, it is

proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

A record has been established for this rulemaking under docket number [PP 4E4311 and 4E4358/P625] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 11, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.425, by adding and alphabetically inserting the entries for cabbage, cucumber, and squash, summer, to read as follows:

§ 180.425 2-(2-Chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone; tolerances for residues.

* * * * *

Commodity	Parts per million
Cabbage	0.1
* * * * *	
Cucumber	0.1
* * * * *	
Squash, summer	0.1
* * * * *	

[FR Doc. 95–21515 Filed 8–29–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 300

[FRL–5286–1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete the Anderson Development Company Site from the National Priorities List; request for comments.

SUMMARY: The United States Environmental Protection Agency (U.S. EPA), Region V, announces its intent to delete Anderson Development Company Superfund Site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which U.S. EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. U.S. EPA and the State of Michigan have determined that all appropriate CERCLA requirements have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, U.S. EPA and the State have determined that remedial activities conducted at the site to date have been protective of public health, welfare, and the environment.

DATES: Comments on the Notice of Intent to Delete should be submitted on or before September 29, 1995.

ADDRESSES: Comments may be mailed to James J. Hahnenberg (HSR–6J) Remedial Project Manager, Office of Superfund, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604.

The EPA Region 5 Administrative Record repository provides comprehensive information on this site. The information is available for viewing by appointment only from 7:30 a.m. to 5:00 p.m., Monday through Friday, excluding Federal holidays. Requests for appointments or copies of the background information from the

Regional public docket should be directed to the EPA Region 5 docket office: Mark Bedford, U. S. EPA, Waste Management Division Records Center, 7th Floor, 77 West Jackson Boulevard, Chicago, Illinois 60604, Phone No. (312) 886–0900.

The local information repositories provide background information from the Regional Administrative Record, and are available for viewing. The two repositories and their addresses are: Adrian Public Library, 143 East Maumee, Adrian, Michigan 49221, Contact: Jule Foebender, Phone No. (517) 263–2265; and Adrian City Hall, 100 East Church Street, Adrian, Michigan 49221.

FOR FURTHER INFORMATION CONTACT: James J. Hahnenberg (HSR–6J), Remedial Project Manager, Office of Superfund, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–4213; or Derrick Kimbrough (P–19J), Office of Public Affairs, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–9749.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The U.S. EPA Region V announces its intent to delete the Anderson Development Company Site from the National Priorities List (NPL), Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300 , and requests comments on the proposed deletion. The U.S. EPA identifies sites which appear to present a significant risk to public health, welfare or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be subject to remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to section 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for additional Fund-financed remedial actions if conditions at the site warrant such action.

The U.S. EPA will accept comments on this proposal for thirty (30) days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that U.S. EPA is using for this action. Section IV discusses the history of this site and explains how the site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e) sites may be deleted from the NPL where no further response is appropriate. However, U.S. EPA retains the ability to use Superfund authority at a deleted site if future conditions warrant such actions. *See 40 CFR 300.425(e)(3).* In making the determination to delete a site, U.S. EPA, in consultation with the State, considers whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA has been implemented and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

III. Deletion Procedures

Deletion of sites from the NPL does not itself create, alter or revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter U.S. EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist Agency management.

U.S. EPA Region 5 will accept and evaluate public comments before making a final decision to delete. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community may be the most pertinent to deletion decisions. The following procedures were used to determine the deletion of this site:

—U.S. EPA Region 5 has recommended deletion and has prepared the relevant documents.

—The State of Michigan has concurred with the proposed deletion decision.

—Concurrent with this National Notice of Intent to Delete, a local notice has been published in local newspapers and has been distributed to the appropriate Federal, State, and local officials, and other interested parties. This local notice announces a 30-day public comment period, provides an address and telephone number for submission of comments, and identifies the location of the local repository.

—Region 5 has made all relevant documents available in the Regional Office and the local site information repository.

The comments received during the notice and comment period will be evaluated before a final decision is made. The Region will prepare a Responsiveness Summary, if necessary, which will address the significant comments received during the public comment period.

The site will be deleted if the U.S. EPA Regional Administrator places a notice in the **Federal Register**. Any deletions from the NPL will be reflected in the next NPL rule. Public notices and copies of any Responsiveness Summary will be made available to the local residents by Region 5.

IV. Basis for Intended Site Deletion

The Anderson Development Company (ADC) Superfund Site (Site) consists of a pretreatment lagoon and adjacent areas. The lagoon was used in the treatment of wastewater from production of 4,4′-Methylene bis (2-chloroaniline) (MBOCA) and had most of the contamination. MBOCA, a semi-volatile organic compound, was identified as a contaminant of concern in 1979 in sludges and soils at ADC, and in soils in the surrounding community. Initial remedial measures by the state and local public agencies addressed most areas with MBOCA contamination during 1980 and 1981. The main area not addressed in 1980–1981 was the pretreatment lagoon.

ADC completed a Remedial Investigation for the site in September 1989, and a Feasibility Study in February 1990, with evaluations focusing on contaminated soils and sludges in or adjacent to the pre-treatment lagoon. Sampling in other areas both on the ADC property and in the surrounding community did not show evidence that residual levels of concern for MBOCA remained outside of the Site. Sample analysis of ground water and surface water indicated that they had not been impacted with MBOCA or other volatiles, semi-volatiles or inorganics from the lagoon at levels warranting remediation.

U.S. EPA signed a Record of Decision (ROD) on September 28, 1990. The ROD was the object of considerable comment regarding U.S. EPA's preferred alternative, in-situ vitrification (ISV) of contaminated soils and sludges. The concerns focused on financial impacts to ADC, uncertainties regarding the effectiveness of ISV, and concerns regarding the safety of ISV. The community indicated that it supported treatment of soils/sludges by low temperature thermal desorption as described in the ROD Amendment

issued in September 1991, but still did not support ISV as a contingent remedy if low temperature thermal desorption was not an effective treatment process at this site.

On September 30, 1991 U.S. EPA signed a ROD Amendment which required the following remedial actions: excavation and staging of contaminated soil, sludge and clay with contamination above the cleanup action levels; conducting a full-scale treatability study to demonstrate the effectiveness of low temperature thermal desorption; processing contaminated soil, sludge and clay in a low temperature thermal desorption device; placing treated materials back in the lagoon and covering with clean fill; in-situ vitrification of contaminated soil, sludge and clay if low temperature thermal desorption was found to not be effective in achieving the cleanup standards; air monitoring during the remedial action; and ground water monitoring following the remedial action for a period of 2 years to assess and confirm the efficacy of low temperature thermal desorption. The State of Michigan concurred with the remedy in the ROD Amendment.

ADC began treating contaminated soils and sludges on January 5, 1992 by low temperature thermal desorption. After this treatment, the soils and sludges met Michigan Act 307 cleanup standards for volatiles and semi-volatile compounds. Treated materials or other soils still exceeding Michigan Act 307 cleanup standards for inorganics were removed for disposal at a landfill determined to be adequately protective.

U.S. EPA issued an Explanation of Significant Differences (ESD) on October 2, 1992 which identified three significant differences from the remedial action selected in the September 30, 1991 ROD. The first significant difference was that treated materials would be disposed of off-site in a Subtitle D landfill, rather than placement of treated materials back into the lagoon and covering them. This decision was made after a focused Risk Assessment identified that manganese presented a human health risk and low temperature thermal desorption of sludges/soils would not reduce concentrations of manganese. The second significant difference was an increase in volume estimates of materials to be remediated from 3,000 cubic yards to 8,000 cubic yards. The third significant difference was an increase in estimated costs from $1.1 million to $6.0 million due to (1) volume increases, (2) increased analytical costs, (3) high soil moistures, and (4) off-site disposal.

On May 9, 1994 U.S. EPA accepted and approved ADC's Final Remedial Action Report for ADC's completion of all site cleanup activities.

Community relations activities for the Site included public meetings, public availability sessions, as well as routine publication of progress fact sheets.

All the completion requirements for this site have been met as specified in OSWER Directive 9320.2–3A. Confirmatory sampling has verified that the September 1990 Record of Decision, and the September 1991 ROD Amendment cleanup objectives have been achieved, and all cleanup objectives specified in the ROD and ROD Amendment have been implemented at the Site.

U.S. EPA, with concurrence of the State of Michigan, has determined that all appropriate responses under CERCLA at the Anderson Development Company Superfund Site have been completed, and that no further cleanup of this Site by responsible parties is necessary. Therefore, U.S. EPA proposes to delete the Site from the NPL.

Dated: August 9, 1995.

Valdas V. Adamkus,

Regional Administrator, U.S. EPA, Region V.

[FR Doc. 95–21410 Filed 8–29–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 721

[OPPTS–50617; FRL–4762–4]

RIN 2070–AC37

Benzidine-Based Chemical Substances; Proposed Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) which would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of benzidine-based chemical substances, defined herein, for any use other than those listed in the regulatory text of this proposed rule. EPA believes that this action is necessary because benzidine-based chemical substances may be hazardous to human health and that the uses governed by this proposed rule may result in significant human exposure. The required notice would provide EPA with the opportunity to evaluate the intended new use and associated activities, before the benzidine-based chemical substances can be introduced into the marketplace, and an opportunity to protect against potentially adverse exposure before it can occur.

DATES: Written comments, in triplicate, must be received by September 29, 1995.

ADDRESSES: All comments must be sent in triplicate to: TSCA Document Receipt Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW, Washington, DC 20460. Comments that contain information claimed as confidential must be clearly marked confidential business information (CBI). If CBI is claimed, three additional sanitized copies must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Comments should include the docket control number. The docket control number for this proposed SNUR is OPPTS–50617. Unit XI. of this preamble contains additional information on submitting comments containing CBI.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPPTS–50617. No CBI should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit XII. of this preamble.

The discussion of EPA's risk management strategy in Unit V. of this proposed rule is included only to provide context for this SNUR, and comments are not solicited for this unit.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Rm. E–545, Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551, e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The final version of this proposed SNUR would require persons to notify EPA at least 90 days before commencing the

manufacture, import, or processing of the benzidine-based chemical substances listed in this proposed rule for any use other than those listed in proposed § 721.1660 of the regulatory text. These excepted uses are: As a reagent to test for hydrogen peroxide in milk, as a reagent to test for hydrogen sulfate, hydrogen cyanide, and nicotine, as a stain in microscopy, and as a reagent for detecting blood. The required notice would provide EPA with information needed to evaluate this use and associated activities, and an opportunity to protect against potentially adverse exposure to the chemical substances before it can occur.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' The Agency must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Section 5(a)(2) factors generally relate to the extent to which a use changes the volume of a chemical substance's production or the type, form, magnitude, or duration of exposure to it. Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use (15 U.S.C. 2604(a)(1)(B)).

Persons subject to the final version of this proposed SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices (PMNs) under section 5(a)(1)(A) of TSCA (15 U.S.C. 2604 (a)(1)(A)). In particular, these requirements include the information submission requirements of TSCA section 5(b) and (d)(1), the exemptions authorized by TSCA section 5(h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUN (15 U.S.C. 2604 (e), (f), 2605, and 2606). If EPA does not take action, section 5(g) of TSCA requires EPA to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a chemical substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)). The regulations that interpret section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, and to the regulations codified at 19 CFR 12.118 through 12.127 and 12.128. Such persons must certify that they are in compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707.

II. Applicability of General Provisions

General regulatory provisions applicable to SNURs are codified at 40 CFR part 721, subpart A. In the **Federal Register** of August 17, 1988 (53 FR 31252), EPA promulgated a ''User Fee Rule'' (40 CFR part 700) under the authority of TSCA section 26(b) (U.S.C. 2625(b)). Provisions requiring persons submitting SNUNs to submit certain fees to EPA are discussed in detail in that **Federal Register** document. Interested persons should refer to the CFR and the cited **Federal Register** document for further information.

III. Summary of This Proposed Rule

The chemical substances that are the subjects of this proposed SNUR are benzidine-based chemical substances, which shall be defined as any chemical substances that are listed in Table 1. of proposed § 721.1660(b) of the regulatory text.

Because the listed benzidine-based chemical substances are currently used only in small amounts in the following manners, any new use would greatly increase exposure to these chemicals. Therefore, EPA is proposing to designate any use of the listed benzidine-based chemical substances as a significant new use, other than the following uses: Use as a reagent to test for hydrogen peroxide in milk, a reagent to test for hydrogen sulfate, hydrogen cyanide, and nicotine, a stain in microscopy, and as a reagent for detecting blood. These are the only uses of benzidine-based chemical substances identified by EPA as ongoing.

This proposed rule would require persons who intend to manufacture, import, or process benzidine or benzidine-based chemical substances listed in this proposed rule to notify EPA, through the submission of a SNUN, at least 90 days before commencing the manufacture, importation, or processing of any of these chemicals for any use designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use, and, if necessary, to prohibit or limit that use before it occurs.

IV. Background Information on Benzidine-Based Chemical Substances

Based upon information on the carcinogenicity of benzidine and benzidine-based dyes, the Agency is concerned for all the benzidine-based chemical substances listed in this proposed rule. Because the molecule benzidine can only be isolated for commerce or use in the form of salts, the term ''benzidine'' shall refer to the molecule benzidine, CAS No. 92–87–5, as well as all benzidine salts.

Benzidine is an aromatic amine that has been used as a feedstock for production of man-made dyes since the late 1800's. Dyestuffs were among the first products of the developing chemical industry, and aromatic amines were the first synthetic chemicals found to cause cancer in humans. This was first reported in the last century, when some workers manufacturing dyes developed bladder cancer. Benzidine was subsequently found to be a potent carcinogen in humans and animals.

Several epidemiology studies of occupationally exposed workers have demonstrated that benzidine exposure is associated with a high risk of developing bladder cancer (Ref. 1). Benzidine is classified by the International Agency for Research on Cancer (IARC) as a Group 1 carcinogen, chemicals which are known to cause cancer in humans and animals (Ref. 2). Benzidine is also classified by the EPA as a Group A, human carcinogen (IRIS, 1986).

Originally, only benzidine was considered to be carcinogenic. However, studies found that dyes derived from benzidine release free benzidine via metabolic routes (Ref. 3). The dyes were predicted to be carcinogens based on these findings. Animal bioassays performed by the National Cancer Institute (NCI) in 1978 confirmed that administration of three different benzidine-based dyes each led to cancer (Ref. 4).

EPA's hazard analysis (Ref. 11) is based on studies of tested representative benzidine-based dyes, as well as benzidine. The overwhelming health concern for benzidine and benzidine-based dyes is bladder cancer in humans, generally believed to be caused through any route of exposure. As of June 1974, OSHA has required that manufacture of benzidine be contained within a closed system (29 CFR 1910.1010: Benzidine). In addition, the American Conference of Governmental Industrial Hygienists (ACGIH) has classified benzidine as a ''recognized human carcinogen'' with no Threshold Limit Value (TLV) assigned, and has recommended that

''all exposure to benzidine should be kept to an absolute minimum'' (ACGIH 1986).

Twelve benzidine-based dyes have been demonstrated to metabolize to benzidine in one or more of four species (Ref. 5). National Toxicology Program (NTP) cancer bioassays by the oral route in rodents using Direct Black 38 (CAS No. 1937–37–7), Direct Blue 6 (CAS No. 2602–46–2), and Direct Brown 95 (CAS No. 16071–8–6), showed dose-related and statistically significant tumor incidence of the liver, skin, and Zymbal gland following oral administration. The time to tumor formation was 5 to 13 weeks. No tumors were found in the controls (Ref. 4). In response to these and other data, the National Institute for Occupational Safety and Health (NIOSH) and NCI have jointly recommended that these three dyes be handled in the workplace as if they were human carcinogens, and have suggested guidelines for minimizing employee exposure (Ref. 6).

Bioavailability studies in Rhesus monkeys, rats, and dogs revealed levels of benzidine in the urine, after the administration of the above-mentioned dyes, equivalent to the levels found after administration of a comparable volume of straight benzidine (Refs. 3 and 5). For this reason, IARC has classified these benzidine-based dyes as Group 2A chemicals, which are carcinogenic to animals and probably carcinogenic to humans (Refs. 1, 6, and 7). Given the consistent results from testing these dyes, as well as known mechanistic similarities among benzidine-based dyes, the entire class of benzidine-based dyes is expected to have a similar degree of toxicity. In addition, NIOSH has recommended that all benzidine-based dyes be recognized as potential human carcinogens, based upon the evaluation of information on the carcinogenicity and metabolism of these dyes (Ref. 8).

There are exposure issues for both the parent amines and the finished dyes. Most available exposure data are for groups of dyes, rather than for individuals. Inhalation, skin absorption, and ingestion are possible routes of exposure in a variety of settings where benzidine-based dyes are either manufactured or used. Benzidine and monoacetyl benzidine, a metabolite, have been found in the urine of workers making or using benzidine-based dyes in the paper, textile, leather, and dye manufacturing industries (NIOSH, 1980). The amount of benzidine found in the urine was more than could be accounted for by only benzidine impurities in the dyes.

Based on models from EPA (Chemical Engineering Branch/Office of Pollution Prevention and Toxics) and industry, reasonable exposure estimates have been calculated for those workers who weigh powder dyes. From these estimates, EPA predicts the highest exposure would occur for workers who would manufacture benzidine-based dyes or who would weigh such dyes, and is also concerned about potential exposures to workers who would operate dyeing machinery (Ref. 9).

V. EPA's Risk Management Strategy for Benzidine-Based and Benzidine Congener-Based Dyes and Pigments

Comments are not solicited for this unit, as it is included only to provide context for this proposed SNUR.

This proposed SNUR is the first step in EPA's risk management strategy for benzidine-based and benzidine congener-based dyes and pigments.

The main objective of EPA's strategy is to reduce the risks associated with the manufacture and use of benzidine-based and benzidine congener-based dyes and pigments. Benzidine and benzidine-based dyes have been phased out of commerce. The SNUR being proposed in this document is intended to prevent the reintroduction of these chemicals into commerce without prior notice to EPA, thus achieving EPA's objective for these substances.

In order to complete the main objective in regards to benzidine congener-based dyes, EPA is conducting a series of dialogues with dye manufacturers, users, and importers, as well as labor unions, environmental groups, and other agencies. EPA is also working with the Organization for Economic Cooperation and Development (OECD) to coordinate efforts internationally in dealing with these chemicals.

EPA will attempt to develop a series of Memoranda of Understanding (MOUs) with dye manufacturers and importers to address the risk from manufacture and use of benzidine congener-based dyes, which include tolidine-based and nonmetallized dianisidine-based dyes. The Agency has developed alternative strategies, in case voluntary agreements cannot be reached. After the conclusion of these efforts, the Agency may address metallized dianisidine-based dyes and benzidine congener-based pigments. The MOUs are projected for completion during the next year.

VI. Objectives and Rationale for the Proposed Rule

To determine what would constitute a significant new use of benzidine-based chemical substances, EPA considered relevant information regarding the toxicity of the substances, likely exposure and releases associated with potential uses, and the four factors listed in TSCA section 5(a)(2). Benzidine has an IARC classification as a Group 1 carcinogen, which are chemicals known to cause cancer in humans and animals. IARC has also classified several benzidine-based dyes as Group 2A chemicals, which are carcinogenic to animals and probably carcinogenic to humans. The benzidine-based dyes that have not been tested are suspected carcinogens.

The EPA has determined that there is no ongoing manufacture, import, or processing of the listed benzidine-based chemical substances, except for use in small amounts as a reagent to test for hydrogen peroxide in milk, as a reagent to test for hydrogen sulfate, hydrogen cyanide, and nicotine, as a stain in microscopy, and as a reagent for detecting blood. Therefore, any use of these benzidine-based chemical substances, except for those uses listed above, would increase the volume of the chemicals' production as well as the type, form, magnitude, or duration of exposure, and therefore can be identified as a significant new use (Ref. 10).

Based on these considerations, EPA wishes to achieve the following objectives with regard to the significant new uses that are designated in this proposed rule. EPA wants to ensure that:

(1) The Agency would receive notice of any company's intent to manufacture, import, or process benzidine-based chemical substances listed in this proposed rule for the significant new uses identified in this proposed rule, before that activity begins.

(2) The Agency would have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing, importing, or processing the listed benzidine-based chemical substances for the significant new uses identified in this proposed rule.

(3) The Agency would be able to regulate prospective manufacturers, importers, or processors of the listed benzidine-based chemical substances before any significant new use occurs, provided that the degree of potential health risk is sufficient to warrant such regulation.

The benzidine-based chemical substances listed in this proposed rule are not currently subject to any Federal regulations that require notification of the Federal Government of activities that might result in adverse exposures to

these substances and provide a regulatory mechanism that could adequately protect human health or the environment from potentially adverse exposure before it occurs.

For the preceding reasons, EPA is proposing to designate any use of benzidine-based chemical substances listed in proposed § 721.1660, except for those uses listed in proposed § 721.1660(a)(2) of the regulatory text, as significant new uses.

VII. Alternatives

Before proposing this SNUR, EPA considered the following alternative regulatory actions for the listed benzidine-based chemical substances.

(1) *Promulgate a TSCA section 8(a) reporting rule for these chemical substances.* Under such a rule, EPA could require any person to report information to the Agency when they intend to manufacture, import, or process the listed benzidine-based chemical substances, for a significant new use as listed in this proposed rule (15 U.S.C. 2607). However, in the case of these particular chemical substances, the use of section 8(a) rather than SNUR authority would have several drawbacks. First, EPA would not be able to take immediate follow-up regulatory action under TSCA section 5(e) or 5(f) to prohibit or limit the activity. In addition, EPA may not receive important information from small businesses, because such firms are exempt from section 8(a) reporting requirements. In view of the level of health concern for the listed benzidine-based chemical substances, the Agency believes that a section 8(a) rule for those chemical substances would not meet EPA's regulatory objectives.

(2) *Regulate benzidine-based chemical substances under section 6 of TSCA.* EPA may regulate under section 6 if there is a reasonable basis to conclude that the manufacture, importation, processing, distribution in commerce, use, or disposal of a chemical substance or mixture ''presents or will present'' an unreasonable risk of injury to human health or the environment. A finding of unreasonable risk indicates a determination that the reduction of health or environmental risk resulting from a potential regulation outweighs the regulatory burden to society.

In the case of this proposed rule, EPA decided that a SNUR was more appropriate than a section 6 rule because there are currently no ongoing uses of concern to justify a section 6 ban. EPA's concerns are for potential future uses, and the notification which would be required by this proposed SNUR, when final, would be sufficient to allow the Agency make the decisions necessary to protect against such uses.

VIII. Applicability of Proposed Rule to Uses Occurring Before Effective Date of the Final Rule

EPA believes that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the proposal date of the SNUR rather than as of the effective date of the final rule. If uses begun during the proposal period of a SNUR were considered ongoing, rather than new, as of the effective date, it would be difficult for EPA to establish SNUR notice requirements, because any person could defeat the SNUR by initiating the proposed significant new use before the rule became final, arguing that the use was no longer new.

Persons who begin commercial manufacture, importation, or processing of the listed benzidine-based chemical substances for any significant new use listed in this proposed rule between proposal and the effective date of the SNUR must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. If, however, persons who begin commercial manufacture, importation, or processing of the chemical substances between proposal and the effective date of the SNUR meet the conditions of advance compliance as codified at § 721.45(h), those persons will be considered to have met the requirements of the final SNUR for those activities.

IX. Test Data and Other Information

EPA recognizes that under TSCA section 5, persons are not required to develop any particular test data before submitting a SNUN. Rather, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them.

However, in view of the potential health risks that may be posed by a significant new use of the listed benzidine-based chemical substances, EPA suggests potential SNUR notice submitters conduct tests that would permit a reasoned evaluation of risks posed by these chemical substances when utilized for an intended use. EPA currently believes that the results of the following tests could adequately characterize possible health and environmental effects of the chemical substances: Cancer bioassays, metabolism testing, and tests for environmental fate and ecotoxicity. However, these studies may not be the only means of identifying potential risks. SNUR notices submitted without accompanying test data may increase the likelihood that EPA would take action under TSCA section 5(e).

EPA encourages persons to consult with the Agency before selecting a protocol for testing the chemical substances. As part of this optional prenotice consultation, EPA will discuss the test data it believes necessary to evaluate a significant new use of the chemical substances. Test data should be developed according to TSCA Good Laboratory Practice Standards at 40 CFR part 792. Failure to do so may lead EPA to find such data to be insufficient to reasonably evaluate the health or environmental effects of the chemical substances.

EPA urges SNUN submitters to provide detailed information on human exposure or environmental release that may result from the significant new use of the listed benzidine-based chemical substances. In addition, EPA encourages persons to submit information on potential benefits of the chemical substances and information on risks posed by the chemical substances compared to risks posed by potential substitutes.

X. Economic Analysis

EPA has evaluated the potential costs of establishing SNUR reporting requirements for benzidine-based chemical substances listed in this proposed rule. While there is no precise way to calculate the total annual cost of compliance with this proposed rule, EPA estimates that the reporting cost for submitting a SNUN ranges from $7,198 to $8,170, including a $2,500 user fee. EPA believes that there will be few, if any, SNUNs submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovations, that impact would be limited because such factors are unlikely to discourage an innovation that has high potential value. The Agency's economic analysis is available in the public record for this proposed rule (OPPTS–50617).

XI. Comments Containing Confidential Business Information

All comments will be placed in the public record unless the commenter claims that they contain CBI, and the comments are clearly labeled as containing claimed CBI when they are submitted. Because of the need to expedite this process, CBI claims should be accompanied by comments substantiating the claim, as described in

40 CFR 2.204(e)(4). While a part of the record, CBI comments will be treated in accordance with 40 CFR part 2. A sanitized version of all CBI comments should be submitted to EPA, in triplicate, for the public file.

It is the responsibility of the commenter to comply with 40 CFR part 2 so that all materials claimed as confidential may be properly protected. This includes, but is not limited to, clearly indicating on the face of the comment (as well as on any associated correspondence) that information claimed to be CBI is included, or marking ''Confidential,'' ''TSCA CBI,'' or similar designation on the face of each document or attachment in the comment which contains the claimed CBI. Comments not claimed as confidential at the time of submission or not clearly labeled as containing CBI will be placed in the public file. EPA will consider the failure to clearly identify the claimed confidential status on the face of the comment as a waiver of any such claim and will make such information available to the public without further notice to the commenter or business.

XII. Rulemaking Record

A record has been established for this rulemaking under docket number OPPTS–50617 (including comments and data submitted electronically as described below). The record includes basic information considered by the Agency in developing the proposed rule.

A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

EPA will accept additional materials for inclusion in the record at any time between this proposal and designation of the complete record. EPA will identify the complete rulemaking record by the date of promulgation of the final rule. A public version of this record containing nonconfidential materials is available for reviewing and copying from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center (NCIC), located in Rm. E–G099, 401 M St., SW., Washington, DC.

XIII. References

(1) International Agency for Research on Cancer (IARC). IARC Monographs 1982, 29,295–310, 311–330, 321–330).

(2) IARC Monographs, Supplement 7:123–125 (1987).

(3) Rinde, E. and Troll, W. ''Metabolic reduction of benzidine azo dyes to benzidine in the rhesus monkey.'' *Journal of the National Cancer Institute* 55: 181–182 (1975).

(4) National Cancer Institute (NCI). ''13–week subchronic toxicity studies of Direct Black 38 and Direct Brown 95 dyes.'' NCI Carcinogenesis. Technical Report Series Number 108. 127p (1978).

(5) Lynn, R.K. et al. ''Metabolism of bisazobiphenyl dyes derived from benzidine, 3,3′-methylbenzidine and 3,3′-dimethoxybenzidine to carcinogenic aromatic amines in the dog and rat.'' *Toxicology and Applied Pharmacology* 56:248–258 (1980).

(6) NIOSH/NCI, *Current Intelligence Bulletin*, 24(1,5): 7–9 (1978).

(7) IARC Monographs, Supplement 7:125-126 (1987).

(8) NIOSH, Special Occupational Hazard Review for Benzidine-Based Dyes (1980).

(9) USEPA. 1990a (April). U.S. Environmental Protection Agency. Textile Dye Weighing Monitopring Study. EPA 560/5–90–009 and Supplement 560/5–90–010.

(10) USEPA. Regulatory Impact Branch, USEPA/OPPT,EETD, June 1, 1993. ''Production, Uses, and Imports of Benzidine and Benzidine Based Chemicals.'' Prepared by Meridian Research, Inc.

(11) USEPA. Chemical Screening and Risk Assessment Division. ''Benzidine/ Benzidine Congener Dyes Support Document, October 24, 1994.

XIV. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a ''significant regulatory action'' as an action likely to result in a rule:

(1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant'').

(2) Creating serious inconsistency or otherwise interfering with an action taken or planned by another agency.

(3) Materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of the recipient thereof.

(4) Raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this order.

Pursuant to the terms of this Executive Order, it has been determined that this proposed rule is not ''significant'' and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) 5 U.S.C. 601–612, EPA is required to consider whether a regulatory action will have an impact on small entities. If the Administrator certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities, then the RFA does not require the EPA to prepare an initial regulatory flexibility analysis (5 U.S.C. 605(b)). Under EPA policy, however, when a proposed rule would have any adverse economic impact on any number of small entities, then EPA will conduct an initial regulatory flexibility analysis that contains an appropriate level of detail. (Habicht, memorandum: Revised Guidelines for Implementing the Regulatory Flexibility Act, EPA, Office of the Administrator, April 9, 1992). EPA has determined that this proposed rule would not have a significant impact on small businesses, but it may have some, minimal, impact in the future.

Consequently, EPA has analyzed the impact of the proposed rule on small entities based upon the criteria in the

Regulatory Flexibility Act. In the SUMMARY unit of this preamble, EPA describes reasons why it is considering taking the proposed action and the objectives of, and legal basis for, the proposed SNUR. This SNUR would apply to any small or large business that may wish to engage in the significant new use described in the proposed rule. It appears that no small or large businesses are currently engaged in activity that is the subject of this proposed rule. Although there may be some small businesses that may decide to conduct such activities in the future, it is not possible at this time to determine for certain how many, if any, there may be. Based upon past experiences, EPA expects to receive few, if any, SNUNs from either small or large businesses in response to this proposed SNUR. As of September 1992, the Agency had received no SNUNs in response to any SNURs promulgated by EPA in the past. Unit XIV.C. and the Economic Analysis to support this SNUR (docket number OPPTS–50617) describe the reporting and other requirements of this proposed rule and the costs of compliance. There are no existing Federal rules that may duplicate, overlap, or conflict with this proposal. Finally there are no significant alternatives to this proposed rule that minimize economic impacts on small businesses and accomplish the statutory objective of insuring that EPA has an opportunity to review and evaluate the risks associated with a new use to determine whether further regulatory activity is necessary.

C. Unfunded Mandate Reform Act

EPA has determined that this proposed rule does not contain regulatory requirements that might significantly or uniquely affect small governments and does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus this proposed rule is not subject to the requirements of sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

D. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and has assigned OMB control number 2070–0038. Public reporting burden for this collection of information is estimated to vary from 94 to 113 hours per response, with an average of 103 hours per response, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch (2131), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' The final rule will respond to any OMB or public comments on the information requirements contained in this proposal.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and rcordkeeping requirements, Significant new uses.

Dated: August 23, 1995.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(e).

2. By adding new § 721.1660 to subpart E to read as follows:

§ 721.1660 Benzidine-based chemical substances.

(a) *Chemical substances and significant new uses subject to reporting.* (1) Benzidine-based chemical substances, which shall be defined as any chemical substances that are listed in Table 1. under paragraph (b) of this section, are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) *The significant new uses are*: Any use other than: As a reagent to test for hydrogen peroxide in milk, as a reagent to test for hydrogen sulfate, hydrogen cyanide, and nicotine, as a stain in microscopy, and as a reagent for detecting blood.

(b) *List of substances.* The following Table 1. lists the benzidine-based substances covered by this section.

TABLE 1.—BENZIDINE-BASED CHEMICAL SUBSTANCES

Chemical name	C.I. Number	CAS Number		Chemical name	C.I. Number	CAS Number
Acid Red 85	22245	3567–65–5		C.I. Direct Brown 190	31750	Unknown
Benzidine	n/a	92–87–5		C.I. Direct Brown 215	35720	83606–72–8
Benzidine·Ni^{2+}	n/a	67632–50–2		C.I. Direct Green 7	30330	6360–64–1
Benzidine·HCL	n/a	75752–15–7		C.I. Direct Green 8	30315	5422–17–3
Benzidine·2HCL	n/a	531–85–1		C.I. Direct Green 9	30310	6360–62–9
Benzidine·2HF	n/a	41766–73–8		C.I. Direct Green 10	30285	6360–61–8
Benzidine·2HI	n/a	75534–79–1		C.I. Direct Green 12	30290	6486–55–1
Benzidine·HDAC	n/a	52754–64–0		C.I. Direct Green 19	30305	6486–58–4
C.I. Acid Black 66	30275	6360–59–4		C.I. Direct Green 21	31790	8003–52–9
C.I. Acid Black 69	30260	6486–53–9		C.I. Direct Green 22	31775	6860–33–4
C.I. Acid Black 70	30355	8005–88–7		C.I. Direct Green 39	30220	6360–57–2
C.I. Acid Black 94	30336	6358–80–1		C.I. Direct Green 58	30225	110735–26–7
C.I. Acid Red 323	22238	6358–34–5		C.I. Direct Green 60	22315	6426–56–8
C.I. Brown 165	22045	6486–32–4		C.I. Direct Orange 25	22135	6486–43–7
C.I. Direct Black 11	30240	6486–52–8		C.I. Direct Orange 2	22380	8005–97–8
C.I. Direct Black 14	30345	4656–30–8		C.I. Direct Orange 33	22385	13190–99–3
C.I. Direct Black 15	22620	6426–75–1		C.I. Direct Orange 43	22193	Unknown
C.I. Direct Black 27	31810	6360–39–0		C.I. Direct Orange 102	22190	6528–39–8
C.I. Direct Black 29	22580	3626–23–1		C.I. Direct Red 10	22145	2427–70–1
C.I. Direct Black 34	35075	6473–08–1		C.I. Direct Red 13	22155	1937–35–5
C.I. Direct Black 40	31760	6449–81–6		C.I. Direct Red 17	22150	2769–07–5
C.I. Direct Black 41	30260	6486–53–9		C.I. Direct Red 18	22280	6548–26–1
C.I. Direct Black 83	31850	6837–80–5		C.I. Direct Red 29	22305	6426–54–6
C.I. Direct Black 100	35415	6358–73–2		C.I. Direct Red 33	22306	6253–15–2
C.I. Direct Black 131	30270	6486–54–0		C.I. Direct Red 42	22180	6548–39–6
C.I. Direct Blue 11	30350	6451–04–3		C.I. Direct Red 43	22205	6486–50–6
C.I. Direct Blue 16	22475	6426–66–0		C.I. Direct Red 44	22500	2302–97–8
C.I. Direct Blue 19	22485	6426–68–2		C.I. Direct Red 52	22290	6797–93–9
C.I. Direct Blue 38	30090	1324–83–0		C.I. Direct Red 53	22405	6375–58–2
C.I. Direct Blue 42	22505	6426–71–7		C.I. Direct Red 59	22420	6655–94–3
C.I. Direct Blue 43	30205	7273–59–8		C.I. Direct Red 60	22200	6486–49–3
C.I. Direct Blue 48	22565	6459–89–8		C.I. Direct Red 74	22170	8003–75–6
C.I. Direct Blue 49	22540	6426–73–9		C.I. Direct Red 84	22360	6459–86–5
C.I. Direct Blue 51	30340	6360–65–2		C.I. Direct Violet 3	22445	6507–83–1
C.I. Direct Blue 58	22490	6426–69–3		C.I. Direct Violet 4	22555	6472–95–3
C.I. Direct Blue 64	22595	6426–74–0		C.I. Direct Violet 12	22550	2429–75–6
C.I. Direct Blue 131	35085	6661–39–8		C.I. Direct Violet 17	22465	6426–65–4
C.I. Direct Blue 177	22625	6426–76–2		C.I. Direct Violet 27	22460	6426–64–8
C.I. Direct Blue 230	22455	6527–65–7		C.I. Direct Violet 36	22470	6472–94–2
C.I. Direct Brown 5	30135	6844–77–5		C.I. Direct Violet 38	22630	6426–77–3
C.I. Direct Brown 7	30035	6837–86–1		C.I. Direct Violet 42	22450	6459–88–7
C.I. Direct Brown 13	35710	8003–82–5		C.I. Direct Violet 43	22440	6426–63–7
C.I. Direct Brown 14	35715	8002–97–9		C.I. Direct Violet 45	22510	6426–72–8
C.I. Direct Brown 17	30100	6661–48–9		C.I. Direct Violet 85	22520	6507–84–2
C.I. Direct Brown 20	30060	1324–67–0		C.I. Direct Violet 88	22046	6358–33–4
C.I. Direct Brown 21	30155	6442–05–3		C.I. Direct Yellow 1	22250	6472–91–9
C.I. Direct Brown 24	31700	8003–74–5		C.I. Direct Yellow 20	22410	6426–62–6
C.I. Direct Brown 25	36030	33363–87–0		C.I. Direct Yellow 24	22010	6486–29–9
C.I. Direct Brown 26	31730	8003–55–2		Direct Black 4	30245	2429–83–6
C.I. Direct Brown 27	31725	6360–29–8		Direct Black 38	30235	1937–37–7
C.I. Direct Brown 33	35520	1324–87–4		Direct Blue 2	22590	2425–73–4
C.I. Direct Brown 39	35060	6473–06–9		Direct Blue 6	22610	2602–46–2
C.I. Direct Brown 43	35700	6471–44–9		Direct Brown 1	30045	3811–71–0
C.I. Direct Brown 46	31785	8003–51–8		Direct Brown 1.2	30110	2586–58–5
C.I. Direct Brown 51	31710	4623–91–0		Direct Brown 2	22311	2429–82–5
C.I. Direct Brown 54	31735	8003–50–7		Direct Brown 6	30140	2883–80–3
C.I. Direct Brown 56	22040	6486–31–3		Direct Brown 31	35660	2429–81–4
C.I. Direct Brown 57	31705	6360–28–7		Direct Brown 59	22345	3476–90–2
C.I. Direct Brown 58	22340	6426–59–1		Direct Brown 74	36300	8014–71–3
C.I. Direct Brown 60	22325	6426–57–9		Direct Brown 95	30145	16071–86–6
C.I. Direct Brown 61	30055	6505–33–5		Direct Brown 154	30120	6360–54–9
C.I. Direct Brown 62	31720	8003–56–3		Direct Green 1	30280	3626–28–6
C.I. Direct Brown 68	30125	6449–85–0		Direct Green 6	30295	4335–09–5
C.I. Direct Brown 70	35530	6428–42–8		Direct Green 8	30315	5422–17–3
C.I. Direct Brown 73	35535	6428–43–9		Direct Orange 1	Mixture	54579–28–1
C.I. Direct Brown 75	30325	1324–84–1			22370	6459–87–6
C.I. Direct Brown 79	30050	6483–77–8			22375	13164–93–7
C.I. Direct Brown 86	22030	6486–30–0			22430	6472–93–1
C.I. Direct Brown 101	31740	8626–29–7		Direct Orange 8	22130	2429–79–0
C.I. Direct Brown 138	30070	6449–84–9		Direct Red 1	22310	2429–84–7
C.I. Direct Brown 151	31685	10130–38–8		Direct Red 28	22120	573–58–0
C.I. Direct Brown 159	31755	10214–11–6		Direct Red 37	22240	3530–19–6
C.I. Direct Brown 171	30040	Unknown		Direct Violet 1	22570	2586–60–9
C.I. Direct Brown 173	30165	6826–64–8		Direct Violet 22	22480	6426–67–1
C.I. Direct Brown 175	30150	6528–58–1				

[FR Doc. 95–21518 Filed 8–29–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

46 CFR Part 514

[Docket No. 95–13]

Automated Tariff Filing and Information System

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Maritime Commission (''Commission'' or ''FMC'') proposes to amend its rules pertaining to the Automated Tariff Filing and Information System (''ATFI'') to clarify that no individual may file or retrieve ATFI data until he or she submits a User Registration Form and supporting documents, together with the proper fee, to the Commission and receives a logon ID and password. The proposed rule also makes it clear that this requirement cannot be circumvented by sharing, loaning or using logon IDs or passwords assigned to others. The Commission also proposes to amend its rules to permit the on-line downloading of daily subscriber data. Subscribers may request daily updates on tape provided by them in those instances where on-line downloading is not cost-effective. Full database tapes, weekly update tapes, and monthly update tapes would no longer be provided.

DATES: Comments must be submitted on or before September 19, 1995.

ADDRESSES: Comments (original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573

FOR FURTHER INFORMATION CONTACT: Doris J. Spencer, Director, Office of Information Resources Management, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573, (202) 523–5835

SUPPLEMENTARY INFORMATION: The Commission's tariff filing rules at 46 CFR 514.8(f)(1) provide that the ATFI logon IDs and passwords are issued to individual users. Despite this provision, there have been numerous instances of logon IDs or passwords being shared with, loaned to or used by others. The Commission proposes to amend § 514.8 to clarify that no individual may file or retrieve ATFI data until he or she submits a User Registration Form and supporting documents, together with the proper fee, to the Commission and receives a logon ID and password. The proposed rule also makes it clear that this requirement can not be circumvented by sharing, loaning or using logon IDs or passwords assigned to others.

Additionally, given the Commission's reduced level of funding, it is no longer feasible for the Commission to provide full database tapes, weekly update tapes and monthly update tapes. As an alternative, the Commission proposes to implement the capability for on-line downloading of daily subscriber data. Subscribers may request daily updates on tape provided by them in those instances where on-line downloading is not cost-effective. The user fee for each daily update is $61.

The Commission certifies pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this proposed rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental jurisdictions. The Commission recognizes that these proposed revisions may have some impact on the shipping industry, but not of the magnitude that would be contrary to the requirements of the Regulatory Flexibility Act.

The proposed rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1980, as amended. Therefore, Office of Management and Budget review is not required.

List of Subjects in 46 CFR Part 514

Freight, Harbors, Maritime carriers, and Reporting and record keeping requirements.

Part 514 of Title 46 of the Code of Federal Regulations is proposed to be amended as follows:

PART 514—[AMENDED]

1. The authority citation for part 514 continues to read as follows:

Authority: 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1712, 1714–1716, 1718, 1721, and 1722; and sec. 2(b) of Pub. L. 101–92, 103 Stat. 601.

Subpart C—Form, Content and Use of Tariff Data

2. In § 514.8, paragraph (f) is revised to read as follows:

§ 514.8 Electronic Filing.

* * * * *

(f) *Password and User ID.* (1) System Identifications (''IDs'') for either filing or retrieval logon and initial password assignments are obtained by submitting the User Registration Form (exhibit 1 to this part), along with the proper fee under § 514.21 and other necessary documents prescribed by § 514.4(d) of this part, to BTCL. A separate User Registration Form is required for each individual that will access ATFI.

(2) Logon IDs and passwords may not be shared with or loaned to or used by any individual other than the individual registrant. The Commission reserves the right to disable any logon ID that is shared with, loaned to or used by parties other than the registrant.

(3) Authority for organizational maintenance, filing or retrieval can be transferred by submitting an amended registration form requesting the assignment of a new logon ID and password (see § 514.(4)(d). The original logon ID will be canceled when a replacement logon ID is issued.

* * * * *

3. In § 514.20, paragraph (d) is revised to read as follows:

§ 514.20 Retrieval.

* * * * *

(d) *Batch retrieval through database files.* Interested parties may subscribe to all tariff filings/updates received by the Commission on a daily basis. The ATFI System Administrator will create a daily subscriber data update file which will be accessible to subscribers who have prepaid the fees for daily updates. The daily updates subscriber will access the ATFI system to on-line download the tariff updates received during the previous workday and any intervening weekend/holidays, as well as any tariff updates created by the Commission (e.g., suspensions, rejections, etc.). Subscribers may request that daily updates be forwarded on tape (either 9 track, 6250 bpi or 8 mm cartridge, Exabyte 8500 compatible) when the file size indicates that the on-line download option is not cost-effective. The Commission may also send selected daily updates by first class mail (or as directed by subscribers at subscriber's expense) or make updates available at the ATFI computer center when the magnitude of the file size indicates that downloads would degrade ATFI access for other ATFI user functions. The subscriber is responsible for insuring that the Commission has received sufficient pre-paid monies before the last business day of the preceding month in order to subscribe to the next month's filings. The Commission will terminate the download capability of any accounts in arrears.

* * * * *

4. In § 514.21, paragraph (j) is revised to read as follows:

§ 514.21 User charges.

* * * * *

(j) *Daily Subscriber Data (§ 514.20(d)).*

(1) Persons requesting download of daily updates must pay $61 per daily update.

(2) Persons requesting daily updates on tape must supply the tapes and pay $61 per daily update.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–21547 Filed 8–29–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 95–139; DA 95–1832]

Cable Television Service; List of Major Television Markets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission, through this action, invites comments on its proposal to amend its rules regarding the listing of major television markets, to change the designation of the Raleigh-Durham-Goldsboro television market to include the community of Fayetteville, North Carolina. This action is taken at the request of Capital Cities/ABC, Inc., licensee of television station WTVD–TV, channel 11, Durham, North Carolina; Capitol Broadcasting Company, Inc., licensee of television station WRAL–TV, channel 5, Raleigh, North Carolina; Delta Broadcasting, Inc., licensee of television station WKFT–TV, channel 40, Fayetteville, North Carolina; FSF TV, Inc., licensee of television station WRDC–TV, channel 28, Durham, North Carolina; and Paramount Stations Group of Raleigh Durham, Inc., licensee of television station WLFL–TV, channel 22, Raleigh, North Carolina and it is taken to test the proposal for market hyphenation through the record established based on comments filed by interested parties.

DATES: Comments are due on or before October 20, 1995, and reply comments are due on or before November 6, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William H. Johnson, Cable Services Bureau, (202) 416–0800.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, CS Docket 95–139, adopted August 15, 1995, and released August 29, 1995. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1919 M Street NW., Washington, DC 20554.

Synopsis of the Notice of Proposed Rulemaking

1. The Commission, in response to a Petition for Rulemaking filed by the petitioner, proposed to amend Section 76.51 of the Rules to add the community of Fayetteville to the Raleigh-Durham-Goldsboro television market.

2. In evaluating past requests for hyphenation of a market, the Commission has considered the following factors as relevant to its examination: (1) The distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond

its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change. Each of these factors helps the Commission to evaluate individual market conditions consistent ''with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete.''

3. Based on the facts presented, the Commission believes that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rulemaking process, including the comments of interested parties. It appears from the information before the Commission that the television stations licensed to Raleigh, Durham and Goldsboro, North Carolina do compete throughout much of the proposed combined market area, and that sufficient evidence has been presented tending to demonstrate commonality between the proposed communities to be added to the market designation and the market as a whole that ''hyphenation'' of the market should be proposed. Moreover, the petitioners' proposal appears to be consistent with the Commission's policies regarding redesignation of a hyphenated television market. Accordingly, comment is requested on the proposed addition of Fayetteville to the Raleigh-Durham-Goldsboro, North Carolina television market.

Initial Regulatory Flexibility Analysis

4. The Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act. A few cable television system operators will be affected by the proposed rule amendment. The Secretary shall send a copy of this *Notice of Proposed Rulemaking,* including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. section 601 *et seq.* (1981).

Ex Parte

5. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. *See generally* 47 CFR §§ 1.1202, 1.1203 and 1.1206(a).

Comment Dates

6. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before October 20, 1995, and reply comments on or before November 6, 1995. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

7. Accordingly, this action is taken by the Chief, Cable Services Bureau, pursuant to authority delegated by § 0.321 of the Commission's rules.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William H. Johnson,

Deputy Chief, Cable Services Bureau.

[FR Doc. 95–21491 Filed 8–29–95; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 95

[WT Docket No. 95–102; FCC 95–261]

To Establish a Very Short Distance, Unlicensed, Two-Way Voice Radio Service in the Ultra High Frequency (UHF) Portion of the Radio Spectrum

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has proposed rules to establish a new personal radio service that would permit individuals a very short distance, unlicensed, two-way voice radio service in the Ultra High Frequency (UHF) portion of the radio spectrum. This action is in response to a petition for rule making from the Radio Shack Division of Tandy Corporation (Tandy). Allowing uses of the radio spectrum in this manner would meet a burgeoning public demand for an affordable and convenient means of direct, short-range, two-way voice communication among small groups of persons.

DATES: Comments must be submitted on or before October 2, 1995 and reply comments must be filed on or before October 16, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William Cross at (202) 418–0680, Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, WT Docket No. 95–102, FCC 95–261, adopted June 22, 1995, and released August 2, 1995. The proposed rules are at the end of this document. The full text of this Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Reference Center, Room 230, 1919 M Street, N.W., Washington, D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, Suite 140, Washington, DC 20037, telephone (202) 857–3800.

Initial Regulatory Flexibility Analysis

Reason for Action

The Commission is proposing to amend Part 95 of its rules to establish a new Family Radio Service within the CB Radio Service. This change will provide a new and innovative communication service and promote more efficient use of the radio spectrum.

Objectives

The proposed rules will encourage rapid deployment and growth of inexpensive low power communications equipment for use by groups in which members need to communicate over short distances.

Legal Basis

The proposed action is authorized under Sections 4(i), 303(b), 303(r), and 307(e) of the Communications Act, 47 U.S.C. §§ 154(i), 303(b), 303(r), and 307(e).

Report, Recordkeeping and Other Compliance Requirements

None.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules

None.

Description, Potential Impact, and Small Entities Involved

The proposed rule change would benefit individuals by allowing them to make use of new services, and procedures of personal communications equipment. Most users are expected to be members of groups such as families that desire to communicate by radio over very short distances.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives

None.

List of Subjects in 47 CFR Part 95

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Part 95 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

Part 95—Personal Radio Services

1. The authority citation for Part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. Subpart B, Sections 95.191 through 95.194, is added to Part 95 to read as follows:

Subpart B—Family Radio Service (FRS), General Provisions

Sec.

95.191 (FRS Rule 1) Eligibility and responsibility.
95.192 (FRS Rule 2) Authorized locations.
95.193 (FRS Rule 3) Types of communications.
95.194 (FRS Rule 4) FRS units.

Subpart B—Family Radio Service (FRS)

General Provisions

§ 95.191 (FRS Rule 1) Eligibility and responsibility.

(a) Unless you are a representative of a foreign government, you are authorized by this rule to operate an FCC certified FRS unit in accordance with the rules in this subpart. No license will be issued.

(b) You are responsible for all communications that you make with the FRS unit. You must share each channel with other users. No channel is available for the private or exclusive use of any entity.

§ 95.192 (FRS Rule 2) Authorized locations.

(a) Provided that you comply with these rules, you are authorized to operate an FRS unit:

(1) Within or over any area of the world where radio services are regulated by the FCC; (this area includes the fifty United States and the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands (50 islets and cays), American Samoa (seven islands), the Commonwealth of Northern Marianna Islands, and Guam Island) or

(2) Within or over any other area of the world, except within or over the territorial limits of areas where radio services are regulated by an agency of the United States other than the FCC or any foreign government (you are subject to its rules); or

(3) Aboard any vessel aircraft registered in the United States, with the permission of the captain, that is within or over any area of the world where radio services are regulated by the FCC or upon or over international waters; or

(4) Aboard any unregistered vessel or aircraft owned or operated by a United States citizen or company that is within or over any area of the world where radio services are regulated by the FCC or upon or over international waters.

(5) You must operate the FRS unit only accordingly to any applicable treaty to which the United States is a party. The FCC will make public notice of any such conditions.

(b) Your use of an FRS unit must not cause harmful interference to a FCC monitoring facility. Doing so could result in imposition of restrictions upon the operation of the FRS unit within 0.8 km (0.5 mile) of the facility by its Engineer-in-Charge. (Geographical coordinates of the facilities that require protection are listed in § 0.121(c) of this chapter.)

(c) The FCC may impose additional restrictions on a FRS station if the station is located at a point within the National Radio Quiet Zone (an area within the States of Maryland, Virginia and West Virginia). The Zone is the area bounded by:

(1) 39°15′ N. on the North;
(2) 78°30′ W. on the East;
(3) 37°30′ N. on the South; and
(4) 80°30′ W. on the West.

§ 95.193 (FRS Rule 3) Types of communications.

(a) You may use an FRS unit to conduct two-way voice communications with another person. You may use the FRS unit to transmit one-way communications only to establish communications with another person, send an emergency message, provide traveler assistance, make a voice page, or to conduct a brief test.

(b) The FRS unit may transmit tones to make contact or to continue communications with a particular FRS unit. If the tone is audible (more than 300 Hertz), it must last no longer than 15 seconds at one time. If the tone is subaudible (300 Hertz or less), it may be transmitted continuously only while you are talking.

(c) You must not use an FRS unit in connection with any activity which is against federal, state or local law.

(d) You must, at all times and on all channels, give priority to emergency communication messages concerning the immediate safety of life or the immediate protection of property.

(e) No FRS unit may be interconnected to the public switched telephone network.

§ 95.194 (FRS Rule 4) FRS units.

(a) You may only use an FCC certified FRS unit. (You can identify an FCC certified FRS unit by the label placed on it by the manufacturer.)

(b) You must not make, or have made, any internal modification to an FRS unit. Any internal modification cancels the FCC certification and voids your authority to operate the unit in the FRS.

(c) You may not attach any antenna, power amplifier, or other apparatus to an FRS unit that has not been FCC certified as part of that FRS unit. There are no exceptions to this rule and attaching any such apparatus to a FRS unit cancels the FCC certification and voids everyone's authority to operate the unit in the FRS.

3. Section 95.401 is revised to read as follows:

§ 95.401 (CB Rule 1) What are the Citizens Band Radio Services?

The Citizens Band Radio Services are:

(a) The Citizens Band (CB) Radio Service—a private, two-way, short-distance voice communications service for personal or business activities of the general public. The CB Radio Service may also be used for voice paging.

(b) The Family Radio Service (FRS)—a private, two-way, very short-distance voice communications service for facilitating family and group activities. The rules for this service are contained in subpart B of this part.

4. Section 95.601 is revised to read as follows:

§ 95.601 Basis and purpose.

These rules provide the technical standards to which each transmitter (apparatus that converts electrical energy received from a source into RF (radio frequency) energy capable of being radiated) used or intended to be used in a station authorized in any of the Personal Radio Services must comply. They also provide requirements

for obtaining type acceptance of such transmitters. The Personal Radio Services are the GMRS (General Mobile Radio Service), the Family Radio Service (FRS), the R/C (Radio Control Radio Service), and the CB (Citizens Band Radio Service). For operating rules, see subparts A through D of this part 95.

5. Section 95.603 is amended by revising the heading and adding paragraph (d) to read as follows:

§ 95.603 Type acceptance or certification required.

* * * * *

(d) Each FRS unit (a transmitter that operates or is intended to operate in the FRS) must be certified for use in the FRS in accordance with subpart J or part 2 of this chapter.

6. Section 95.605 is revised to read as follows:

§ 95.605 Type acceptance and certification procedures.

Any entity may request type acceptance or certification for its transmitter in one of the Personal Radio Services, following the procedures in part 2 of this chapter.

7. Sections 95.627 through 95.669 are redesignated as §§ 95.629 through 95.671 and a new § 95.627 is added to read as follows:

§ 95.627 FRS unit channel frequencies.

(a) The FRS unit channel frequencies are:

Channel No.	(MHz)
1	462.5625
2	462.5875
3	462.6125
4	462.6375
5	462.6625
6	462.6875
7	462.7125
8	467.5625
9	467.5875
10	467.6125
11	467.6375
12	467.6625
13	467.6875
14	467.7125

(b) Each FRS unit must be maintained within a frequency tolerance of 0.0005%.

8. Newly designated 95.629 is amended by revising paragraph (b), redesignating paragraphs (d) and (e) as paragraphs (e) and (f) respectively, and adding a new paragraph (d) to read as follows:

§ 95.629 Emission types.

* * * * *

(b) An R/C transmitter may transmit any appropriate non-voice emission which meets the emission limitations of § 95.633.

* * * * *

(d) An FRS unit may transmit only emission type F3E. A non-voice emission is limited to selective calling or tone-operated squelch tones to establish or continue voice communications.

* * * * *

9. Newly designated § 95.631 is amended by adding a new paragraph (c) to read as follows:

§ 95.631 Emission bandwidth.

* * * * *

(c) The authorized bandwidth for emission type F3E transmitted by a FRS unit is 12.5 kHz.

10. Newly designated § 95.633 is amended by revising paragraph (b) introductory text and the table immediately following it to read as follows:

§ 95.633 Unwanted radiation.

* * * * *

(b) The power of each unwanted emission shall be less than TP as specified in the applicable paragraph:

Transmitter	Emission type	Applicable paragraphs
GMRS	A1D, A3E, F1D, G1D, F3E, G3E with filtering	(1), (3), (7)
	A1D, A3E, F1D, G1D, F3E, G3E without filtering	(5), (6), (7)
	H1D, J1D, R1D, H3E, J3E, R3E	(2), (4), (7)
FRS	F3E with filtering	(1), (3), (7)
Note: Filtering refers to the requirement in § 95.635(b)		
R/C:		
27 MHz band	As specified in § 95.629(b)	(1), (3), (7)
72–76 MHz band	As specified in § 95.629(b)	(1), (3), (7) (10) (11), (12)
CB	A1D, A3E	(1), (3), (8), (9)
	H1D, J1D, R1D, H3E, J3E, R3E	(2), (4), (8), (9)
	A1D, A3E type accepted before September 10, 1976	(1) (3), (7)
	H1D, J1D, R1D, H3E, J3E, R3E type accepted before September 10, 1986	(2), (4), (7)

Note 1: * * *

Note 2: * * *

* * * * *

11. Newly designated § 95.635 is amended by revising paragraph (a) to read as follows:

§ 95.635 Modulation standards.

(a) A GMRS transmitter that transmits emission types F1D, G1D, or G3E must not exceed a peak frequency deviation of plus or minus 5 kHz. An FRS unit or a GMRS transmitter that transmits emission type F3E must not exceed a peak frequency deviation of plus or minus 5 kHz.

* * * * *

12. Newly designated § 95.637 is amended by adding a new paragraph (d) to read as follows:

§ 95.637 Maximum transmitter power.

* * * * *

(d) No FRS unit, under any condition of modulation, shall exceed 0.500 W Carrier power (average TP during one unmodulated RF cycle) when transmitting emission type F3E.

13. Newly designated § 95.645 is revised to read as follows:

§ 95.645 FRS unit and R/C transmitter antennas.

The antenna of each FRS unit, and the antenna of each R/C station transmitting in the 72–76 MHz band, must be an integral part of the transmitter. The antenna must have no gain (as compared to a half-wave dipole) and must be vertically polarized.

14. Newly designated § 95.647 is revised to read as follows:

§ 95.647 Power capability.

No CB or R/C station transmitter or FRS unit shall incorporate provisions for increasing its transmitter power to any level in excess of the limit specified in § 95.637.

15. Newly designated § 95.649 is revised to read as follows:

§ 95.649 Crystal control required.

All transmitters used in the Personal Radio Services must be crystal controlled, except an R/C station that transmits in the 26–27 MHz frequency band, and a FRS unit.

16. Appendix 1 to subpart E is amended by adding the definition for ''FRS'', in alphabetical order, to read as follows:

Appendix 1 to Subpart E—Glossary of Terms

* * * * *

FRS. Family Radio Service.

* * * * *

[FR Doc. 95–21248 Filed 8–29–95; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register

Vol. 60, No. 168

Wednesday, August 30, 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

Rural Telephone Bank

Amendments to Bylaws

AGENCY: Rural Telephone Bank, USDA.

ACTION: Notice of revised bylaws.

SUMMARY: The Board of Directors of the Rural Telephone Bank (Bank) adopted amendments on August 11, 1995, to the bylaws of the Bank. The bylaw amendments adopted will:

1. Modify the election procedures to allow for other than secret balloting so that stockholders may vote by facsimile (Bylaw Sec. 4.3(a) and (b), 4.4(a), 4.4(d));
2. Change the date regular stockholders' meetings are held (Bylaw Sec. 3.1);
3. Substitute Rural Utilities Service or RUS for Rural Electrification Administration or REA (Bylaw Sec. 2.2(a), 2.8, 4.2, 6.9); and
4. Update text to read gender neutral (Bylaw Sec. 2.4, 3.7(b), 4.4(e), 4.5, 4.6, 5.3, 6.2, 6.5, 6.5(g), 6.6, 6.6(g), 6.7, 7.1).

EFFECTIVE DATE: This action was effective August 11, 1995.

FOR FURTHER INFORMATION CONTACT: Robert Peters, Assistant Governor, Rural Telephone Bank, Room 4056, South Building, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 720–9554.

The bylaws as revised follow:

By laws of Rural Telephone Bank with amendments adopted through August 11, 1995.

Article I—Name, Organization, Purposes and Location

Sec. 1.1 Name, Organization, and Purposes. The name of the body corporate by and for which these bylaws are adopted is Rural Telephone Bank (hereinafter called the ''Bank''). It is an agency and instrumentality of the United States, established by the Act of May 7, 1971, 85 Stat. 29, 7 U.S.C. 931–950(b), (hereinafter called the ''Act''), for the general purposes of obtaining an adequate supply of supplemental funds to the extent feasible from non-Federal sources, to utilize said funds in the making of loans pursuant to the Act, and to conduct its operations to the extent practicable on a self-sustaining basis.

Sec. 1.2 Location of Offices. The Bank shall have an office in the District of Columbia, and additional offices at such other places as the Governor, with the concurrence of the Board of Directors of the Bank (hereinafter called the ''Board''), may from time to time designate.

Article II—Capital Stock and Special Fund Equivalents

Sec. 2.1 Classes of Stock. The capital stock of the Bank shall consist of three classes, to wit, Class A, Class B, and Class C.

Sec. 2.2 Rights, Powers, Privileges and Preferences of Each Class of Stock. (a) Class A stock shall have a par value of one dollar ($1.00) per share and shall be issued only at par and only to the Administrator of the Rural Utilities Service (hereinafter called the ''Administrator'') on behalf of the United States for capital furnished to the Bank by the United States as provided in section 406(a) of the Act, and shall be non-voting stock. Such stock shall be entitled to a cumulative return, payable from the Bank's income, at the rate of two per centum (2%) per annum. Such stock shall be redeemed and retired in such amounts and at such times as provided in section 406(c) of the Act. Upon dissolution or liquidation of the Bank, Class A stock shall be retired at par before any payment is made to holders of Class B or Class C stock, and the holder of Class A stock shall be entitled to share pro rata with the holders of Class B stock then outstanding in the surpluses and contingency reserves remaining after the payment of all the Bank's liabilities and after retirement of all classes of stock at par as provided in section 411 of the Act. Class A stock shall not be transferable.

(b) Class B stock shall have a par value of one dollar ($1.00) per share, shall be issued only at par, shall be held only by the recipients of loans made under section 408 of the Act, and shall be voting stock. No dividends shall be payable on Class B stock, but the holders thereof shall be entitled to patronage refunds in Class B stock as hereinafter provided. Prior to dissolution or liquidation of the Bank, Class B stock may be redeemed and retired only after all shares of Class A stock shall have been redeemed and retired: *Provided,* however, That the Board may, under rules of general application adopted by it and upon agreement with the stockholder, provide for the conversion of Class B stock into Class C stock upon payment of amounts owed by a holder of Class B stock to the Bank and upon surrender of sufficient shares of Class B stock, supplemented by cash if necessary, to equal the par value of each share of Class C stock to be issued inasmuch as fractional shares of Class C stock shall not be issued. Upon dissolution or liquidation of the Bank, holders of Class B stock shall be entitled to share pro rata with the holder of Class A stock then outstanding in the surpluses and contingency reserves remaining after the payment of all of the Bank's liabilities and after retirement of all classes of stock at par as provided in section 411 of the Act. Class B stock shall not be transferable, either absolutely or by way of collateral, except in connection with the assumption by the transferee, with the approval of the Governor, of all or part of the transferor's loan from the Bank.

(c) Class C stock shall have a par value of one thousand dollars ($1,000) per share, shall be issued only at par, shall be held only by borrowers or by corporations and public bodies eligible to borrow under section 408 of the Act, or by organizations controlled by such borrowers, corporations and public bodies, and shall be voting stock. At such times and in such amounts as the Board may designate, dividends may be declared and paid to holders of Class C stock, but only from income of the Bank. Until all Class A stock is retired, the annual rate of any such dividend shall not exceed the current average rate payable on the bonds, debentures, notes and other evidences of indebtedness issued by the Bank (hereinafter collectively called ''telephone debentures''). No dividend on Class C stock shall be paid at any time when any portion of the cumulative 2 percent return on Class A stock required by section 406(c) of the Act remains unpaid. Prior to dissolution or liquidation of the Bank, Class C stock may be redeemed and retired only after

all shares of Class A stock shall have been redeemed and retired. Upon dissolution or liquidation of the Bank, holders of Class C stock shall be entitled to retirement of their stock at par after payment of all liabilities of the Bank and after retirement of all Class A and Class B stock at par, but shall not be entitled to share in any remaining surpluses or contingency reserves, as provided in section 411 of the Act. Class C stock shall not be transferable, absolutely or by way of collateral, except to a borrower, or a corporation or public body eligible to borrow under section 408 of the Act, or an organization controlled by such borrowers, corporations, or public bodies.

(d) No holder of Class B or Class C stock shall be entitled to more than one vote, regardless of the number and class or classes of shares held, nor shall Class B and Class C stockholders, regardless of their number, which are owned or controlled by the same person, group of persons, firm, association, or corporation be entitled to more than one vote.

Sec. 2.3 Share Certificates. (a) The Bank shall issue certificates evidencing the purchase of shares of stock of the Bank but only upon payment in full of the par value thereof. The Bank shall also issue certificates evidencing distribution of patronage refunds as hereinafter provided. The certificates for Class A stock shall be in such form, satisfactory to the Administrator, as may be prescribed by the Board from time to time. Certificates for Class B and Class C stock shall be in such form as the Board may from time to time prescribe. The certificates shall be signed by the Governor and attested by the Secretary of the Bank. No certificate shall be valid unless it is signed as herein provided. The Bank shall act as its own transfer agent or registrar.

(b) All certificates of each class shall be consecutively numbered. The name of the entity owning the shares represented thereby, with the number of such shares and the date of issue, shall be entered on the Bank's books. All certificates surrendered to the Bank for transfer or conversion shall be canceled, and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and canceled, except that in the case of a lost, destroyed or mutilated certificate, a new one may be issued therefor upon such terms and indemnity to the Bank as the Board may prescribe.

(c) Notwithstanding other provisions in these bylaws, however, the Board may authorize the use of book entry system for stock and issue certificates only on the specific request of the stockholder.

(d) The Board may also, notwithstanding other bylaw provisions, restrict the issuance of a certificate for shares associated with a specific loan until the end of each fiscal year.

Sec. 2.4 Transfer of Shares. Shares in the capital stock of the Bank shall be transferred only on the books of the Bank by authorization from the holder thereof or by the holder's legal representative upon proof of the legal representative's authority filed with the Secretary of the Bank, and on surrender for cancellation of such shares. The entity in whose name shares stand on the books of the Bank shall be deemed to be the owner thereof for all purposes.

Sec. 2.5 Date for Determination of Stockholders' Rights. The Board may fix a date, not exceeding four (4) months preceding the date of any meeting of stockholders or any election of Directors, any dividend payment date or any date for the determination or allotment of rights, as a record date for the determination of stockholders entitled to notice of and to vote at such meeting or in such election, or entitled to receive such dividend or rights as the case may be.

Sec. 2.6 Special Fund Equivalents. The amounts to be paid by any entity into the special fund provided for in section 406(f) of the Act and the rights, powers, privileges and preferences in respect of dividends, patronage refunds, voting rights, transfer of interest, retirement of special fund equivalent and liquidation or dissolution of the Bank accruing to an entity making such a payment, shall, to the extent permitted under the laws of the jurisdiction in which such entity is organized, be determined as if such entity had purchased stock in the Bank for such payment. The Bank shall issue to such entity written evidence, in such form as the Board may from time to time prescribe, of the payment made by such entity into the Bank's special fund established pursuant to said section 406(f) of the Act. Such writing shall comply, in respect of its execution, numbering and the surrender of such writing and the issuance of share certificates or other evidence of payment into the special fund in lieu of the surrendered evidence, with the provisions of section 2.3 above. Evidences of payment into said special fund shall be transferred in the manner provided in section 2.4 above for the transfer of shares of stock. The provisions of section 2.5 above shall also be applicable in respect of such evidences of payment. Each reference in these bylaws to capital stock or to Class B or Class C stock and to stockholders shall, subject to the first sentence of this section 2.6 be deemed to include evidences, or holders of evidences, of payment into the special fund in lieu of purchase of the class of stock to which reference is made.

Sec. 2.7 Commonly Owned or Controlled Stockholders. Each reference in these bylaws to the voting rights of stockholders, shall, in respect of stockholders which are owned or controlled by the same person, group of persons, firm, association, or corporation (7 U.S.C. 946(b)) be deemed to mean that the right is vested and is to be exercised as if all such stockholders owned or controlled by the same person, group of persons, firm, association or corporation were one stockholder.

Sec. 2.8 Classification of Stockholders. At least one month before any meeting of stockholders or any election of Directors, the Governor shall prepare a list of all stockholders, classified on the books of the Rural Utilities Service as either cooperative-type or commercial-type entities and organizations, which are entitled to vote, indicating thereon those which are required to share their vote with other commonly owned or controlled stockholders in a designated affiliated group. A copy of the list shall be available for inspection and copying at the offices of the Rural Telephone Bank and the Rural Utilities Service in Washington, DC.

Article III—Meetings of Stockholders

Sec. 3.1 Regular Meeting. A regular meeting of the stockholders shall be held each odd-numbered year after 1995 on such day and at such place and time as may be selected by the Board, for the purpose of (a) hearing reports from officers of the Bank, and (b) acting upon such other matters as may properly be brought before the meeting.

Sec. 3.2 Special Meetings. Special meetings of the stockholders may be called by the Chairperson of the Board, by resolution of the Board, upon a written request signed by seven (7) members of the Board, or by not less than fifty (50) stockholders, subject to section 2.7. It shall be the duty of the Secretary to promptly cause notice of such meeting to be given as hereinafter provided. Special meetings may be held at any place designated by the person or persons calling the meeting.

Sec. 3.3 Notice. Written or printed notice stating the place, day and hour of the meeting, and the purpose or purposes for which the meeting is called, shall be delivered not less than

ten (10) days nor more than forty (40) days before the date of the meeting, either personally or by mail, by or at the direction of the Secretary, or upon default by the Secretary, by the entities calling the meeting, to each stockholder and published in the **Federal Register**. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the stockholder's address as it appears on the records of the Bank with postage thereon prepaid. The failure of any stockholder to receive notice of a meeting of stockholders shall not invalidate any action which may be taken by the stockholders at any such meeting.

Sec. 3.4 Quorum. The quorum for a meeting of the stockholders shall consist of one hundred (100) stockholders present in person or by proxy. All members of a commonly owned or controlled affiliated group as set forth in section 2.7 shall be considered as one stockholder for quorum as well as voting purposes. If less than a quorum is present at any meeting, a majority of those present in person or by proxy may adjourn the meeting from time to time without further notice. Stockholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. A stockholder shall be considered as being present in person or by proxy if the individual designated as its voting representative pursuant to section 3.7(a), is present.

Sec. 3.5 Voting. Each stockholder entitled to vote shall be entitled to only one vote upon each matter submitted to a vote at a meeting of stockholders. All questions submitted to a vote of stockholders shall be decided by a vote of a majority of the stockholders voting thereon present in person or by proxy.

Sec. 3.6 Proxies. (a) Subject to sections 2.7 and 3.7(a), at all meetings of stockholders, a stockholder may vote by proxy executed in writing by the stockholder. Such proxy shall be filed with the Secretary before or at the time of the meeting. No proxy shall be voted at any meeting of stockholders unless it shall designate the particular meeting at which it is to be voted, and no proxy shall be voted at any meeting other than the one so designated or any adjournment of such meeting. Any stockholder which has granted a proxy may vote in person through the individual designated as its voting representative pursuant to section 3.7(a) and such vote shall revoke the proxy theretofore given and shall have the same effect as if the proxy shall not have been executed. A proxy may only be voted by a voting representative of another stockholder in the same segment of the industry as the grantor of the proxy. Public bodies, for the purpose of these bylaws, shall be considered part of the cooperative segment.

(b) Proxy voting is prohibited in the election of Directors.

Sec. 3.7 Voting of Shares by Certain Holders. (a) Shares standing in the name of a corporation, public body, or other organization may be voted by the director, manager, or other employee of the stockholder authorized by the chief executive officer, president, or vice president of such organization to be its voting representative or by the holder of a proxy as set forth in section 3.6.

(b) Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by the receiver without the transfer thereof into the receiver's name if authority so to do be contained in an appropriate order of the court by which such receiver was appointed.

(c) A stockholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

Article IV—Directors

Sec. 4.1 Powers. Except to the extent otherwise required by law or by these bylaws, the management of the Bank shall be vested in the Board.

Sec. 4.2 Number. Until ownership, control and operation of the Bank has been converted pursuant to section 410(a) of the Act, the Board shall consist of seven members designated by the President of the United States (five of whom shall be officers or employees of the United States Department of Agriculture but not RUS and two of whom shall be from the general public and not officers or employees of the United States) and six additional members elected by the holders of Class B and Class C stock.

Sec. 4.3 Election. (a) Six members of the Board shall be elected by holders of Class B and Class C stock, voting noncumulatively as follows: (1) Three by a plurality vote of stockholders voting in the cooperative segment of the industry, from among the directors, managers, and other employees of cooperative-type entities and organizations controlled by them holding Class B or Class C stock, and (2) three by a plurality vote of stockholders voting in the commercial segment of the industry, from among the directors, managers, and other employees of commercial-type entities and organizations controlled by them holding Class B or Class C stock. Ballots cast for the election of the Directors as established in section 405(b)(2) and (3) of the Act shall be cast biennially and counted on such day in November of each even-numbered year as the Board may select.

(b) Stockholders wishing to cast a secret ballot may vote by mail.

(c) Each election under paragraph (a)(1) or (a)(2) of this section shall not be considered valid unless a majority of the stockholders eligible to vote in the election have voted in the election.

(d) Upon a determination by the Assistant Secretary that ballots were received from less than a majority of eligible voters in one or both of the two segments of the industry, the Chairperson shall call a special meeting of the Board to determine the procedures to be followed for a new election for the segment or segments involved.

(e) In the event of a tie vote, the Chairperson shall call a special meeting of the Board to determine the procedures to be followed to break a tie vote.

Sec. 4.4 Nominations and Tenure. (a) At least three (3) months before the tabulation of ballots for the election of Directors, the Secretary shall send a form to each holder of Class B or Class C stock which may be used to nominate not more than three eligible individuals as defined in section 4.3(a) above. Any form nominating Directors received by the Assistant Secretary of the Rural Telephone Bank within the time limit established by the Board shall be tabulated by tellers nominated by the Governor and approved by the Board.

(b) All eligible individuals receiving at least ten (10) nominations by cooperative-type stockholders shall be entered on the official ballot as candidates for the three positions on the Board allocated to the cooperative segment of the industry. All eligible individuals receiving at least ten (10) nominations by commercial-type stockholders shall be entered on the official ballot as candidates for the three positions on the Board allocated to the commercial segment of the industry. The only nominees eligible for inclusion on the official ballot as candidates are those certified by the Secretary as having been nominated in accordance with the provisions in this subsection and section 4.3(a) above, however, write-in candidates are permitted on the official ballot which will contain blank spaces for writing in the names of three additional candidates.

(c) The Secretary shall be responsible for mailing, at least three (3) weeks before the date for tabulation of ballots, a statement of the number of Board members to be elected by the stockholders in each segment of the industry, a biographical sketch of each candidate for the Board, and the official ballot to be used by the stockholder. Each ballot shall show the name and the position of each candidate in the candidate's stockholder's organization.

(d) The authorized voting representative of each stockholder shall vote by mail ballot and shall be entitled to cast one vote for one candidate for each position for which that stockholder is eligible to vote. The authorized voting representative may be a director, manager, or other employee of the stockholder authorized by the chief executive officer, president, or vice president of such organization. Any mail ballot received by the Assistant Secretary of the Bank by close of business on the day before the day the ballots are to be counted shall be tabulated by tellers nominated by the Governor and approved by the Board. The Assistant Secretary shall deliver the ballots to the head teller to be tabulated. A ballot sent by telephone facsimile and received by the Assistant Secretary of the Bank shall be considered to be a mail ballot.

(e) Directors shall be elected for two (2) years but they shall serve after expiration of the term of office of such member until the successor for such member has taken office. Upon the establishment of the fact that a Director, at the time of the Director's election, did not, or has since ceased to, have the qualifications required by these bylaws or the Act, the Board shall remove such Director from office.

(f) Any nominating form or official ballot placed in the mail by the Bank in Washington, D.C., addressed with the address appearing in the official records of the Bank and with postage fully paid, shall be considered properly mailed in satisfaction of the requirements of these bylaws.

Sec. 4.5 Vacancies. Any vacancy occurring on the Board shall be filled by the affirmative vote of the remaining Board members for the unexpired portion of the term; *Provided, however,* That the person selected by the Board to fill a vacancy shall be chosen from among the same group (cooperative-type or commercial-type) of individuals that elected the member's predecessor to the Board; *And provided, further,* That the Board shall have no power to choose a successor to a Director appointed by the President of the United States.

Sec. 4.6 Compensation. Board members designated from the general public, pursuant to section 405(b)(1)(B) of the Act, or elected pursuant to section 405(b)(2) or (3) of the Act, shall receive one hundred dollars ($100) per day for each day or part thereof, not to exceed fifty days per year, spent in the performance of official duties for the Bank, and shall be reimbursed by the Bank for travel and other expenses in such manner and subject to such limitations as the Board may prescribe. Directors who are officers or employees of the Department of Agriculture shall serve as directors without additional compensation. No close relative of a Board member shall receive compensation for serving the Bank unless the relationship shall have been fully disclosed to the Board prior to the relative's employment and the Board shall have determined that the relative's employment will be beneficial to the Bank.

Sec. 4.7 Board Committees. The Board may, from time to time, provide for such committees as it deems desirable. The resolution establishing the committee shall prescribe the name and functions of the committee, and shall name the Director or Directors who shall constitute it and the Chairperson thereof. A majority of the members of any such committee shall constitute a quorum. Vacancies on any such committee shall be filled by appointment by the Board. The committee shall keep a record of its proceedings and shall report to the Board as and when required by it.

Article V—Meetings of Board

Sec. 5.1 Regular Meetings. A regular meeting of the Board shall be held quarterly on ten (10) days notice at such times and places as designated by resolution of the Board. In an election year, one such meeting shall be held no more than 45 days after the date of the election of Directors.

Sec. 5.2 Special Meetings. (a) Special meetings of the Board may be called by the Chairperson or by any three Board members on ten (10) days notice given in accordance with the regulations and bylaws of the Bank. The person or persons calling the meeting shall fix the time and place for the holding of the meeting.

(b) Special meetings of the Board may be held on less than ten (10) days notice if a majority of the Directors determines by a recorded vote that Bank business requires that the special meeting be held on less than ten (10) days notice and that no earlier public announcement of the change is possible.

Sec. 5.3 Notice. Notice of any meeting shall be given in writing and delivered in person, by mail, by telephone facsimile, or by telegram, to each Director and published in the **Federal Register**. If mailed, such notices shall be deemed to be delivered when deposited in the United States mail, addressed to the Director at the Director's address as it appears on the records of the Bank, with postage thereon prepaid; and if notice is by telephone facsimile, such notice shall be deemed to be delivered when transmission of notice has been successfully completed as shown on the facsimile machine's communication report or comparable document; and if notice is by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegram company prepaid.

Sec. 5.4 Quorum. A majority of the members of the Board shall constitute a quorum for the transaction of business at any meeting of the Board; *Provided, however,* That if less than a majority of the Board members is present at said meetings, a majority of Board members present may adjourn the meeting from time to time; *And provided, further,* That the Secretary shall notify any absent Board members of the time and place of such adjourned meeting and shall publish notice thereof in the **Federal Register**. The act of a majority of the Board members present at a meeting at which a quorum is present shall be the act of the Board except as otherwise provided in these bylaws.

Sec. 5.5 Sunshine Act. All meetings of the Board shall comply with the Government in the Sunshine Act (5 U.S.C. 552b) and the regulations of the Bank implementing such Act (7 CFR 1600.1 *et seq.*).

Article VI—Officers

Sec. 6.1 Number. The officers of the Board of Directors shall be the Chairperson, Vice Chairperson, Secretary, Treasurer, and such other officers as may be determined by the Board from time to time. The offices of Secretary and Treasurer may be held by the same person.

Sec. 6.2 Election and Term of Office. The officers shall be elected by the Board at the meeting of the Board held pursuant to section 5.1 of these bylaws. If the election of officers shall not be held at such meeting, such election shall be held as conveniently thereafter as may be. Each officer shall hold office until the first meeting of the Board following the next succeeding election of Directors or until the officer's successor shall have been elected and shall have qualified. A vacancy in any

office shall be filled by the Board for the unexpired portion of the term.

Sec. 6.3 Removal of Officers and Agents. Any officer or agent elected or appointed by the Board may be removed by the Board whenever in its judgment the best interest of the Bank will be served thereby.

Sec. 6.4 Chairperson and Vice Chairperson. The Chairperson or, in the Chairperson's absence or inability to act, the Vice Chairperson shall:

(a) Preside at all meetings of the stockholders and of the Board; and

(b) Not vote on a matter before the Board whenever the Chairperson's vote will cause a tie vote on the matter.

Sec. 6.5 Secretary and Assistant Secretary. The Secretary or, in the Secretary's absence or inability to act, the Assistant Secretary, shall be responsible for:

(a) Keeping the minutes of all meetings except as otherwise provided in these bylaws;

(b) Seeing that all notices are duly given in accordance with these bylaws or as required by law;

(c) Safekeeping of the corporate records and affixing the seal of the Bank to all documents, the execution of which on behalf of the Bank under its seal is duly authorized in accordance with the provisions of these bylaws;

(d) Keeping stock records containing names and addresses of all stockholders of the Bank, showing, among other things, the number of shares held by each, and the dates when they became the owners thereof;

(e) Attesting share certificates, and telephone debentures, the issue of which shall have been authorized by the Board;

(f) Keeping on file at all times a complete copy of the bylaws of the Bank containing all amendments thereto and, at the expense of the Bank, furnishing a copy of the bylaws and of all amendments thereto to every stockholder; and

(g) In general performing all duties incident to the office of Secretary and such other duties as from time to time may be assigned to the Secretary by the Board.

Sec. 6.6 Treasurer and Assistant Treasurer. The Treasurer or, in the Treasurer's absence or inability to act, the Assistant Treasurer, shall be responsible for:

(a) Custody of all funds and securities of the Bank;

(b) The receipt of, and the issuance of receipts for, all moneys due and payable to the Bank and for the deposit of all such moneys in the name of the Bank in accordance with the provisions of these bylaws;

(c) Signing all checks, drafts, or other orders for the payment of money; and

(d) In general performing all the duties incident to the office of the Treasurer and such other duties as from time to time may be assigned to the Treasurer by the Board.

Sec. 6.7 Governor. The Governor shall be the chief executive officer of the Bank, and, without limiting the generality of the authority vested in the Governor by law, shall:

(a) Sign share certificates and telephone debentures, the issue of which shall have been authorized by the Board, and any other instrument or document of the Bank;

(b) Establish the positions of Deputy Governor, Assistant Governor, Deputy Assistant Governor, Assistant Secretary, and Assistant Treasurer and recommend to the Board for approval those persons to serve in such positions; and establish such other positions as the Governor shall deem necessary, and appoint persons to fill such positions; and

(c) Carry-out policy adopted by the Board of Directors and administer the telephone program in compliance with the laws enacted by Congress.

Sec. 6.8 Bonds. Officers, employees or agents of the Bank shall be bonded, at the expense of the Bank, if and to the extent the Governor and the Board shall determine.

Sec. 6.9 Reports. The officers of the Bank shall annually submit to the stockholders and to persons with a loan or loan commitment from RUS reports covering the business of the Bank. The Board shall also make an annual report to the Secretary of Agriculture, for transmittal to the Congress, on the Administration of Title IV of the Rural Electrification Act of 1936, as amended, and upon any other matters relating to the effectuation of the policies of said Title IV, including recommendations for legislation.

Article VII—Financial Transactions

Sec. 7.1 Countersignature of Checks, Drafts, Etc. Unless otherwise determined by the Governor, all checks, drafts or other orders for the payment of money shall be countersigned by such person or persons as shall be designated by the Governor.

Sec. 7.2 Deposits. All funds except petty cash of the Bank shall be deposited from time to time to the credit of the Bank in accordance with the provisions of 31 United States Code 867. If, in accordance with the provisions of such law, the Bank is permitted to choose a depository other than the Treasurer of the United States, the Governor, with the approval of the Board, shall select such other depository or depositories.

Sec. 7.3 Fiscal Year. The fiscal year of the Bank shall, through June 30, 1976, commence on July 1 of each year and end on June 30 of the following year; and shall, beginning on October 1, 1976, commence on October 1 of each year and end on September 30 of the following year with the three months ending on September 30, 1976, being considered a transition quarter between two fiscal years.

Article VIII—Patronage Capital

Sec. 8.1 Patronage Capital Assignable. ''Patronage capital assignable'' shall consist of all revenues of the Bank for any fiscal year in excess of the amount thereof necessary to:

(a) Pay expenses of the Bank, including without limitation, payments in lieu of property taxes as provided in section 401(c) of the Act;

(b) Pay interest on telephone debentures accruing in such fiscal year;

(c) Provide reasonable allowances for depreciation, obsolescence and losses on loans and interest receivable;

(d) Pay to the holder or holders of Class A stock an amount equal to two per centum (2%) per annum of the capital furnished to the Bank for such stock; and

(e) Pay to the holders of Class C stock dividends at the rate determined by the Board; *Provided, however,* That no dividends shall be declared on Class C stock until arrearages, if any, on payments to holders of the cumulative Class A stock have been paid; and *Provided, further,* That until all Class A stock shall have been retired, the Board shall not declare any dividends on Class C stock at an annual rate in excess of the then current average rate payable on the Bank's telephone debentures.

Sec. 8.2 Calculation of Patronage Refunds. (a) After the end of each fiscal year after fiscal year 1987, the patronage capital assignable will be transferred to the reserve for losses due to interest rate fluctuations. Any amounts in this reserve then in excess of $10,000,000 shall be transferred from the reserve, on the basis of amounts first transferred to the reserve being those first transferred therefrom and these amounts shall be allocated as Class B stock to those borrowers holding Class B stock during the fiscal year the amounts were earned. The amount allocated to each such holder of Class B stock for each fiscal year shall be calculated by applying to the amount for a particular year transferred from the reserve pursuant to the preceding sentence the ratio which the amount of interest revenue to the Bank from each such holder of Class B

stock in that same fiscal year bears to the Bank's total interest revenue from all holders of Class B stock in that same fiscal year.

(b) If, at any time after all Class A stock has been retired, the Board should determine that the Bank's financial condition will not be impaired thereby, it may establish procedures for the retirement of Class B stock in full or in part or its conversion to Class C stock in addition to the conversion authorized in section 2.2(b) hereof.

Sec. 8.3 Calculation of Class C Stock Dividend. For any fiscal year after 1988, any dividends on Class C stock shall be paid to the holders hereof on the basis of one-twelfth of the dividend for each full month, or portion of a month, the stock is held during such fiscal year.

Article IX—Miscellaneous

Sec. 9.1 Waiver of Notice. Any stockholder or member of the Board may waive in writing any notice of a meeting required to be given by these bylaws, either before or after the time of such meeting. The attendance of a stockholder or member of the Board at any meeting shall constitute a waiver of notice of such meeting by such stockholder or Board member, unless such attendance shall be for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened.

Sec. 9.2 Policies, Rules and Regulations. The Board shall have power to make and adopt such policies, rules and regulations, not inconsistent with law or these bylaws, as it may deem advisable for the management of the Bank.

Sec. 9.3 Accounting System and Audit Reports. The Board shall cause to be established and maintained a complete accounting system which, among other things, shall conform to accounting system principles, standards and procedures applicable to corporate business enterprises. A summary of the report of each audit of the Bank's financial transactions made by the General Accounting Office of the United States shall be mailed to each stockholder promptly after the report shall have been received.

Sec. 9.4 Seal. The Board shall adopt a suitable corporate seal, containing the name of the Bank.

Sec. 9.5 Conduct of Meetings. Meetings of stockholders and Directors of the Bank shall be conducted in accordance with the current edition of ''Roberts' Rules of Order'' except as such rules may be inconsistent with the Act or these Bylaws.

Article X—Amendments

These bylaws may be altered or amended by a vote of two-thirds of the entire Board at any regular or special meeting of the Board provided the notice of such meeting shall contain a copy of the proposed amendment or alteration. All stockholders shall be notified immediately of any amendment of these bylaws.

Copies of the bylaws as amended will be mailed to all stockholders of the Bank and all recipients of telephone loans from the Rural Utilities Service or the Rural Telephone Bank. Others may receive copies from the Governor, Rural Telephone Bank, Room 4051, South Building, United States Department of Agriculture, Washington, DC 20250, telephone (202) 720–9540.

Dated: August 23, 1995.

Wally Beyer,

Governor, Rural Telephone Bank.

[FR Doc. 95–21461 Filed 8–29–95; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 950807204–5204–01]

Standards for Address Lists: Public Law 103–430

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Proposed Program and Request for Comments.

SUMMARY: In accordance with Public Law (Pub. L.) 103–430, ''The Census Address List Improvement Act of 1994,'' the Census Bureau will accept address lists from States,[1] tribal governments, and local units of general purpose government,[2] as well as from metropolitan planning organizations and other regional planning agencies, (referred to hereafter as ''tribal, and local governments''), for the purpose of building and updating a nationwide address list called the Master Address File (MAF). The Census Bureau is developing the MAF to document the address of every living quarters in the United States and its territories and will use it to implement the full range of Census Bureau statistical programs. The Census Bureau will begin accepting address lists from tribal and local governments (''address lists'') in October 1995. Following Census Bureau review and processing of these address lists, the Census Bureau will provide detailed information to the submitting tribal or local government documenting the actions taken regarding each address. The program for using address lists to build the MAF and keep it up to date is referred to as the Program for Address List Supplementation (PALS). The Census Bureau is requesting comments on the proposed standards for the submission of address lists to the Census Bureau under the PALS program.

DATES: Any suggestions or recommendations concerning the proposed standards should be submitted in writing by September 29, 1995.

ADDRESSES: Director, Bureau of the Census, Washington, DC 20233–0001.

FOR FURTHER INFORMATION CONTACT: Dr. Joel Morrison, Chief, Geography Division, Bureau of the Census, Washington, DC, telephone (301) 457–1132, or e-mail to ''joel.morrison@census.gov.''

SUPPLEMENTARY INFORMATION: Later in the decade, the Census Bureau will provide relevant portions of the MAF to ''Census Liaisons'' designated by tribal and local governments for their review and concurrence in conjunction with the 2000 census (a process herein referred to as ''MAF review''), consistent with the confidentiality provisions of Title 13, United States Code, as specified in Pub. L. 103–430. Further, the Office of Information and Regulatory Affairs (OIRA) within the Federal Office of Management and Budget, in consultation with the Census Bureau, will develop an appeals process for Pub. L. 103–430 activities. Because the plan for these future activities is under development, the timetable for the activities described in this notice is tentative. Future notices (to be published by late 1996) will announce and seek comments on a detailed timetable for all address list improvement activities, information on Census Bureau processes for verifying addresses, and the substantive details of the appeals process.

The Census Bureau will begin accepting and processing address lists containing city-style addresses (that is, those with house number-street name addresses) beginning in October 1995. The Census Bureau will publish standards and a timetable for processing lists containing noncity-style addresses

[1] The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and any other territory or possession of the United States.

[2] As defined in section 184 of Title 13, U.S. Code, the term ''local units of general purpose government'' means the government of a county, municipality, township, Indian tribe, Alaska Native village, parish, borough, or other unit of government other than a state.

(those with rural route and box number, P.O. Box number, or general delivery addresses) in a future notice (to be published by late 1996). As address lists change due to deletions, corrections, and additions, the Census Bureau will accept second and subsequent submissions on a continuous basis, and process them as resources permit.

The Census Bureau will attempt to use the most recent address information provided by a tribal or local government to conduct each subsequent census and survey, regardless of when that government provides it. Before the 2000 decennial census, the Census Bureau will seek to reach agreement with tribal and local officials—through processes of list matching, address verification, MAF review by the designated Census Liaisons, and Census Bureau feedback on results—about the inventory of living quarters addresses within their jurisdictions. Addresses on address lists submitted to the Census Bureau by mid-calendar year 1998 (exact date to be determined and announced later) will be included in the full set of processes for MAF review described above. This MAF review process will provide an important opportunity for the designated Census Liaisons to check the Census Bureau's geographic assignment of each residential address within governmental unit boundaries and individual census blocks. Addresses on address lists submitted to the Census Bureau by late 1998 (exact date to be determined and announced later) also will be eligible for the appeals process called for in Pub. L. 103–430. Between late 1998 and the date for the 2000 census, the Census Bureau will accept and process address lists only to the extent they can be verified in other 2000 census operations; addresses on lists submitted after that date will not be eligible for the Pub. L. 103–430 appeals process. These late submissions will be most productive in helping the Census Bureau include in the census all housing units in existence as of the census date when tribal and local governments have previously submitted address lists.

To effectively use the addresses contained on address lists to build and update the MAF, and to provide meaningful feedback to the tribal and local list providers, the Census Bureau must determine a geographic location for each address. The Census Bureau will do this through an automated match to its geographic support system, the Topologically Integrated Geographic Encoding and Referencing (TIGER) data base. When the Census Bureau is unable to determine the geographic location of an address, it will request that the submitting tribal or local government supply a map location for that address and for the street along which it is located before adding that address to the MAF and the street to the TIGER data base. The Census Bureau can provide maps for this purpose. For new addresses submitted after late 1998 and before the date for the 2000 census, the Census Bureau requests that the tribal or local government provide this map location information for all such new addresses at the time the address lists are submitted.

The Census Bureau will conduct procedures to independently verify all addresses it adds to the MAF from address lists (for example, through matches to address information from the U.S. Postal Service, other independent sources, or its own field operations) and will remove from the MAF those addresses for which it cannot find confirming evidence.

The Census Bureau will treat all address information received from tribal and local governments as confidential, pursuant to Title 13, United States Code, in accordance with Pub. L. 103–430; this does not limit in any manner the right of the tribal or local government to use its own address information, nor does it preclude the Census Bureau from providing detailed feedback to the submitting jurisdiction about the Census Bureau's disposition of addresses on its lists.

STANDARDS FOR ADDRESS LISTS USED IN CONJUNCTION WITH PUB. L. 103–430:

The basic standards proposed in Section 1, below, describe the address list characteristics that will enable the Census Bureau to use the tribal and local address information. Address lists that also meet the supplemental standards specified in Section 2, below, will improve the Census Bureau's ability to process the information in a timely manner and will improve the match rate between the addresses on those lists and the addresses in the MAF. Along with other factors, such as when the address lists are received, the Census Bureau will consider the extent to which each address list meets these standards in setting priorities for processing.

1. Basic Standards

The following basic standards apply to all address lists that a tribal or local government plans to submit to the Census Bureau as part of the PALS.

a. Addresses must accurately reflect residential units existing at the time of submission. The definition of ''residential unit'' includes housing units in single or multiple-occupancy structures and in group living quarters where unrelated individuals share the facilities of a structure. Group living quarters include residential units such as college dormitories, orphanages, nursing homes, military barracks, prisons, and large rooming or boarding houses. A housing unit is a house, an apartment, a group of rooms, or a single room that is occupied as a separate living quarters or, if vacant, intended for occupancy as a separate living quarters. A separate living quarters is one in which the occupants live and eat separately from other people in the building AND for which the occupants have direct access from outside the building or through a common hall.

b. City-style addresses must show the basic street address (that is, house number *and* street name). The street name must include applicable street directional and street type indicators (for example, ''105 S MAIN ST NW'').

c. For jurisdictions that have converted from a rural-style to a city-style address system, or that have replaced one city-style system with another city-style system, the addresses must reflect the current system. (See also related non-mandatory standards.) File documentation and the address list must indicate whether the current address system is recognized for mail delivery by the U.S. Postal Service.[3]

d. If the address list includes both residential and nonresidential addresses, it must distinguish between the two. (If an address is used to identify a unit used for both residential and nonresidential purposes, it should be identified as ''residential'' or ''mixed use'' for purposes of this standard.)

e. For jurisdictions that include addresses in more than one ZIP Code, each address record must include the correct and current 5-digit ZIP Code.

f. Addresses in a multiunit structure must include a unit designation for each housing unit (for example, ''101 MAIN ST, APT A'') and a tally of the total number of individual dwelling units located within the multiunit structure. In addition to (but not instead of) the basic street address, it is useful for the Census Bureau to receive the building, apartment, and complex names as well.

If individual unit designations are not available, each address record must include descriptive information that identifies the addresses for multi-unit structures separately from those addresses for single-unit structures. The

[3] For address lists wherein the city-style addresses are not recognized for mail delivery, the feedback provided by the Census Bureau will be on a different schedule and will lack the same level of detail as where the addresses are used for mail delivery.

options described below are in preferential order.

(1) When the address list has in its inventory only one record representing a multiunit structure:

i. Include as part of each address record a tally of the total number of individual dwelling units located within the multiunit structure.

ii. Include as part of each address record a single character signifying that it represents a multiunit structure (for example, ''M'').

(2) When the address list includes a unique record for every individual unit, but does not contain distinguishing unit designations, mark each such record with a single character flag signifying that it represents an individual unit in a multiunit structure (for example, ''I'').

g. Tribal and local governments must provide with each address list documentation describing the file specifications, record layout (including field names, descriptions, character positions, and/or field delimiters), and data elements for each record in the address list, along with a description of the source of the address information.

2. Supplemental Standards

The following supplemental standards set forth desirable characteristics for address lists that a tribal or local government plans to submit to the Census Bureau as part of the PALS.

a. Address lists are most useful when they are submitted in a computer-readable format, using one of the following media: PC floppy disk, CD-ROM, 8-mm tape, or 9-track magnetic tape (no label with 1,600 or 6,250 BPI density). All media casings should have external labels that clearly identify the data contained and the name of the tribal or local government.

b. Computer-readable address lists are most useful when they are submitted using the file specifications and content format specified below:

(1) ASCII files with fixed length records.

(2) Separate records for each residential unit with an end-of-record indicator appropriate to the submitting government's operating system.

(3) Arrange the file content as:

Character position	Field
1–5	5-digit ZIP Code.
6–77	Street Address, including house number, street name, and within-structure designation.
78	Multiunit Indicator (a flag signifying whether or not the address record pertains to a multiunit structure; use for the situation represented by item 1f(1)ii OR 1f(2)).
79–82	Multiunit Tally, right justified (the total number of units sharing the basic street address represented on the record; see item 1f(1)i).
Optional Fields, with Suggested Positioning	
83–102	Post Office Name.
103–104	2-character USPS State Abbreviation or 2-digit FIPS State Code.
105–107	3-digit FIPS County Code.
108–111	USPS Plus-4 add-on code.
112-end	Other Descriptive Information (for example, a single character indicator that distinguishes between addresses used for mail delivery and those that are not [item 1c], a single character indicator that distinguishes between residential, nonresidential, and ''mixed use'' [item 1d], a building name address [item 2b(5)], the superseded address where a new address system has been put in place [item 2b(6)], a single-character indicator that distinguishes between address records that are corrections, deletions, and additions [item 2f], and for those address records incorporating a correction from a previous address list submission, the old information [item 2f]).

The Street Address field (character positions 6–77) can be shortened if no address record requires the full allotted space. In order to save space, the tribal or local government may shorten each address record by reducing the size of the Street Address field, eliminating the optional fields, or repositioning the optional fields. Regardless of data format used, basic standard 1,g requires that the tribal or local government document the file specifications, record layout, and data elements for each record in the address list.

The Street Address field should contain only the indicated information. It is highly desirable that this field NOT include person-name information, post office name, or state abbreviations.

(4) Files that have the components of the Street Address stored in separate fields should include documentation that defines the subfields within the Street Address field (character positions 6–77) and the position of each component of the address in their appropriate subfields. Please ensure that the documentation accurately describes the field arrangement.

(5) For residential units that are identified by both a house number-street name address and a building name address, it is most useful to have the house number-street name address in the Street Address field and the equivalent building name address in the Other Descriptive Information field. When the house number-street name address is unavailable, either place the building name address in the Street Address field or in the Other Descriptive Information field. Whichever is the case, please ensure that the documentation accurately describes the file content arrangement.

(6) In addition to providing computerized address list and documentation, it is very helpful for the tribal or local government to submit a hard-copy document containing a representative sample of address records.

c. For jurisdictions in which all addresses are in a single 5-digit ZIP Code, each address record should include the 5-digit ZIP Code.

d. Append the 4-digit USPS Plus-4 add-on code, along with the 5-digit ZIP Code, to each address record, if available.

e. If a tribal or local government is submitting information from more than one address list, it should consolidate and unduplicate the address lists before submitting them to the Census Bureau. Otherwise, the submitting government should specify the sequence in which the Census Bureau should process the multiple lists.

f. For jurisdictions that have changed address systems during the preceding five years, each address record should include both the current address and the superseded address.

g. For second or subsequent address list submissions, it is preferable that the new address lists include only additions, deletions, and corrections to the original list(s). Provide an indicator (diagnostic flag) that will distinguish between the new address records (for

example, ''N''), records from an earlier list that now should be deleted (such as, ''D''), and the corrected records (for example, ''C''). For address records requiring corrections, provide the original depiction of the address in the Other Descriptive Information space allotment (character positions 112-end); this will significantly help the Census Bureau's efforts to identify and remove the superseded version of the address and avoid delivery of more than one questionnaire to the same household.

Dated: August 24, 1995.

Harry A. Scarr,

Deputy Director, Bureau of the Census.

[FR Doc. 95–21521 Filed 8–29–95; 8:45 am]

BILLING CODE 3510–07–P

International Trade Administration

U.S.-Argentina Business Development Council—Commercial Law Initiative

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Opportunity to Participate in Commercial Law Initiative.

SUMMARY: On January 25, 1995, Secretary of Commerce Ronald H. Brown and Argentine Minister of Economy and Public Works and Services Domingo Cavallo signed Terms of Reference establishing the United States-Argentina Business Development Council (''BDC''). The purpose of the BDC, a bilateral, public-private sector council, is to provide a forum for cooperation through which U.S. and Argentine public and private sector representatives can exchange information on commercial matters and encourage discussion on various themes related to bilateral business development and trade promotion. The BDC is comprised of a U.S. section and an Argentine section. The U.S. section is comprised of U.S. government officials and Chief Executive Officers and other top management level employees of U.S. companies with commercial interest in and experience with Argentina. The activities of the BDC may include, but are not limited to, the following: identifying commercial opportunities, impediments and issues of concern to the U.S. and Argentine business communities; improving dissemination of information on U.S.-Argentine market opportunities; developing sectoral or project oriented approaches to expanding business opportunities; implementing trade and business development programs; and other appropriate steps to foster commercial relations between the United States and Argentina. To implement these activities, the BDC has formed various working groups, one of which is the Commercial Law Working Group (''Law Group''). The Law Group intends to implement a cooperative work program called the Commercial Law Initiative or CLI, including information exchange activities and legal seminars.

DATES: In order to receive full consideration, comments must be received no later than: September 13, 1995.

ADDRESSES: Ursula Odiaga Iannone, Attorney-Advisor, Office of the Chief Counsel for International Commerce, U.S. Department of Commerce, Room 5624, 14th and Constitution Avenue N.W., Washington, DC 20230; FAX (202) 482–4076.

FOR FURTHER INFORMATION CONTACT: Ursula Odiaga Iannone, Attorney-Advisor, Office of the Chief Counsel for International Commerce, U.S. Department of Commerce, Room 5624, 14th and Constitution Avenue N.W., Washington, DC 20230, (202) 482–1614.

SUPPLEMENTARY INFORMATION:

Commercial Law Initiative

The Law Group is co-chaired by the General Counsel of the Department of Commerce and the Undersecretary of Legal Affairs of the Argentine Ministry of Economy and Public Works and Services. The Law Group intends to implement a cooperative work program, the Commercial Law Initiative, to increase mutual understanding of the U.S. and Argentine legal systems as they affect U.S.-Argentine bilateral commerce (''commercial law''). Possible avenues of cooperation include: (1) Activities to exchange information on commercial law developments, practice and methods, *e.g.*, legal seminars and exchanges of legal experts; (2) cross dissemination of commercial laws of each country; (3) establishing a repository for laws, international conventions and agreements and other legal materials; and (4) stimulating, supporting and monitoring cooperation and direct contacts between concerned organizations, enterprises, private sector attorneys and members of academia of both countries in the area of commercial law.

Legal Seminar

As part of the CLI, the Law Group plans to conduct at least two legal seminars, first in Argentina and then in the United States. In accordance with the public sector-private sector partnership embodied in the BDC, the seminars will be organized by the Department of Commerce and the Argentine Ministry of Economy and Public Works and Services and co-sponsored and largely staffed by private sector attorneys from both countries who are experts in the priority topics to be covered. It is anticipated that the first seminar will take place in Argentina in March of 1996 and the second seminar will be held in the United States in the Fall of 1996. Legal seminar participants may be speakers, audience members and/or drafters of issue papers and will be required to pay a participation fee. As described below, the BDC will identify priority legal issues to be covered by the Law Group and in the legal seminars. The Department of Commerce Office of General Counsel will develop participation criteria for the legal seminars based in part on the priority legal issues identified as discussed below.

Opportunity to Provide Input on Priority Legal Issues

As a first step in the CLI, the Co-Chairs of the Law Group will exchange letters identifying and prioritizing the issues that their respective BDC sections desire to be addressed in the following 18 months by the Law Group. It is anticipated that this exchange will occur in September of 1995. The General Counsel of the Department of Commerce is accepting comments concerning the identification of priority issues to be raised by the U.S. section of the BDC. To identify legal issues relevant to conducting commercial relations with Argentina, please mail or FAX your comments to Ms. Iannone as indicated in the **ADDRESSES** section above.

Authority: Act of February 14, 1903, c. 552, as amended, 15 U.S.C. § 1501 *et seq.*, 32 Stat. 825; Reorganization Plan No. 3 of 1979, 19 U.S.C. § 2171 Note, 93 Stat. 1381.

Dated: August 24, 1995.

Walter M. Bastian, III,

Director, Office of Latin America and the Caribbean.

[FR Doc. 95–21559 Filed 8–29–95; 8:45 am]

BILLING CODE 3510–DA–P

[A–588–707]

Granular Polytetrafluoroethylene Resin 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 requests by one respondent and the petitioner, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on granular polytetrafluoroethylene (PTFE) resin from Japan. The review period is August 1, 1993, through July 31, 1994. This review covers one company, Daikin Industries, Ltd. As a result of the review, the Department has preliminarily determined that dumping margins exist for the respondent. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 30, 1995.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 1994, the Department published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' (59 FR 39543) of the antidumping duty order on granular PTFE resin from Japan (53 FR 32287, August 24, 1988). Respondent, Daikin Industries, Ltd., and petitioner, E. I. Dupont de Nemours & Company, requested an administrative review in accordance with 19 CFR 353.22(a) (1993). On September 16, 1994, the Department published a notice of initiation of this review (59 FR 47609). The period of review is August 1, 1993, through July 31, 1994. The Department is now conducting this review pursuant to section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Applicable Statute and Regulations

Unless otherwise stated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Scope of the Review

The antidumping duty order covers granular PTFE resins, filled or unfilled. The order explicitly excludes PTFE dispersions in water and PTFE fine powders. During the period covered by this review, such merchandise was classified under item number 3904.61.90 of the Harmonized Tariff Schedule (HTS). We are providing this HTS number for convenience and Customs purposes only. The written description of scope remains dispositive.

The review covers one manufacturer/exporter of granular PTFE resin, Daikin Industries, Ltd. (Daikin). The period of review is August 1, 1993, through July 31, 1994.

United States Price

In calculating United States price (USP), the Department determined both purchase price and exporter's sales price (ESP), as defined in section 772 of the Tariff Act, to be appropriate. All sales were made through Daikin America, Inc. (DAI), a related sales agent in the United States, to an unrelated purchaser. However, whenever sales are made prior to the date of importation through a related sales agent in the United States, we typically determine that purchase price is the most appropriate determinant of the USP if:

1. The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related shipping agent;
2. Direct shipment from the manufacturer to the unrelated buyers was the customary commercial channel for sales of this merchandise between the parties involved; and
3. The related selling agent in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyers.

Granular Polytetrafluoroethylene Resin From Japan; Final Results of Antidumping Duty Administrative Review, 60 FR 33188 (June 27, 1995); *Final Determination of Sales at Less Than Fair Value: New Minivans From Japan,* 57 FR 21937, 21945 (May 26, 1992).

For Daikin's sales which satisfy the criteria listed above, we regard the routine selling functions of the exporter as merely having been relocated from the country of exportation to the United States, where the sales agent performs them. Whether these functions take place in the United States or abroad does not change the substance of the transactions or the functions themselves, and we therefore treated these sales as purchase price transactions in accordance with section 353.41(b) of our regulations.

DAI also maintains an inventory of subject merchandise in the United States. Where the date of importation preceded the date of sale and DAI's role included warehousing responsibilities in addition to routine selling functions, we regarded sales of such merchandise as ESP sales in accordance with section 353.41(c) of our regulations.

We based purchase price and ESP on the packed, delivered price to unrelated purchasers in the United States. We made deductions, where applicable, for foreign brokerage and handling, foreign inland freight, ocean freight, marine insurance, U.S. brokerage and handling, U.S. inland freight, U.S. duty, U.S. harbor fees and merchandise processing fees, and inland insurance, in accordance with section 772(d) of the Tariff Act. For ESP sales we also made deductions, where applicable, for credit expense, replacement of defective merchandise, commissions paid to unrelated selling agents in the United States and indirect selling expenses, in accordance with section 772(e) of the Tariff Act.

We made an addition to USP for the Japanese consumption tax in accordance with our practice as set forth in *Silicomanganese From Venezuela; Preliminary Determination of Sales at Less Than Fair Value (Silicomanganese),* 59 FR 31204 (June 17, 1994).

Foreign Market Value

Based on a comparison of the volume of home market and third country sales, we determined that the home market was viable. Therefore, in accordance with section 773(a)(1)(A) of the Tariff Act, we based FMV on the packed, delivered price to unrelated purchasers in the home market.

In a preceding administrative review we found that Daikin made home market sales below the cost of production (COP). Therefore, in accordance with our standard practice, we also conducted a COP investigation during the current administrative review. We calculated COP as the sum of Daikin's reported materials, labor, factory overhead, and general expenses. We compared COP to home market prices, net of movement charges, price adjustments, and discounts.

As a result of our COP investigation, we found no below-cost sales, and therefore did not disregard any home market sales as being below cost.

We calculated FMV on a monthly weighted-average basis. Where possible we compared all U.S. sales to sales of identical merchandise sold in Japan. For U.S. sales in which identical merchandise was not sold during the relevant contemporaneous period, we used as FMV contemporaneous sales of the product that was most similar to the merchandise involved in the U.S. sale, in accordance with section 771(16) of the Tariff Act. We matched similar products based on physical characteristics and product specifications provided by Daikin in its

questionnaire response dated February 24, 1995.

In accordance with our practice, we disregarded sample sales as being outside the ordinary course of trade. *See Granular Polytetrafluroethylene Resin From Japan; Final Results of Administrative Review,* 58 FR at 50345 (September 27, 1993). The sales in question represent small quantities of granular PTFE resin sold to testing facilities in Japan at prices substantially higher than the prices of the vast majority of Daikin's sales. Further, the sales in question were not for consumption, but for evaluation purposes.

Where applicable, we made deductions for inland freight, discounts, post-shipment price adjustments, and physical differences in merchandise. To adjust for differences in circumstances of sale (COS) between the home market and the United States, we first deducted direct selling expenses incurred in the home market, which included credit and replacement of defective merchandise. Home market movement expenses incurred between the warehouse and the customer after the sale were treated as direct COS deductions. For comparison to purchase price sales, we then added direct selling expenses incurred in the United States for replacement of defective merchandise, credit, and commissions (because no commissions were paid in the home market). Where applicable, in accordance with section 353.56(b)(1) of our regulations, we offset U.S. commissions by deducting home market indirect selling expenses from FMV in an amount not exceeding those commissions. For comparison to ESP sales, in accordance with section 353.56(b)(2) of our regulations, we also deducted home market indirect selling expenses in an amount not to exceed the sum of U.S. commissions and indirect selling expenses incurred in the United States. Home market movement expenses were also incurred between the factory and the warehouse before the sale, and we have adjusted for such expenses as indirect selling expenses under the commission offset provision of section 353.56(b)(1) and under the ESP offset provision of section 353.56(b)(2), as appropriate. In order to adjust for differences in packing between the two markets, we deducted home market packing costs from FMV and added U.S. packing costs. We also adjusted for Japanese consumption tax in accordance with our decision in *Silicomanganese.*

Preliminary Results of Review

As a result of our comparison of USP with FMV, we preliminarily determine that the following dumping margin exists:

Manufacturer/exporter	Period	Margin (percent)
Daikin Industries	08/01/93–07/31/94	69.10

Interested parties may submit written comments on these preliminary results. Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held approximately 44 days from the date of publication. Case briefs and other written comments from interested parties may be submitted not later than 30 days from the date of publication. Rebuttal briefs and rebuttal comments, limited to issues raised in the case briefs, may be filed not later than 37 days from the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentage stated above. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

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 by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed company will be the rate we establish in the final results of this administrative review; (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 this review, 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) the cash deposit rate for all other manufacturers or exporters will continue to be 91.74 percent, the rate made effective by the final results of the most recent administrative review of the order (*see PTFE Resin From Japan*, 60 FR at 33189). As noted in the Department's previous final results in this proceeding, this rate is the ''all others'' rate from the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

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: August 16, 1995.

Susan G. Esserman,

Assistant Secretary, for Import Administration.

[FR Doc. 95–21554 Filed 8–29–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–475–818, A–489–805]

Notice of Postponement of Preliminary Antidumping Duty Determinations: Certain Pasta From Italy and Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 30, 1995.

FOR FURTHER INFORMATION CONTACT: Donna Berg (202–482–0114) or Michelle Frederick (202–482–0186), Office of Antidumping Investigations, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

POSTPONEMENT OF PRELIMINARY DETERMINATIONS: On June 1, 1995, the Department of Commerce (the Department) initiated antidumping duty investigations of certain pasta from Italy and Turkey (60 FR 30268, June 8, 1995). The notice of initiation stated that if these investigations proceed normally, the Department would issue its preliminary determinations by October 19, 1995.

On June 26, 1995, the U.S. International Trade Commission

determined that there is a reasonable indication that a U.S. domestic industry is threatened with material injury by reason of imports of pasta from Italy and Turkey (60 FR 35563, July 10, 1995).

Pursuant to section 733(c) of the Tariff Act of 1930, as amended (the Act), the Department is postponing the preliminary determinations in these investigations until no later than December 8, 1995. In accordance with section 773(c)(1)(B) of the Act, the Department has determined that all parties concerned in these investigations are cooperating. Further, we find these cases to be extraordinarily complicated for the following reasons. Due to the large combined number of exporters of pasta in Italy and Turkey, the Department devoted a considerable amount of time developing and implementing respondent selection procedures. This caused a delay in the issuance of the questionnaire. In addition, due to the large number of companies selected for investigation, the Department will be examining an extremely large number of complex transactions. Further, many of the issues in these investigations are novel given these are among the first cases conducted since the implementation of the Uruguay Round Agreements Act. For these reasons, we have determined that additional time is necessary to make the preliminary determinations. Accordingly, we are postponing our preliminary determinations in these investigations until no later than December 8, 1995.

This notice is published pursuant to section 733(c)(2) of the Act, as amended, and 19 CFR 353.15(d).

Dated: August 25, 1995.

Gary Taverman,

Acting Deputy Assistant Secretary for Investigations.

[FR Doc. 95–21555 Filed 8–29–95; 8:45 am]

BILLING CODE 3510–DS–P

National Institute of Standards and Technology

Announcing a Meeting of Key Escrow Issues

AGENCY: National Institute of Standards and Technology.

ACTION: Notice of open meeting.

SUMMARY: NIST announces a meeting to discuss issues regarding key escrow encryption, specifically to include export criteria for software and the desirable characteristics for U.S. key escrow agents.

DATES: The meeting will be held at NIST on September 6 and 7, 1995, from 9:00 a.m. to 5:00 p.m.

ADDRESSES: To register to attend the meeting, interested parties may contact Key Escrow Issues Meeting, Arlene Carlton, Technology Building, Room B–154, NIST, Gaithersburg, MD, 20899; 301–975–3240, fax: 301–948–1784, or e-mail at ''carlton@micf.nist.gov''.

Individuals interested in speaking are asked to contact Ed Roback at NIST on 301–975–3696, fax: 301–948–1784, or e-mail at ''roback@enh.nist.gov''.

FOR FURTHER INFORMATION CONTACT: Arlene Carlton, Technology Building, Room B–154, NIST, Gaithersburg, MD, 20899; 301–975–3240, fax: 301–948–1784, or e-mail at ''carlton@micf.nist.gov''.

SUPPLEMENTARY INFORMATION: The Commerce Department's National Institute of Standards and Technology invites industry representatives and other interested parties to a meeting on September 6 and 7, to discuss issues related to key escrow encryption. While not limited, two principal agenda items for discussion will be: (1) Developing the criteria for software key escrow encryption exportability and (2) the desirable characteristics for U.S. key escrow agents.

Industry has asked the government for criteria for the export of software key escrow encryption. Rather than simply publishing criteria, however, the Administration desires consultations with industry in preparing final criteria for publication. This session of the meeting will begin with a presentation of the government's perspective of the desirable criteria, followed by a chance for other participants to offer their thoughts on this issue as well as reaction to the federal perspective. Under acceptable criteria, the government is willing to allow for the export of strong cryptography (e.g., DES) when coupled with a key escrow mechanism. It is anticipated that this would be coupled with a one-time product review (e.g., as is the case for RC2/RC4 products) by the Department of State. Following such approval, the Department of Commerce would administer export regulations.

The second session of the meeting will address the desirable characteristics of acceptable U.S. escrow agents. Clearly, if export of key escrow encryption products will be allowed, the cryptographic keys must be stored with some entity. This session will address the criteria for the approval of such organizations. It may also discuss what sort of legal protections, if any, may be necessary to provide, for example, against unauthorized release of encryption keys. Follow-up meetings to both issues may be necessary.

Other related topics may be included, time permitting. Note that a separate meeting has been scheduled for 9/15/95 to discuss the development of federal standards for key escrow encryption.

Government representatives will attend from the Office of Science and Technology Policy, the Department of State, the Department of Justice, the Department of Commerce, the National Security Agency, and the Federal Bureau of Investigation.

If you would like to make a presentation with your recommendations on either topic, or propose an additional topic, please contact Ed Roback at NIST on 301–975–3696. Presentations may be limited in length to accommodate all speakers. The meeting will be open to the public, although seating is limited.

No detailed agenda has been set yet. NIST reserves the right to cancel any part of the meeting.

Dated: August 23, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–21486 Filed 8–29–95; 8:45 am]

BILLING CODE 3510–CN–M

Announcing a Meeting of Developing Federal Information Processing Standards for Key Escrow Encryption

AGENCY: National Institute of Standards and Technology.

ACTION: Notice of open meeting.

SUMMARY: NIST announces an exploratory workshop to develop federal standards for key escrow encryption, specifically to include software implementations.

DATES: The meeting will be held September 15, 1995, from 9:00 a.m. to 5:00 p.m..

ADDRESSES: The meeting will be held at Gaithersburg Hilton Hotel, 620 Perry Parkway, Gaithersburg, Maryland.

To register to attend the meeting, interested parties may contact Key Escrow Standards Workshop, Arlene Carlton, Technology Building, Room B–154, NIST, Gaithersburg, MD, 20899; 301–975–3240, fax: 301–948–1784, or e-mail at ''carlton@micf.nist.gov''.

Individuals interested in speaking are asked to contact Ed Roback at NIST on 301–975–3696, fax: 301–948–1784, or e-mail at ''roback@enh.nist.gov''.

FOR FURTHER INFORMATION CONTACT: Arlene Carlton, Technology Building, Room B–154, NIST, Gaithersburg, MD, 20899; 301–975–3240, fax: 301–948–

1784, or e-mail at ''carlton@micf.nist.gov''.

SUPPLEMENTARY INFORMATION: On September 15, 1995, the Commerce Department's National Institute of Standards and Technology will hold an exploratory workshop on developing Federal Information Processing Standards (FIPS) for key escrow encryption, specifically to include software implementations. This effort is being initiated to further the Administration's commitment to federal use of key escrow encryption.

Industry representatives and other interested parties are invited to the workshop to provide their perspectives on the desirable characteristics of key escrow encryption standards to NIST and other federal officials. Government representatives also will present their objectives and preliminary approach to this standards development process. Discussion will also include proposals for follow-on activities.

For discussion purposes, one initial option for this standards activity may be to create a generic key escrow encryption standard containing criteria for federal use of key escrow techniques implemented in either software or hardware. This high-level standard could then be supplemented with lists of validated key escrow techniques. (Currently FIPS 185, ''Escrowed Encryption Standard,'' a hardware-based standard, is the only FIPS-approved key escrow technique.) Guidance would also be needed to guide selection of appropriate key escrow techniques for particular applications. Key escrowing will be used by federal agencies (and others, if they so choose) in conjunction with FIPS-approved encryption techniques. Development and implementation of such standards are necessary to guide federal agencies in effectively and securely implementing key escrow encryption.

The meeting is open to the public, although seating is limited to approximately 100 individuals. Presentations may be limited in length to accommodate all speakers. No detailed agenda has been set yet. NIST reserves the right to cancel any part of the meeting.

Dated: August 23, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–21487 Filed 8–29–95; 8:45 am]

BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

Open Meeting; Florida Keys National Marine Sanctuary Advisory Committee

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Florida Keys National Marine Sanctuary Advisory Council (SAC) notice of open meeting.

SUMMARY: The Council was established in December 1991 to advise and assist the Secretary of Commerce in the development and implementation of the comprehensive management plan for the Florida Keys National Marine Sanctuary.

TIME AND PLACE: September 13, 1995, from 9:00 a.m. until adjournment. The meeting location will be at the Hawk's Cay Resort, Mile Marker 61, Duck Key, Florida.

AGENDA:

1. Reports from Chairpersons of the ten SAC action plan working groups.
2. Schedule next meeting.

PUBLIC PARTICIPATION: The meeting will be open to public participation. Public comment will be received from 11:30 until noon. Seats will be set aside for the public and the media. Seats will be available on a first-come first-served basis.

FOR FURTHER INFORMATION CONTACT: June Cradick at (305) 743–2437.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program

Dated: August 22, 1995.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 95–21250 Filed 8–29–95; 8:45 am]

BILLING CODE 3510–08–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of a Special Access Textile Program for Andean Trade Preference Act Countries

August 24, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

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 purpose of this notice is to inform the public that, in furtherance of the objectives of the Andean Trade Preference Act (ATPA) of 1991, 19 U.S.C. Section 3201, et seq., the Committee for the Implementation of Textile Agreements has decided to establish a Special Access Program for textile products assembled in ATPA, designated countries from fabric formed and cut in the United States. The eligible designated countries under the ATPA are currently Bolivia, Colombia, Ecuador and Peru. However, agreements with eligible countries must be concluded before the United States will apply the program to the specific countries.

The first Special Access limits under this program will be established for imports from Colombia of cotton and man-made fiber underwear in Categories 352/652 and wool coats in Category 444. The levels will be announced in the **Federal Register** at a later date. The United States and Colombia will also establish a Special Access visa and certification system.

Requirements for participation in the Special Access Program provided in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989 are applicable to ATPA designated countries.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–21557 Filed 8–29–95; 8:45 am]

BILLING CODE 3510–DR–F

Establishment and Amendment of Import Limits, Amendment of a Restraint Period and Announcement of Special Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Colombia

August 24, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing and amending limits and announcing special access levels.

EFFECTIVE DATE: September 1, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC), the limits agreed upon by the Governments of the United States and Colombia, as notified to the Textiles Monitoring Body (TMB), are being amended to establish limits for the period beginning on January 1, 1995 and extending through December 31, 1995. Since Colombia is now a member of the World Trade Organization (WTO), the limits published in the **Federal Register** on April 5, 1995 (60 FR 17319) are being amended. Pursuant to the ATC, these new limits supersede those notified to the TMB contained in the Memorandum of Understanding (MOU) dated November 18, 1994 between the Governments of the United States and the Republic of Colombia.

A notice published in **Federal Register** on June 23, 1995 (60 FR 32652) announces a limit for cotton and man-made fiber underwear in Categories 352/652 for the period March 29, 1995 through March 28, 1996. A separate notice published on June 23, 1995 (60 FR 32657) announces a request to consult with the Government of the Republic of Colombia on imports of women's and girls' wool coats in Category 444.

In Memoranda of Understanding (MOUs) dated June 27, 1995 and August 9, 1995, the Governments of the United States and the Republic of Colombia agreed, pursuant to Article 6 of the Uruguay Round Agreement on Textiles and Clothing (ATC), to establish a limit for textile products in Categories 352/652 and 444, respectively. Textile products in Categories 352/652 and 444 shall be covered under the Andean Special Access Textile Program for products which are assembled in Colombia from fabric wholly formed and cut in the United States that are intended for re-export to the United States. The Special Access limit for Categories 352/652 and 444 shall be 22,500,000 dozen (restraint period April 1, 1995 through December 31, 1995) and 201,000 numbers (restraint period January 1, 1995 through December 31, 1995), respectively. There is a sublimit of 2,250,000 dozen for Categories 352/652 and a sublimit of 80,400 numbers for Category 444 for products that are not assembled from U.S. formed and cut fabrics.

The United States and the Republic of Colombia agree to establish a visa and Andean Special Access Textile Program certification system to be implemented no later than October 1, 1995. Further notice will be published in the **Federal Register** concerning the implementation of the visa and certification system.

Products subject to the Andean Special Access Textile Program shall be assembled in Colombia from fabric wholly formed and cut in the United States for re-export to the United States under contracts governed by HTSUSA 9802.00.8015; or assembled in Colombia from fabric wholly formed and cut in the United States, and then subject to bleaching, acid washing, stonewashing, garment dyeing, or permapressing in Colombia following assembly, for re-export to the United States under contracts governed by Statistical Headnote 5 to Chapter 61 of the Harmonized Tariff Schedule of the United States Annotated, and Statistical Headnote 3 to Chapter 62 of the Harmonized Tariff Schedule of the United States Annotated, as implemented by the Government of the United States requiring the use of the statistical prefix ''H.''

Shipments of cut parts in Categories 352/652 and 444 must be accompanied by a form ITA-370P, signed by a U.S. Customs officer, prior to export from the United States for assembly in Colombia in order to qualify for entry under the Special Access Program.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the current limits for Categories 315 and 443; and establish a limit for Categories 352/652 for the period April 1, 1995 through December 31, 1995 and Category 444 for the period January 1, 1995 through December 31, 1995.

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).

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

August 24, 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 and man-made fiber textile products, produced or manufactured in Colombia and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995.

This directive cancels and supersedes the directive dated June 16, 1995 concerning imports of cotton and man-made fiber underwear in Categories 352/652 exported from Colombia during the period March 29, 1995 through March 28, 1996. This directive cancels and supersedes the directive dated June 16, 1995 which directed you to count imports in Category 444 for the period May 31, 1995 through May 30, 1996.

Effective on September 1, 1995, you are directed, pursuant to the Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing (ATC) and Memoranda of Understanding dated June 27, 1995 between the Governments of the United States and the Republic of Colombia, to establish the restraint period for Categories 352/652 to begin on April 1, 1995 and extend through December 31, 1995 at a level of

2,250,000 dozen [1]. Also pursuant to the ATC and a Memorandum of Understanding dated August 9, 1995, you are directed to establish a limit for Category 444 for the period January 1, 1995 through December 31, 1995 at a level of 201,000 numbers [2].

Further, you are directed to amend the 1995 limits for the following categories:

Category	Twelve-month limit [1]
315	18,721,985 square meters.
443	122,715 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–21558 Filed 8–29–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the United Arab Emirates

August 24, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 1, 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) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted for swing and recrediting unused carryforward. The current limits for Category 352 and 847 are being adjusted to account for carryover omitted in a previous adjustment.

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 17339, published on April 5, 1995; and 60 FR 36787, published on July 18, 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 bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 24, 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, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995.

Effective on September 1, 1995, you are directed to amend the directive dated March 30, 1995 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the United Arab Emirates:

Category	Adjusted limit [1]
334/634	201,416 dozen.
335/635/835	143,584 dozen.
338/339	570,954 dozen of which not more than 350,846 dozen shall be in Categories 338–S/339–S [2].
351/651	149,802 dozen.
352	192,285 dozen.
363	5,000,257 numbers.
847	173,983 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

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. 95–21556 Filed 8–29–95; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after March 31, 1995.

[2] The limit has not been adjusted to account for any imports exported after December 31, 1994.

DEPARTMENT OF DEFENSE

Department of the Army

Draft Environmental Impact Statement (EIS) on the Disposal and Reuse of the BRAC Parcel at Tooele Army Depot, Tooele, Utah

AGENCY: Department of the Army, DOD.

ACTION: Notice of Availability.

SUMMARY: The proposed action evaluated by this EIS is the disposal of the 1700 acre BRAC parcel at Tooele Army Depot, Tooele, Utah in accordance with the Defense Base Closure and Realignment Act of 1990, Public Law 101–510. The Draft EIS addresses the environmental consequences of the disposal and subsequent reuse of the 1700 acres. Three alternative methods of disposal are analyzed: Encumbered Disposal, Unencumbered Disposal and retention of the property in a caretaker status (i.e., the No Action Alternative). The Encumbered Disposal Alternative addresses natural or man-made encumbrances to the future reuse. The Unencumbered Disposal Alternative evaluates the potential to remove encumbrances, thereby allowing the property to be disposed of with fewer or no Army imposed restrictions on future use. The impacts of reuse are evaluated in terms of land use intensities.

A scoping meeting was held at the Tooele Senior Citizen's Center on October 29, 1994. Public notices requesting input and comments from

the public were issued in the regional area surrounding the Tooele Army Depot.

DATES: Written public comments and suggestions received within 45 days of the publication of the Environmental Protection Agency's Notice of Availability for this action will be addressed in the Final Environmental Impact Statement.

ADDRESSES: Copies of the Draft Environmental Impact Statement can be obtained by writing to Mr. Glenn Coffee, U.S. Army Engineer District, Attn: CESAM–PD–E, P.O. Box 2288, Mobile, Alabama 36628–0001.

Dated: August 23, 1995.

Raymond J. Fatz,

Acting Deputy Assistant Secretary of the Army (Environmental, Safety and Occupational Health), OASA (IL&E).

[FR Doc. 95–21540 Filed 8–29–95; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Implementation Plan for the Environmental Impact Statement for a Multi-Purpose Canister System for Management of Civilian and Naval Spent Nuclear Fuel

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy announces the availability of the Implementation Plan for the Environmental Impact Statement for a proposed Multi-Purpose Canister System for Management of Civilian and Naval Spent Nuclear Fuel. The purpose of the Implementation Plan is to report the results of the public scoping and public participation processes and to serve as a plan for the preparation of the Environmental Impact Statement. The Implementation Plan also describes the alternatives and issues to be evaluated in the Environmental Impact Statement.

FOR FURTHER INFORMATION CONTACT: For further information on the Multi-Purpose Canister Environmental Impact Statement, please contact: Gerald J. Parker, Multi-Purpose Canister Environmental Impact Statement Manager, Office of Civilian Radioactive Waste Management (RW–45), U.S. Department of Energy, 1000 Independence Avenue SW., Room 7F–075, Washington, D.C. 20585, 202–586–5679.

To request copies of the Implementation Plan, please call 1–800–672–3304.

For general information on the Department's National Environmental Policy Act review process, please contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, 202–586–4600 or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

On October 24, 1994, the Department of Energy issued a Notice of Intent in the **Federal Register** (55 FR 53442) to prepare an Environmental Impact Statement for the fabrication and deployment of a multi-purpose canister-based system for the management of civilian spent nuclear fuel (MPC Environmental Impact Statement). In the Notice of Intent, the Department identified the proposed action as the fabrication and deployment of certain components of a multi-purpose canister-based system. Specifically, the proposed action includes two sizes of MPCs (a 125-ton and a 75-ton MPC), with associated rail transportation casks and on-site transfer casks. The proposed action would provide a standardized container system to handle, store, transport and dispose of spent nuclear fuel in order to minimize or eliminate the need for the spent nuclear fuel to be removed from canisters or casks during storage and transportation, and, to the extent practicable, be compatible with disposal. DOE requested comments on the scope of the Environmental Impact Statement.

The Notice of Intent established a public scoping period which began October 24, 1994, and ended January 6, 1995. However, the Department found it practicable to consider all comments received by March 31, 1995. The Department held public scoping meetings in Las Vegas, Nevada on November 21, 1994; Chicago, Illinois on November 30, 1994; and Washington, D.C. on December 7, 1994, to provide an opportunity for public participation by interested individuals, organizations, and other governmental agencies. During the public scoping period, about 400 commenters provided a total of 2,832 comments, either by participating in the meetings or by submitting comments via response forms, letters, postcards, toll-free telephone messages, facsimiles, electronic mail, or electronic bulletin board to the Department. In response to comments received during scoping from the Department of the Navy, the scope of the MPC Environmental Impact Statement has been expanded to include consideration of the use of MPCs, and alternatives to the MPC-based system, for naval spent nuclear fuel. The Department of the Navy will be a cooperating agency in preparing this EIS, in accordance with 40 CFR 1501.6 and 10 CFR 1021.342.

MPC Environmental Impact Statement Alternatives

The alternatives to be evaluated in the MPC Environmental Impact Statement address future dry storage, transportation, and disposal needs, and include the fabrication and deployment of a range of single- and dual-purpose cask and canister hardware systems, and a multi-purpose canister hardware system. The alternative hardware systems differ in whether they are based on single-unit, heavily-shielded ''casks'' that feature bolted lids, or on relatively thin-walled ''canisters'' that are sealed by welding and used with separate, specialized overpacks for purposes of storage, transportation, or disposal.

The five alternatives to the proposed action that will be evaluated in this EIS are: (1) A ''no-action'' alternative, which is the current technology comprising different systems of specialized single- and dual-purpose canisters and casks that have been certified by the Nuclear Regulatory Commission or are currently undergoing certification; (2) the current technology supplemented by high-capacity rail transportation casks; (3) a system of transportable storage casks; (4) a system of dual-purpose canisters; and (5) a system utilizing only the small (75-ton) MPCs. Alternatives (4) and (5) were added in response to comments received during the public scoping period.

Areas to be Addressed

The MPC Environmental Impact Statement will address potential environmental impacts of the proposed action and alternatives in three general areas: (1) manufacturing, (2) handling and storage activities at facilities, and (3) transportation. The analysis of the potential environmental impacts of these three areas of activity will emphasize those impacts which discriminate among the alternatives.

Manufacturing

Because the actual sites where manufacturing would take place have not been chosen, the analysis of potential manufacturing impacts will be based on the environmental settings of typical or representative manufacturing facilities (those facilities that currently produce hardware identical or similar to the proposed or alternative hardware systems), as well as a qualitative site-specific analysis at two known potential manufacturing locations.

Handling and Storage

The evaluation of at-reactor handling and storage activities will be based on representative site data derived from data collected at existing spent fuel storage locations. Site-specific National Environmental Policy Act documents for commercial reactor sites already have been issued by the U.S. Nuclear Regulatory Commission. Handling and storage activities for naval spent nuclear fuel at the Idaho National Engineering Laboratory will be addressed in the Naval Spent Nuclear Fuel Appendix to the MPC Environmental Impact Statement. The analysis in the MPC Environmental Impact Statement of potential impacts at a repository will consider the use of the MPC and alternative hardware systems only for surface activities, since ultimate disposition impacts can be meaningfully assessed only in connection with proposed repository acceptance criteria. Such criteria will be analyzed in a separate Environmental Impact Statement that the Department will prepare for the candidate repository at Yucca Mountain, Nevada.

Transportation

The impacts of transportation activities for each alternative will be assessed using existing transportation impact models for shipments. Transportation evaluations would consider shipments between each existing storage location and two hypothetical Monitored Retrievable Storage facility locations, and subsequently to the candidate repository facility at Yucca Mountain, or between each existing storage location directly to the candidate repository facility. Representative routes will be chosen between origination and destination sites for purposes of assessing the potential risks involved in such transportation, including use of a potential rail spur at Yucca Mountain.

Availability of Implementation Plan

Copies of the Implementation Plan are being provided to Federal agencies, Indian tribal organizations, State and local government agencies, public interest groups, manufacturers of equipment, transportation interests, industry and utility organizations, regulators, and members of the general public who indicated an interest in receiving a copy or who participated in the public scoping processes. The Implementation Plan will be provided upon request to additional parties who express interest by calling 1–800–672–3304. Copies of the Implementation Plan also have been placed in the Department of Energy reading rooms identified below. Please contact the individual reading rooms for information on their hours of operation and the availability of the Implementation Plan.

Department of Energy Freedom of Information Public Reading Rooms

Albuquerque Operations Office:
- National Atomic Museum, Building 20358, Wyoming Boulevard, P.O. Box 5400, Albuquerque, NM 87185–5400, Attn: Diane Leute (505) 845–4378
- Los Alamos Community Reading Room, 1450 Central, Suite 101, Los Alamos, NM 87544, Attn: Tim Ribe (505) 665–2127

Bartlesville Project Office/National Institute for Petroleum and Energy Research, BPO/NIPER Library, U.S. Department of Energy, 220 North Virginia Avenue, P.O. Box 2128, Bartlesville, OK 74003, Attn: Josh Stroman (918) 337–4371

Bonneville Power Administration, U.S. Department of Energy, 905 N.E. 11th St., P.O. Box 3621–ALP, Portland, OR 97208, Attn: Gene Tollefson (503) 230–6877

Chicago Operations Office, Document Department, University of Illinois at Chicago, 801 South Morgan Street, Chicago, IL 60607, Attn: John Shuler (312) 413–2594 or 996–2738

Dallas Support Office, U.S. Department of Energy, 1420 W. Mockingbird Lane, Suite 400, Dallas, TX 75247, Attn: Gailene Reinhold (214) 767–7185

Golden Field Office, DOE Public Reading Room, 14869 Denver West Parkway, Golden, CO 80401, Attn: Chris Powers (303) 275–4742

Headquarters Office, U.S. Department of Energy, Room 1E–190, Forrestal Bldg., 1000 Independence Ave., SW., Washington, DC 20585, Attn: Carolyn Lawson (202) 586–3142

Idaho Operations Office, Idaho Public Reading Room, 1776 Science Center Drive, Idaho Falls, ID 83402, Attn: Carl Robertson (208) 526–0271

Morgantown Energy Technology Center, METC Library, U.S. Department of Energy, 3610 Collins Ferry Road, P.O. Box 880, Morgantown, WV 26505, Attn: Matt Marsteller (304) 291–4183

Ohio Field Office, FOI Public Reading Room, 1 Mound Road, Miamisburg, OH 45342, Attn: Jane Greenwalt (513) 865–4468

Richland Operations Office, Washington State University, Tri-Cities Branch Campus, 100 Sprout Road, Richland, WA 99352, Attn: Terri Traub (509) 376–8583

Rocky Flats Field Office, Public Reading Room, Front Range Community College Library, 3645 West 112th Avenue, Westminster, CO 80030, Attn: Will-Ann Lamsens (303) 469–4435

Nevada Operations Office, U.S. Department of Energy, Public Reading Room, 2621 Losee Road, Building B–3, North Las Vegas, NV 89030, Attn: Cynthia Ashley (702) 295–1623 or -0848

Oak Ridge Operations Office, U.S. Department of Energy, Public Reading Room, 55 Jefferson Circle, Room 112, Oak Ridge, TN 37831, Attn: Amy L. Rothrock (acting) (615) 241–4780

Oakland Operations Office, U.S. Department of Energy, Public Reading Room, EIC, 8th Floor, 1301 Clay Street, Oakland, CA 94612–5208, Attn: Lauren L. Noble (510) 637–1762

Savannah River Operations Office, Gregg-Granite Library, University of South Carolina-Aiken, 171 University Parkway, Aiken, SC 29801, Attn: Paul Lewis (803) 641–3320

Pittsburgh Energy Technology Center, U.S. Department of Energy, Building 922/M210, Wallace Road, P.O. Box 10940, Pittsburgh, PA 15236, Attn: Ann C. Dunlap (412) 892–6167

Southeastern Power Administration, U.S. Department of Energy, Legal Library, Samuel Elbert Building, 2 South Public Square, Elberton, GA 30635–2496, Attn: Joel W. Seymour (706) 213–3800

Southwestern Power Administration, U.S. Department of Energy, Public Reading Room, 1 West 3rd St., P.O. Box 1619, Tulsa, OK 74101, Attn: Marti Ayers (918) 581–6804

Strategic Petroleum Reserve Project Management Office, U.S. Department of Energy, SPRPMO/SEB Reading Room, 900 Commerce Road, New Orleans, LA 70123, Attn: Ulysses Washington (504) 734–4243

Superconducting Super Collider Termination Project Office, U.S. Department of Energy, 2550 Beckleymeade Avenue, Dallas, TX 75237, Attn: Gina Dan (214) 708–2526

Draft Environmental Impact Statement

The Department expects to issue the Draft Environmental Impact Statement for public comment in December 1995; public hearings on the Draft Environmental Impact Statement will be scheduled and announced at that time.

Issued in Washington, D.C., this 27th day of August, 1995.

Lake H. Barrett,

Deputy Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 95–21535 Filed 8–29–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site Specific Advisory Board, Hanford Site

AGENCY: Department of Energy.
ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Hanford Site.

DATES: Thursday, September 7: 9:00 a.m.–5:00 p.m.

ADDRESSES: Tower Inn Best Western, 1515 George Washington Way, Richland, Washington.

FOR FURTHER INFORMATION CONTACT: Jon Yerxa, Public Participation Coordinator, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA, 99352.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

September Meeting Topics

The Hanford Advisory Board will receive information on and discuss issues related to: the Draft Request for Proposals for a Management and Integration Contractor for the Hanford Site, Emergency Response, TWRS Privatization Update, Waste Importation Issues and Related EIS's, and Solid Waste Alternatives. The Committee will also receive updates from various Subcommittees, including reports on: the St. Louis Plan Implementation Update, Budget Process & Reallocation, and Board Administrative Matters.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jon Yerxa's office at the address or telephone number listed above. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Jon Yerxa, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA 99352, or by calling him at (509)-376–9628.

Issued at Washington, DC on August 25, 1995.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–21538 Filed 8–29–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site Specific Advisory Board, Department of Energy/Los Alamos National Laboratory

AGENCY: Department of Energy.
ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Department of Energy/Los Alamos National Laboratory.

DATES: Tuesday, September 12, 1995: 6:00 pm–9:00 pm; 8:00 pm to 9:00 pm (public comment session).

ADDRESSES: Town Hall, 120 Civic Plaza Drive, Taos, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Roybal, EM SSAB, Department of Energy/Los Alamos National Laboratory, Northern New Mexico Community College, 1002 Onate Street, Espanola, NM 87352, (800)753–8970, or (505)753–8970.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Tuesday, September 12, 1995

6:00 pm Call to Order and Welcome
7:00 pm Organization
8:00 pm Input from the Public
9:00 pm Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ms. Lisa Roybal, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days before the date of the meeting, due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Herman Le-Doux, Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87185–5400.

Issued at Washington, DC on August 25, 1995.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–21539 Filed 8–29–95; 8:45 am]

BILLING CODE 6450–01–P

Advisory Committee on External Regulation of Department of Energy Nuclear Safety

AGENCY: Department of Energy.
ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the sixth meeting of the Advisory Committee on External Regulation of Department of Energy Nuclear Safety.

DATES AND TIMES: The Committee session will be held at the Sheraton Colony Square Hotel in Atlanta, Georgia. The session will begin on Monday, September 18, 1995, at 10:00 am and adjourn at 6:30 pm. The Committee will reconvene on Monday for a public comment session beginning at 8:30 pm. The Committee session will continue at the same location on Tuesday, September 19 beginning at 8:00 am and adjourning at 5:00 pm.

ADDRESSES: Sheraton Colony Square Hotel, Habersham Room (Lobby level), 188 14th Street N.E., Atlanta, Georgia 30361.

FOR FURTHER INFORMATION CONTACT: Thomas H. Isaacs, Executive Director,

Advisory Committee on External Regulation of Department of Energy Nuclear Safety, 1726 M Street, NW, Suite 401, Washington, DC 20036, (202) 254–3826.

SUPPLEMENTARY INFORMATION: The purpose of the Committee is to provide the Secretary of Energy, the White House Council on Environmental Quality, and the Office of Management and Budget with advice, information, and recommendations on how new and existing Department of Energy (DOE) nuclear facilities and operations, except those operations covered under Executive Order 12344 (Naval Propulsion Program), might best be regulated with regard to safety. The Department currently self-regulates many aspects of nuclear safety, pursuant to the Atomic Energy Act of 1954, as amended. The Committee consists of members drawn from Federal and State government and the private sector, and is co-chaired by John F. Ahearne, Lecturer in Public Policy, Duke University, and Director, The Sigma Xi Center, and Gerard F. Scannell, President of the National Safety Council. Members were chosen with environment, safety, and health backgrounds, balanced to represent different public, Federal, State, Tribal, regulatory, and industry interests and experience.

Purpose of the Meeting

The Committee will focus primarily on the discussion of regulatory options for inclusion in the Committee's final recommendations.

Tentative Agenda

In addition to conducting deliberations related to its charter, the Committee will focus on the development of its recommendations for inclusion in its final report. A final agenda will be available at the meeting. The agenda will provide an opportunity for public comments starting at 8:30 pm on September 18, 1995, at the Sheraton Colony Square Hotel, Habersham Room (lobby level).

Public Participation

The meeting is open to the public. Members of the public are welcome to make oral statements during the public comment period. Every effort will be made to hear all those wishing to speak. Those who wish to do so may pre-register by contacting Glenda Oakley at (301) 924–6169. Individuals may also register on September 18, 1995, at the meeting site. Written comments are welcome and should be mailed to Thomas H. Isaacs, Executive Director, Advisory Committee on External Regulation of Department of Energy Nuclear Safety, 1726 M Street, NW, Suite 401, Washington, DC 20036. The Committee Co-Chairs are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts and Minutes

A meeting transcript and minutes will be available for public review and copying four to six weeks after the meeting at the DOE Freedom of Information Public Reading Room, 1E–1990, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 am and 4:00 pm, Monday through Friday, except Federal holidays. The transcript will also be made available at the Department's Field Office Reading Room locations.

Issued at Washington, DC on August 25, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–21537 Filed 8–29–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Nonproliferation and National Security; Study on the National Ignition Facility and the Issue of Nonproliferation

AGENCY: Department of Energy.

ACTION: Notice of Availability of Draft Study, Request For Comment, and Public Meetings.

SUMMARY: The Secretary of Energy has committed the Department of Energy to resolve the question of whether the National Ignition Facility (NIF) will aid or hinder U.S. nonproliferation efforts. The Secretary directed the Department's Office of Arms Control and Nonproliferation, in the Office of Nonproliferation and National Security, which has no programmatic responsibility for the NIF, to draft a study to examine its nonproliferation implications. Earlier this year, the Department held three public meetings in Oakland and Livermore, California, and Washington, DC, to solicit public comments on the draft outline of the NIF nonproliferation study (59 FR 67284, 60 FR 7180). As a result of these meetings and the comments received, the study was broadened from a technical analysis to include the arms control and nonproliferation policy implications of NIF.

Today's notice is to announce that the draft study is now available for public review. The Office of Arms Control and Nonproliferation will hold public meetings to provide the public with an opportunity to ask questions of DOE officials about the study; provide comments on strong and weak points of the draft study; and make suggestions for ways the Department could manage vertical and horizontal proliferation concerns at NIF. Each meeting will consist of an overview by DOE representatives, interactive discussion groups and a summary session.

DATES: Meetings will be held at each of the following sites: September 21, 1995, in Washington, DC starting at 10 am and concluding at 3:30 pm and September 28, 1995, in Livermore, CA, with a daytime session at 9 am until 1 pm and a repeat session in the evening from 6 pm until 10 pm. In addition, written comments (8 copies) will be received by the Department until September 28, 1995.

ADDRESSES: The public meetings will be held at the following locations:

Washington, DC, September 21, 1995:
U.S. Department of Energy, Main Auditorium, 1000 Independence Avenue, SW., Washington, DC

Livermore, CA, September 28, 1995:
Research Drive Conference Center, 2140 Research Drive, Livermore, CA

Written comments (8 copies) should be addressed to: Lisa J. Evanson, NN–40, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

In the event any person wishing to submit a written comment cannot provide 8 copies, alternate arrangements can be made in advance by calling (202) 586–3012. It would be helpful if the following format were followed for written comments: (1) Note strong points of the study, (2) note weak points, and (3) provide your suggestions for ways to manage the vertical and horizontal proliferation concerns at NIF.

Copies of the study will be available for reading and copying at the following locations:

U.S. Department of Energy, Freedom of Information Reading Room, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020, 9:00 a.m.–4:00 p.m., Monday–Friday

Lawrence Livermore National Laboratory, Visitor's Center, East Gate and Greenville Road, Livermore, CA

SUPPLEMENTARY INFORMATION: After receiving comments from the public on the draft study, the Office of Arms Control and Nonproliferation will revise the study and provide it, along with a compilation of public comment, to the Secretary for her decision.

FOR FURTHER INFORMATION CONTACT: Copies of the draft study and further

information on the public meetings can be obtained from the Department by calling Andi Kasarsky at (202) 586–3012.

Issued in Washington, DC on August 24, 1995.

John J. Nettles, Jr.,

Acting Principal Deputy Director, Office of Nonproliferation and National Security.

[FR Doc. 95–21536 Filed 8–29–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. EF95–3031–000, et al.]

United States Department of Energy—Southeastern Power Administration (Jim Woodruff Project), et al.; Electric Rate and Corporate Regulation Filings

August 24, 1995

Take notice that the following filings have been made with the Commission:

1. United States Department of Energy—Southeastern Power Administration (Jim Woodruff Project)

[Docket No. EF95–3031–000]

Take notice that on August 10, 1995, the Deputy Secretary of Energy, on behalf of the Southeastern Power Administration, tendered for filing and final confirmation and approval proposed rate schedules for the Jim Woodruff Project to become effective for the period September 20, 1995 to September 19, 2000.

Comment date: September 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. New England Electric System, Nantucket Electric Company; New England Electric System, Nantucket Electric Company; New England Power Company

[Docket No. EL95–74–000; Docket No. EC95–20–000; Docket No. ER95–1604–000]

Take notice that on August 18, 1995, New England Electric System (NEES) and Nantucket Electric Company (Nantucket) submitted for filing a Petition for Declaratory Order Disclaiming Jurisdiction and Alternative Joint Application for Merger Authorization under Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, Section 203 of the Federal Power Act (FPA), 16 U.S.C. § 824b, and Part 33 of the Commission's Regulations, 18 CFR 33.1 *et seq.* The Petition seeks a declaratory order by the Commission disclaiming jurisdiction over NEES's proposed acquisition of Nantucket, a retail electric company. The Alternative Joint Application seeks an order granting authorization and approval of the merger of NEWCO, a Massachusetts corporation and a wholly-owned subsidiary of NEES that will be formed to effectuate NEES's acquisition of Nantucket, with and into Nantucket. The Joint Application is contingent on the Commission's denial of the Petition for Declaratory Order Disclaiming Jurisdiction over the proposed merger.

Also take notice that on the date stated above, New England Power Company (NEP) submitted for filing pursuant to Section 205 of the FPA, 16 U.S.C. § 824e, and 18 CFR 35.13, a service agreement (the ''Service Agreement'') under which NEP would provide wholesale requirements service to Nantucket under NEP's FERC Electric Tariff No. 1 (Tariff 1). The merger of NEES and Nantucket is conditioned on the Commission's acceptance of the Service Agreement.

The parties have served copies of the filing on regulatory agencies in Massachusetts, New Hampshire and Rhode Island.

Comment date: September 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Oklahoma Gas and Electric Company

[Docket No. ER94–1266–000]

Take notice that on August 11, 1995, Oklahoma Gas and Electric Company (OG&E) tendered for filing additional information as requested by FERC staff regarding an Interchange Agreement between the Grand River Dam Authority and the Oklahoma Gas and Electric Company.

Copies of this filing have been sent to GRDA.

Comment date: September 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. R.J. Dahnke & Associates

[Docket No. ER94–1352–004]

Take notice that on July 31, 1995 and August 3, 1995, R.J. Dahnke & Associates tendered for filing certain information as required by the Commission's August 10, 1994 letter order. Copies of the informational filing are on file with the Commission and are available for public inspection.

5. Louisville Gas and Electric Company

[Docket No. ER94–1380–007]

Take notice that on August 21, 1995, Louisville Gas and Electric Company tendered for filing revised rate schedules in compliance with the Commission's order dated July 26, 1995.

Comment date: September 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Peak Energy, Inc.

[Docket No. ER95–379–002]

Take notice that on August 14, 1995, Peak Energy, Inc. tendered for filing certain information as required by the Commission's order dated February 24, 1995. Copies of the informational filing are on file with the Commission and are available for public inspection.

7. Commonwealth Edison Company

[Docket No. ER95–1092–000]

Take notice that on August 16, 1995, Commonwealth Edison Company (ComEd) amended the filing made earlier in this proceeding to submit Service Agreements, establishing Electric Clearinghouse, Inc. (ECI), and National Electric Association Limited Partnership (NEA), as customers under the terms of ComEd's Transmission Service Tariff FTS–1 (FTS–1 Tariff). The Commission has previously designated the FTS–1 Tariff as FERC Electric Tariff, Original Volume No. 4.

ComEd requests an effective date of July 17, 1995, and accordingly seeks waiver of the Commission's notice requirements. Copies of this filing were served upon ECI, NEA and the Illinois Commerce Commission.

Comment date: September 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Interstate Power Company

[Docket No. ER95–1205–000]

Take notice that on August 10, 1995, Interstate Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: September 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Public Service Corporation; WPS Energy Services, Inc.

[Docket No. ER95–1528–000; Docket No. ER95–1546–000]

Take notice that on August 11, 1995, Wisconsin Public Service Corporation (WPSC) tendered for filing a comprehensive, open-access transmission tariff (the Tariff) and a request for authorization to sell capacity and energy at market-based rates. WPSC requested an October 11, 1995 effective date. In addition, WPS Energy Services, Inc. (ESI) tendered for filing a request for authorization to sell capacity and energy at market-based rates.

WPSC and ESI state that copies of this filing have been served on the Wisconsin Public Service Commission and the Michigan Public Service Commission.

Comment date: September 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Consolidated Edison Company of New York

[Docket No. ER95–1544–000]

Take notice that on August 16, 1995, Consolidated Edison Company of New York tendered for filing an amendment in the above-referenced docket.

Comment date: September 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Otter Tail Power Company

[Docket No. ER95–1555–000]

Take notice that on August 11, 1995, Otter Tail Power Company tendered for filing a signed agreement between itself and Manitoba Hydro Electric Board.

Comment date: September 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Florida Power Corporation

[Docket No. ER95–1560–000]

Take notice that on August 16, 1995, Florida Power Corporation (FPC) tendered for filing a service agreement for transmission service resale with Catex Vitol Electric L.L.C. (Catex), under Florida Power's existing T–1 Transmission Tariff. This allows transmission service to be provided to Catex at all existing and future interconnections of FPC.

FPC requests a waiver of the Commission's 60 day notice requirement to allow FPC and Catex's Agreement to become effective August 17, 1995. FPC submits that waiver is appropriate because this filing does not change the rates under the T–1 Transmission Tariff, which has already been accepted for filing.

Comment date: September 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Ohio Power Company

[Docket No. ER95–1571–000]

Take notice that on August 17, 1995, Ohio Power Company (OPCO), tendered for filing proposed changes in its FERC Rate Schedules for Service to Wheeling Power Company (WPCO). The proposed rate changes would increase annual revenues over rates currently being collected by OPCO from WPCO by $1,178,767, prior to the jurisdictionalization of other revenues, exclusive of a non-fuel surcharge described in the filing, based upon the twelve-month period ending December 31, 1996. OPCO has requested that the Commission waive its fuel and notice regulations so that the rates and charges which are revised by this filing become effective, subject only to a nominal suspension, as of September 1, 1995. A Settlement Agreement between OPCO and WPCO supporting the proposed changes has also been filed. Comments on the Settlement Agreement must be filed on or before September 6, 1995 and Reply Comments must be filed on or before September 18, 1995.

The proposed rate schedule changes are designed to reflect general increases in the cost of providing electric service.

Copies of the filing were served upon WPCO, the Public Service Commission of West Virginia, the Public Utilities Commission of Ohio, the Consumer Advocate Division of the Public Service Commission of West Virginia and the West Virginia Industrial Intervenors, an ad hoc association of WPCO's major industrial customers.

Comment date: September 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Niagara Mohawk Power Corporation

[Docket No. ER95–1591–000]

Take notice that Niagara Mohawk Power Corporation (Niagara) on August 21, 1995, tendered for filing an agreement between Niagara Mohawk and Sonat Power Marketing (Sonat) dated August 9, 1995 providing for certain transmission services to Sonat.

Copies of this filing were served upon Sonat and the New York State Public Service Commission.

Comment date: September 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–1592–000]

Take notice that on August 21, 1995, Consolidated Edison Company of New York, Inc. (''Con Edison'') tendered for filing an agreement with Aquila Power Corporation (''APC'') to provide for the sale of energy and capacity. For energy sold by Con Edison the ceiling rate is 100 percent of the incremental energy cost plus up to 10 percent of the SIC (where such 10 percent is limited to 1 mill per KWhr when the SIC in the hour reflects a purchased power resource). The ceiling rate for capacity sold by Con Edison is $7.70 per megawatt hour. All energy and capacity sold by APC will be at market-based rates.

Con Edison states that a copy of this filing has been served by mail upon APC.

Comment date: September 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. San Diego Gas & Electric Company

[Docket No. ER95–1593–000]

Take notice that on August 21, 1995, San Diego Gas & Electric Company (SDG&E) tendered for filing an Interchange Agreement (Agreement between (SDG&E) and Coastal Electric Services Company (Coastal).

SDG&E requests that the Commission allow the Agreement to become effective on October 23, 1995, or at the earliest possible date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Coastal.

Comment date: September 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Florida Power & Light Company

[Docket No. ER95–1594–000]

Take notice that on August 21, 1995, Florida Power & Light Company (FPL) tendered for filing a proposed Service Agreement with the City of Starke for transmission service under FPL's Transmission Tariff No. 1.

FPL requests that the proposed Service Agreement be permitted to become effective on August 1, 1995.

Comment date: September 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Appalachian Power Company

[Docket No. ER95–1595–000]

Take notice that Appalachian Power Company (APCO) on August 21, 1995, tendered for filing proposed changes to its Electric Service Agreement, Rate Schedule FERC No. 102. The proposed change will alter the maximum demand at each delivery point and amend the contract capacity to reflect a permanent load transfer between delivery points.

APCO proposes an effective date of October 25, 1995, and states that copies of the filing were served upon the customers and the Virginia State Corporation.

Comment date: September 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Pennsylvania Power & Light Company

[Docket No. FA92–8–001]

Take notice that on August 14, 1995, Pennsylvania Power & Light Company tendered for filing its compliance filing in this docket pursuant to the Commission's letter order dated June 30, 1995.

Comment date: September 7, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–21497 Filed 8–29–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP92–237–021]

Alabama-Tennessee Natural Gas Company; Notice of Proposed Change in FERC Gas Tariff

August 24, 1995.

Take notice that Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) on August 22, 1995, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

3rd Sub. Fifth Revised Sheet No. 4
2nd Sub. Seventh Revised Sheet No. 4
2nd Sub. Eighth Revised Sheet No. 4
3rd Sub. Eighth Revised Sheet No. 4
Tenth Revised Sheet No. 4

Alabama-Tennessee proposes that these tariff sheets be made effective September 1, 1995, October 1, 1995, and as otherwise designated thereon.

According to Alabama-Tennessee, if this filing is accepted and approved by the Commission, it will be the last IT true-up filing to be made by Alabama-Tennessee under the terms of the settlement filed with the Commission in this proceeding on September 21, 1993 (''Settlement'') and the related letter order issued by the Commission on December 30, 1993 approving the Settlement.

Alabama-Tennessee states that in its filing it has made the various corrections which it identified in its April 27, 1995 filing in this docket. In addition, Alabama-Tennessee states it has used the methodology as to the rates for the winter and summer periods which the Tennessee Valley Municipal Gas Association had argued was appropriate for the relevant periods. According to Alabama-Tennessee, it has included a new schedule showing the current balance in the deferred account. Alabama-Tennessee represents that it intends to flow through the net credit in this account, pursuant to the Settlement, within 90 days of August 31, 1995, which is the end of Year Two under the Settlement.

In connection with this filing, Alabama-Tennessee states that it will be revising the filing it made on August 1, 1995 in Docket No. RP95–410 under the reconciliation procedures of Alabama-Tennessee's take-or-pay settlement in Docket No. RP91–103. According to Alabama-Tennessee, it will be correcting for the accounting treatment of the discounted rate which it is charging and collecting for IT service that it is providing one of its customers.

Alabama-Tennessee requests that the Commission grant such waivers as may be required to accept and approve its filing as submitted.

Alabama-Tennessee states that copies of its filing were served upon the Company's jurisdictional customers and interested public bodies as well as all the parties shown on the Commission's official service list established in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.211 and 385.214). All such motions or protests should be filed on or before August 31, 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 to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–21471 Filed 8–29–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–377–001]

Colorado Interstate Gas Company; Notice of Compliance Filing

August 24, 1995.

Take notice that on August 21, 1995, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Second Revised Sheet No. 283
Original Sheet No. 283A

The new tariff sheets are filed to comply with Ordering Paragraph (C) of the Commission's August 4, 1995, Order in Docket No. RP95–377. As required by the Commission, CIG has removed all references to the conditional overrun proposal.

A copy of this filing was served upon all parties in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such petitions or protests should be filed on or before August 31, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–21472 Filed 8–29–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–124–002]

Gas Research Institute; Notice of Filing of Report of Refund

August 24, 1995.

Take notice that Algonquin Gas Transmission Company (Algonquin) on August 21, 1995 tendered for filing a Report of Refund of collections of GRI surcharges on discounted capacity release transactions pursuant to FERC Order issued May 3, 1995 in Docket No. RP95–124–001.

Algonquin states that the refund, which was for the period January 1, 1994 through May 31, 1995, was included as a credit on its customer invoices on July 7, 1995. Algonquin notes that a copy of this filing is being served upon each affected customer and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington,

DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 31, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–21473 Filed 8–29–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–30–004]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 24, 1995.

Take notice that on August 18, 1995, Koch Gateway Pipeline Company (Koch Gateway) tendered for the following tariff sheets in its FERC Gas Tariff Fifth Revised Volume No. 1:

Fifth Revised Volume No. 1

Fifth Revised Sheet No. 20
Fifth Revised Sheet No. 21
Fifth Revised Sheet No. 22
Fifth Revised Sheet No. 24

Koch Gateway states that the above referenced tariff sheets reflect Koch Gateway's compliance with the Commission's August 3, 1995, Order on Rehearing and Show Cause Filing. Koch Gateway states that these tariff sheets reflect modifications to include the costs associated with the buy-out of two firm transportation contracts with Sea Robin Pipeline Company (''Sea Robin'').

Koch Gateway also states that the revised tariff sheets are being served upon all of Koch Gateway's customers, State Commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, N.W., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Regulations. All such motions or protests should be filed on or before August 31, 1995. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–21474 Filed 8–29–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–25–000]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 24, 1995.

Take notice that on August 18, 1995, Mississippi River Transmission Corporation (MRT) tendered for filing Seventh Revised Sheet No. 10 to its FERC Gas Tariff Third Revised Volume No. 1.

MRT states that the purpose of this filing is to adjust the currently effective ACA charge in its rates to the new FERC approved surcharge of $.0022 per MMBtu effective October 1, 1995, in accordance with Section 23 of its FERC Gas Tariff.

Any person desiring to be heard or protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 31, 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 available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–21475 Filed 8–29–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–419–000]

Pacific Gas Transmission Company; Notice of Proposed Changes to FERC Tariff

August 24, 1995.

Take notice that on August 15, 1995, Pacific Gas Transmission Company (PGT) tendered for filing proposed revised tariff sheets to be a part of its FERC Gas Tariff, First Revised Volume No. 1–A and Second Revised Volume No. 1 and requested that they be made effective September 15, 1995.

PGT states that the tariff sheets which it is submitting update its Index of Shippers in First Revised Volume No. 1–A and Second Revised Volume No. 1 to reflect changes and corrections in its list of shippers under various rate schedules and the attendant service agreements. In addition, PGT states that it is making two technical corrections to its Statement of Effective Rates and Charges in First Revised Volume No. 1–A which do not affect the rates of services provided by PGT.

PGT further states it has served a copy of this filing upon all interested state regulatory agencies and PGT's jurisdictional customers.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 31, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–21476 Filed 8–29–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2187–002]

Public Service Company of Colorado; Notice of Availability of Final Environmental Assessment

August 24, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) Regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the existing Georgetown Hydroelectric Project, located on the South Clear Creek in Clear Creek County, Colorado, near the city of Georgetown.

The Federal Energy Regulatory Commission and the U.S. Forest Service have prepared an Environmental Assessment (EA) for the project which analyzes existing and potential future environmental effects of the project. Our conclusion is that approval of the

project, with appropriate environmental protective or enhancement measures, would not be a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, N.E., Washington, D.C. 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–21470 Filed 8–29–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT95–17–000]

Sabine Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

August 24, 1995.

Take notice that on August 21, 1995, Sabine Pipe Line Company (Sabine) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet proposed to be effective October 1, 1995:

Second Revised Sheet No. 289

The revised tariff sheet reflects a change in operating personnel shared by Sabine and its affiliated marketing company.

Sabine states that copies of this filing are being mailed to its customers, state commissions and other interested parties. In accordance with the provisions of 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Sabine's offices at 1111 Bagby Street in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 31, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–21477 Filed 8–29–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–115–000]

Sumas International Pipeline Inc.; Notice of Tariff Filing

August 24, 1995.

Take notice that on August 18, 1995, Sumas International Pipeline Inc. (SIPI), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following tariff sheet, with a proposed effective date of October 1, 1995:

Fifth Revised Sheet No. 4

SIPI states that the above tariff sheet reflects the new ACA unit surcharge rate of $.0024 per Mcf which is equivalent to $.0023 per MMBtu on SIPI's system.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 31, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–21478 Filed 8–29–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–82–000]

Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

August 24, 1995.

Take notice that on August 22, 1995, Viking Gas Transmission Company (Viking) filed Fourth Revised Sheet No. 6 of its FERC Gas Tariff, First Revised Volume No. 1, to be effective October 1, 1995.

Viking states that the purpose of this filing is to reduce Viking's Annual Charge Adjustment (''ACA'') surcharge from $0.0024 per dekatherm to $0.0023 per dekatherm, as permitted by § 154.38(d)(6) of the Commission's Regulations.

Viking states that copies of the filing have been mailed to all of its customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions should be filed on or before August 31, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–21479 Filed 8–29–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5286–4]

Public Water Supply Supervision Program Revision for the State of Alabama

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Alabama is revising its approved State Public Water Supply Supervision Primacy Program. Alabama has adopted drinking water regulations for inorganic chemicals, volatile organic chemicals and synthetic organic chemicals (Phase II/V) as well as lead & copper. EPA has determined that these State program revisions are no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve the State program revisions.

All interested parties may request a public hearing. A request for a public hearing must be submitted by September 29, 1995 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by September 29, 1995, a public

hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his/her own motion, this determination shall become final and effective September 29, 1995.

Any request for a public hearing shall include the following: (1) the name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Alabama Department of Environmental Management, Public Water Supply Section, 1751 Congressman W.L. Dickinson Drive, Montgomery, Alabama 36109

Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365

FOR FURTHER INFORMATION CONTACT: Philip H. Vorsatz, EPA, Region IV, Drinking Water Section at the Atlanta address given above or telephone (404) 347–2913.

(Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 141 and 142 of the National Primary Drinking Water Regulations)

Dated: June 27, 1995.

Patrick M. Tobin,

Acting Regional Administrator, EPA, Region 4.

[FR Doc. 95–21283 Filed 8–29–95; 8:45 am]

BILLING CODE 6560–50–P

[OPP–50810; FRL–4972–2]

Lepidopteran Pheromones; Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is expanding the minimum acreage from 10 acres to 250 acres for when an experimental use permit (EUP) is required under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for certain biological pesticides. This policy includes the majority of Lepidopteran pheromones, regardless of formulation or mode of application, when used at a maximum use rate of 150 grams active ingredient (ai)/acre/year. Tests conducted on these pheromones under the conditions specified in this notice would not require an EUP at acreages up to and including 250 acres. Tests conducted with other arthropod pheromone products on food crops entering commerce would still require an EUP and a temporary tolerance or exemption from the requirement of a temporary tolerance. Similarly, testing on acreages exceeding 250 acres for all pheromones (food and non-food uses) still requires an EUP.

EFFECTIVE DATE: This policy becomes effective August 30, 1995.

FOR FURTHER INFORMATION CONTACT By mail: Phil Hutton, Product Manager (PM–90), Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 5th Floor, Crystal Station 1, 2805 Crystal Drive, Arlington, VA, (703) 308–8260, e-mail: hutton.phil@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, in this policy, is providing additional regulatory relief for manufacturers, researchers and developers of certain Lepidopteran pheromones regardless of formulation or mode of application when used at rates less than or equal to 150 grams ai/acre/year. For the purposes of this policy, Lepidopteran pheromones are defined as naturally occurring compounds designated by the unbranched aliphatics (with a chain between 9 and 18 carbons) ending in an alcohol, aldehyde or acetate functional group and containing up to 3 double bonds in the aliphatic backbone. This definition encompasses the majority of Lepidopteran pheromones. While other types of chemical compounds have been demonstrated to be Lepidopteran pheromones, the Agency believes the type described here represents not only the majority of Lepidopteran pheromones but also those with the most complete toxicological data base.

Section 5 of FIFRA, 7 U.S.C. 136c, and 40 CFR part 172 provide for issuance by EPA of EUPs for the testing of new, unregistered pesticides or new uses of existing pesticides for product performance and registration purposes. Such permits are generally issued for large-scale testing of pesticides on more than 10 acres. Accompanying a food-use EUP is the requirement that any treated crops be destroyed or a temporary tolerance or exemption from the requirement of a temporary tolerance for residues in or on the crop be in place.

Due to the unique characteristics of pheromones, EPA believes that pheromone products used for food purposes need to be tested at acreages greater than 10 acres and as high as 250 acres to determine the products' value for pesticidal purposes. Many pheromone uses are effective as mating disruptants to the adult insects. Larger test acreages are needed to sufficiently evaluate the disruption of the natural flight range of the adult target insect. An additional factor necessitating larger acreages is the volatile nature of most pheromone compounds. Separate treatments in adjoining small plots is unfeasible, and test plot sizes ranging from 20 to 60 acres are usually required depending upon the nature of the treated site and the pest in question. EPA believes that 250 acres should be sufficient to determine the value for pesticidal purposes of most pheromones.

I. Background

Biochemical pesticides are naturally occurring substances that elicit pesticidal effects by a nontoxic mode of action to the target pest. A pheromone is defined by EPA as a compound produced by an arthropod (insect, arachnid, or crustacean) that modifies the behavior of other individuals of the same species (40 CFR 152.25(b)(1)). Lepidopteran pheromones (a subset of arthropod pheromones) are those produced by a member of the order Lepidoptera, which includes butterflies and moths. One physical-chemical feature common to all these compounds is their volatility which is the basis for the signalling and homing mechanism. The Agency has registered 17 arthropod pheromones active ingredients, 11 of which are Lepidopteran pheromones.

The Agency recognizes that pheromones are inherently different from conventional synthetic pesticides in their nontoxic pesticidal mode of action, low use rate, and target species specificity, and is employing various measures to facilitate their development and ultimate registration. In January 1994, EPA expanded the minimum acreage required for an EUP to 250 acres for arthropod pheromones in polymeric matrix dispensers with an annual application rate limitation of 150 grams/acre (59 FR 3681; January 26, 1994). The following July, EPA broadened the regulatory scope of the EUP minimum acreage limit to include broadcast applications and sprayable formulations of non-food uses of arthropod pheromones (59 FR 34182; July 7, 1994). EPA is now in the position to broaden

the scope even further by including food uses of broadcast or sprayable applications of Lepidopteran pheromones under certain conditions outlined in this notice. It is important to note that this policy is only applicable to Lepidopteran pheromone products where the pheromone(s) is the sole active ingredient(s). Lepidopteran pheromone products formulated to include non-pheromone pesticide active ingredients, and non-lepidopteran pheromone products still require an EUP, when the treated area exceeds 10 acres and the formulation does not utilize a retrievable matrix.

II. Risk Considerations

A. Ecological Effects

In regard to nontarget organism effects, the risks from broadcast applications to crop lands should not be greater than from forestry or other non-crop use if the same environmental hazard restrictions apply. Experimental use of broadcast applications are limited to terrestrial use only and experimental application does not include use in or around marshes, swamps, rivers, streams, ponds, lakes, estuaries, flood plains, or drainage ditches, nor should the product be allowed to wash or drain into water. Low rates of experimental application, high volatility, limited acreage, and the current extent of knowledge indicating generally low orders of toxicity are all justifications to overcome potential increased risks to nontarget organisms due to exposure to foliar residues. The Agency has previously determined that exposure to wildlife will be minimal when release of the pheromone is confined to experimental purposes only and applications are limited to a maximum of 150 grams ai/acre/year on a maximum of 250 acres.

B. Human Health

The need for further regulatory relief above that provided for non-food uses prompted the Agency to reconsider the human dietary exposure for broadcast applications. In its previous policy notice, EPA was not able to make a no unreasonable adverse effects finding for arthropod pheromone pesticides for use on food crops because of insufficient data on the levels of exposure from pheromones applied in a broadcast manner. For pheromone products, especially those directly applied to food, one problem has been a lack of subchronic toxicity studies and an estimate of the actual pheromone residues occurring with use. The Agency has contended that sprayable formulations or other modes of application of pheromones to raw agricultural commodities had the potential to increase the likelihood of human dietary exposure. The Agency, at this time, still does not have adequate data to support the inclusion of all uses of arthropod pheromones in its EUP policy. It does possess enough information, however, to include the straight-chained Lepidopteran pheromones, a significant subset.

Human health concerns arise for any experimentally treated crops that may enter the food supply. From the data submitted, the Agency was able to conclude that the potential for residues from Lepidopteran pheromones, as described in this notice, is not a dietary hazard. This conclusion is based on: (1) The low acute toxicity seen in the data review of the Lepidopteran pheromones registered to date; (2) the known metabolism of long-chain fatty acids that predicts these compounds would be metabolized either by beta-oxidation yielding a series of paired carbon losses or by complexing with glucuronide and excretion by the kidneys; and (3) low exposure subsequent to application from product aging, volatilization, and the results of the field residue studies. Elsewhere in this issue of the **Federal Register**, EPA is proposing an exemption from the requirement of a permanent tolerance for these straight-chained Lepidopteran pheromones under the Federal Food, Drug, and Cosmetic Act.

The Agency has found that given the generally low expected toxicity and high volatility of arthropod pheromones, an upper limit of 150 grams ai/acre/year is adequate for testing the Lepidopteran pheromone product performance while still protecting the public health, nontarget organisms and the environment from unreasonable risks. These application rates encompass the majority of pheromone uses seen by the Agency to date.

III. Conclusion

Today's notice sets forth that for food uses of the majority of Lepidopteran pheromone pesticides, regardless of formulation or mode of application, EPA is permitting the acreage expansion from 10 to 250 acres for experimental testing at a maximum use rate of 150 grams ai/acre/year before triggering the requirement of an EUP under FIFRA. For the purposes of this policy, Lepidopteran pheromones are defined as naturally occurring compounds which are unbranched aliphatics (with a chain between 9 and 18 carbons) ending in an alcohol, aldehyde or acetate functional group and containing up to 3 double bonds in the carbon chain. Synthetically produced compounds that are identical to a known Lepidopteran pheromone as described above, and those that differ only in that their molecular structures are stereochemical isomers (or ratios of such isomers) also are included in this notice. The Agency contends, that for experimental uses involving food crops and all other non-aquatic uses, this change in policy provides significant flexibility to determine product efficacy without resulting in significant risk to human health or the environment due to the active ingredient's low use rate, high volatility, and lack of dietary exposure. Upon meeting the above conditions, the Agency has determined that pheromones of the type described do not present an unreasonable adverse effect to human health or the environment due to unlikely exposure.

The above policy applies to only the experimental phase of pheromone product development and not to registration of the product. The intent of this regulatory relief policy is to permit adequate conditions for practical research and development, while protecting the food supply and nontarget species from higher pheromone levels than occur naturally. The current set of studies listed in 40 CFR 158.690 are still required for the registration and sale of the final product.

With the implementation of this policy, EPA hopes to encourage the development and use of environmentally acceptable biological pesticides as alternatives to more toxic conventional synthetic chemical pesticides. The aim is to ease the testing requirements of these products, to speed their market entry, and promote their integration into pest management strategies.

List of Subjects

Environmental protection, Experimental use permits.

Dated: August 18, 1995.

Janet L. Andersen,

Acting Director, Biopesticide and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 95–21038 Filed 8–29–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–00413; FRL–4973–2]

Revision of Metabolism Testing Guideline Under FIFRA and TSCA; Notice of Availability and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and request for comments.

SUMMARY: EPA is making available for public comment, a revised proposed guideline for General Metabolism studies of pesticides. This revised guideline, when final, will replace OPP Guideline 85–1 under 40 CFR 158.340 and OPPTS Guideline under 40 CFR 798.7100.

DATES: Comments must be received on or before October 31, 1995.

ADDRESSES: Interested persons are invited to submit written comments in triplicate to: By mail: Public Response and Program Resources Branch, Field Operations Division (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person: bring comments to : Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: guidelines@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number ''OPP–00413.'' No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under the ''SUPPLEMENTARY INFORMATION'' caption of this preamble.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. All statements will be made part of the record and will be taken into consideration by the Agency Scientists.

FOR FURTHER INFORMATION CONTACT: By mail: Yiannakis M. Ioannou, (7509C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: Rm. 820D, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–7894; e-mail: ioannou.yiannakis@epamail.epa.gov.

Copies of documents may be obtained by contacting: By mail: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or for courier pick-up: Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5805 or 305–5454. By internet: e-mail requests to: guidelines@epamail.epa.gov or, in the near future, via the EPA Public Access Gopher (gopher.epa.gov) under the heading ''Environmental Test Methods and Guidelines.''

SUPPLEMENTARY INFORMATION: The Pesticide Assessment Guidelines, OPPTS 870 harmonized series (formerly Subdivision F), describe protocols for performing toxicology and related tests to support registration of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Some of the tests are also used in tolerance reviews under the Federal Food, Drug, and Cosmetic Act (FFDCA). Subdivision F was proposed for public comment in the **Federal Register** of August 22, 1978 (43 FR 37336) and published by NTIS in October 1982 (EPA Doc. No. 540/9–82–025, October 1982; NTIS Doc. No. PB 83–153916). Subdivision F included guideline 85–1 for performing General Metabolism Studies. OPPTS also published a guideline for General Metabolism Studies (to satisfy TSCA requirements) under 40 CFR 798.7100. This revised OPPTS 870.7485 guideline is designed to replace both aforementioned guidelines.

The proposed revisions are the result of efforts by Agency scientists to improve the existing guideline to reflect current Agency experience and the state-of-the-art regarding metabolism of pesticides and other toxic compounds. In addition, a need for revision was indicated by the results of the Pesticide Reregistration Rejection Rate Analysis as well as by comments received in response to the notice (FRL–3775–9) published in the **Federal Register** of September 19, 1990 (55 FR 38578).

On May 24, 1995, a workshop was held to discuss the revision of the Metabolism Testing Guidelines. The workshop was attended by representatives from Government, Industry, Academia, Environmental Groups, and other interested parties and comments provided by these groups before, during, and after the workshop were incorporated, whenever appropriate, into OPPTS 870.7485.

All interested parties are encouraged to submit comments on the proposed revised guideline for general metabolism studies. Specific comments should reference the specific number and paragraph or subparagraph of the proposed guideline. Recommended technical or scientific changes/modifications should be supported by current scientific/technical knowledge and include supporting references. References may be to the published literature, studies submitted to the Agency in support of registration, and unpublished data. Citations must be sufficiently detailed so as to allow the Agency to obtain copies of the original documents and unpublished data supplied to allow their evaluation.

Comments on the proposed revised guideline will be considered by the Agency and such modifications of the guideline considered to be of merit will be incorporated into the final guideline. The draft modifications and the public comments will be presented to the FIFRA Scientific Advisory Panel at a public meeting for its comments before being published as a final guideline. Notice of this meeting will be published in the **Federal Register** and all interested parties will be offered the opportunity to present written and public comments to the FIFRA Scientific Advisory Panel at the public meeting.

A record has been established for this notice under docket number ''OPP–00413'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

guidelines@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the

use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

List of Subjects

Environmental protection, Test guidelines.

Dated: August 23, 1995.

Stephanie R. Irene,

Acting Director, Health Effects Division, Office of Pesticide Programs.

[FR Doc. 95–21413 Filed 8–29–95; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5288–5]

Proposed Settlement Agreement, Clean Air Act Petition for Judicial Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement in the following case: *Geneva Steel Company* v. *Carol Browner, Administrator United States Environmental Protection Agency*, No. 94–9554 (10th Cir. petition filed Sept. 6, 1994). This petition for judicial review was filed under section 307(b) of the Clean Air Act, 42 U.S.C. 7607(b), contesting various aspects of EPA's final approval of State implementation plan revisions submitted by the State of Utah addressing, among other planning requirements, the control of particulate matter emissions in Utah and Salt Lake Counties. See 59 FR 35036 (July 8, 1994).

For a period of thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement agreement from persons who are not parties or intervenors to the litigation specified above. EPA or the U.S. Department of Justice may withhold or withdraw consent to the proposed settlement agreement if the comments disclose facts or circumstances that indicate that such agreement is inappropriate, improper, inadequate, or inconsistent with the requirements of the Clean Air Act.

A copy of the proposed settlement agreement is available from: (1) Phyllis Cochran, Air and Radiation Division (Mailcode 2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–7606; or (2) Jonah Staller, Office of Regional Counsel (Mailcode 8RC), U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202, (303) 294–7190.

Written comments should be sent to: Vickie Patton, Air and Radiation Division (Mailcode 2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, and must be received by September 29, 1995.

Dated: August 24, 1995.

Jonathan Z. Cannon,

Assistant Administrator (General Counsel).

[FR Doc. 95–21526 Filed 8–29–95; 8:45 am]

BILLING CODE 6560–50–P

[OPP–180979; FRL 4974–5]

Bifenthrin; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Arizona Department of Agriculture (hereafter referred to as the ''Applicant'') for use of the pesticide, bifenthrin (Capture), to control sweetpotato whitefly (SWF) on up to 5,500 acres of leaf lettuce and 6,100 acres of cauliflower in Arizona. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before September 14, 1995.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–180979,'' should be submitted by mail to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–180979]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain (CBI) must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Margarita Collantes, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8347; Internet address: collantes.margarita@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for use of the bifenthrin, available as Capture 2EC from FMC Corporation, to control sweetpotato whitefly on up to 5,500 acres of leaf lettuce and 6,100 acres of cauliflower per season in Arizona. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, the lack of hard freezes during the past winter

has allowed a large number of whiteflies to survive. Although imidacloprid was recently registered as an alternative to control the SWF, a single soil application of imidacloprid will not adequately protect the crop throughout the full production cycle. Imidacloprid is systemic and can be taken up by the seedling as it emerges through the soil, and will have minimal impact on beneficial predators and parasites of the whitefly. Foliar application will be needed to provide additional control of whiteflies later in the season. It might be possible to utilize imidacloprid for these foliar applications, but its mode of action is such that development of resistance is a major concern. The mode of action of this product depends on its ability to interact with a specific neuroreceptor of the pest. Should pest populations develop in which this neuroreceptor is altered, resistance would result. Bayer is well aware of this fact and will not support continued use of their product later into the vegetable growing season. The Applicant believes the use of bifenthrin as a foliar spray in combination with imidacloprid at planting will provide excellent control of whiteflies. Without the use of bifenthrin, the Applicant claims that growers will suffer significant economic loss this growing season.

Under the proposed exemption, a maximum of four applications per crop season for lettuce, and a maximum of 5 applications per crop season for cauliflower would be made at [0.08 to 0.1 lb of active ingredient (a.i./A)] (5.2 to 6.4 fl. ozs. of product per acre) by ground or air equipment. Not to apply within 20 days of harvest. Do not apply by ground equipment within 25 feet or by air within 150 feet of lakes, reservoirs, rivers, permanent streams or natural ponds estuaries and commercial fish farms. A 200-yard buffer shall be observed around aquatic habitats containing endangered species (desert pupfish, woundfin and Gila topminnow).

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption if an emergency exemption has been requested or granted for that use in any 3 previous years, and a complete application for registration of that use has not been submitted to the Agency [40 CFR 166.24(a)(6). Exemptions for the use of bifenthrin on lettuce have been requested and granted for the past 3 years, and an application for registration of this use has not been submitted to the Agency.

A record has been established for this notice under docket number ''[OPP-180979]'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Arizona Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: August 18, 1995.

Susan Lewis,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–21412 Filed 8–29–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011511

Title: PISCES Service Agreement

Parties: Members of the Asia North America Eastbound Rate Agreement (''ANERA''):

A.P. Moller-Maersk Line

American President Lines, Ltd.

Hapag Lloyd AG

Kawasaki Kisen Kaisha Ltd.

Mitsui O.S.K. Lines, Ltd.

Nedlloyd Lijnen B.V.

Neptune Orient Lines Ltd.

Nippon Yusen Kaisha

Orient Overseas Container Line, Inc.

Sea-Land Service, Inc.

Parties to PISCES, Limited Liability Company (''PISCES''):

American President Lines, Ltd.

Combined Data Resource, Inc.

''K'' Line America, Inc.

OOCL (USA) Inc.

Synopsis: The proposed Agreement would permit PISCES, a limited liability company formed pursuant to the Pacific Information Systems Agreement, FMC Agreement No. 203–011399, to provide information systems to ANERA, its members, and their customers. The parties would be authorized to agree upon the purchase, lease, sale, maintenance and repair, etc. of information systems among themselves or others as appropriate to implement the Agreement. The parties have requested a shortened review period.

Dated: August 24, 1995.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–21462 Filed 8–29–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Provident Bancorp; 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 September 13, 1995.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Provident Bancorp, Cincinnati, Ohio; to acquire Mathematical Investment Management, Inc., Cleveland, Ohio, and thereby engage in investment advisory and securities brokerage activities, pursuant to §§ 225.25(b)(4) and 225.25(b)(15), of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 24, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–21445 Filed 8–29–95; 8:45 am]

BILLING CODE 6210–01–F

United Security Bancorporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has 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.

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 September 13, 1995.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. United Security Bancorporation, Spokane, Washington; to engage *de novo* through its subsidiary, USB Mortgage Company, Inc., Spokane, Washington, in mortgage lending services and real estate contract purchases and sales, pursuant to § 225.25(b)(1) of the Board's Regulation Y; escrow activities, pursuant to § 225.25(b)(3) of the Board's Regulation Y; and appraisal services, pursuant to § 225.25(b)(13) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 24, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–21446 Filed 8–29–95; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Change in Solicitation Procedures Under the Small Business Competitiveness Demonstration Program

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice.

SUMMARY: Title VII of the ''Business Opportunity Development Reform Act of 1988'' (Pub. L. 100–656) established the Small Business Competitiveness Demonstration Program and designated nine (9) agencies, including GSA, to conduct the program over a four (4) year period from January 1, 1989 to December 31, 1992. The Small Business Opportunity Enhancement Act of 1992 (Pub. L. 102–366) extended the demonstration program until September 1996 and made certain changes in the procedures for operation of the demonstration program. The law designated four (4) industry groups for testing whether the competitive capabilities of the specified industry groups will enable them to successfully compete on an unrestricted basis. The four (4) industry groups are: Construction (except dredging); architectural and engineering (A&E) services (including surveying and mapping); refuse systems and related services (limited to trash/garbage collection); and non-nuclear ship repair. Under the program, when a participating agency misses its small business participation goal, restricted competition is reinstituted only for those contracting activities that failed to attain the goal. The small business goal is 40 percent of the total contract dollars awarded for construction, trash/garbage collection services, and non-nuclear ship repair and 35 percent of the total contract dollars awarded for architect-

engineer services. This notice announces modifications to GSA's solicitation practices under the demonstration program based on a review of the agency's performance during the period from July 1, 1994 to June 30, 1995. Modifications to solicitation practices are outlined in the Supplementary Information section below and apply to solicitations issued on or after October 1, 1995.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Tom Wisnowski, Office of GSA Acquisition Policy, (202) 501–1224.

SUPPLEMENTARY INFORMATION: Procurements of construction or trash/garbage collection with an estimated value of $25,000 or less will be reserved for emerging small business concerns in accordance with the procedures outlined in the interim policy directive issued by the Office of Federal Procurement Policy (58 FR 13513, March 11, 1993).

Procurements of construction or trash/garbage collection with an estimated value that exceeds $25,000 by GSA contracting activities will be made in accordance with the following procedures:

Construction Services in Groups 15, 16, and 17

Procurements for all construction services (except solicitations issued by GSA contracting activities in Regions 1, 2, 3, 4, 5, 8, 10, and the National Capital Region) in SIC Group 15, shall be conducted on an unrestricted basis.

Procurements for construction services in SIC Group 15 issued by GSA contracting activities in Regions 1, 2, 3, 4, 5, 8, 10, and the National Capital Region shall be set aside for small business when there is a reasonable expectation of obtaining competition from two or more small businesses. If no expectation exists, the procurements will be conducted on an unrestricted basis.

Region 1 encompasses the states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.

Region 2 encompasses the states of New Jersey, New York, and the territories of Puerto Rico and the Virgin Islands.

Region 3 encompasses the states of Pennsylvania, Delaware, West Virginia, Maryland (except Montgomery and Prince Georges counties), and Virginia (except the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William).

Region 4 encompasses the states of Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Mississippi, and Tennessee.

Region 5 encompasses the states of Illinois, Indiana, Ohio, Michigan, Minnesota, and Wisconsin.

Region 8 encompasses the states of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

Region 10 encompasses the states of Alaska, Idaho, Oregon, and Washington.

The National Capital Region encompasses the District of Columbia, Montgomery and Prince Georges counties in Maryland, and the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William in Virginia.

Trash/Garbage Collection Services in PSC S205

Procurements for trash/garbage collection services in PSC S205 will be conducted on an unrestricted basis.

Architect-Engineer Services (all PSC Codes Under the Demonstration Program)

Procurements for all architect-engineer services (except procurements issued by contracting activities in GSA Regions 2, 3, 4, 5, 9, and the National Capital Region) shall be conducted on an unrestricted basis. Procurements for A-E services issued by contracting activities in Regions 2, 3, 4, 5, 9, and the National Capital Region shall be set aside for small business when there is a reasonable expectation of obtaining competition from two or more small businesses. If no expectation exists, the procurements may be conducted on an unrestricted basis.

Region 2 encompasses the states of New Jersey, New York, and the territories of Puerto Rico and the Virgin Islands.

Region 3 encompasses the states of Pennsylvania, Delaware, West Virginia, Maryland (except Montgomery and Prince Georges counties), and Virginia (except the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William).

Region 4 encompasses the states of Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Mississippi, and Tennessee.

Region 5 encompasses the states of Illinois, Indiana, Ohio, Michigan, Minnesota, and Wisconsin.

Region 9 encompasses the states of Arizona, California, Hawaii, and Nevada.

The National Capital Region encompasses the District of Columbia, Montgomery and Prince Georges counties in Maryland, and the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William in Virginia.

Non-Nuclear Ship Repair

GSA does not procure non-nuclear ship repairs.

Dated: August 24, 1995.

Ida M. Ustad,

Associate Administrator for Acquisition Policy.

[FR Doc. 95–21511 Filed 8–29–95; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95N–0270]

Drug Export; Anzemet (Dolasetron Mesilate) Bulk Drug Substance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Marian Merrell Dow Inc., has filed an application requesting conditional approval for the export of Anzemet (dolasetron Mesilate) Bulk Drug Substance to Italy for the preparation and packaging of the following injectable dose strengths 12.5 milligrams (mg), 25 mg, 50 mg, 100 mg, and 200 mg for transshipment to the United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–310), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–3150.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30

days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Marian Merrell Dow Inc., Marian Park Dr., P.O. Box 9627, Kansas City, MO 64134–0627, has filed an application requesting conditional approval for the export of Anzemet (dolasetron Mesilate) Bulk Drug Substance to Italy for the preparation and packaging of the following injectable dose strengths 12.5 mg, 25 mg, 50 mg, 100 mg, and 200 mg for transshipment to the United Kingdom. Anzemet (dolasetron Mesilate) injection is indicated for nausea and vomiting in patients receiving initial and repeat courses of cancer chemotherapy (including high dose cisplatin) or radiotherapy and for post operative nausea and vomiting. The application was received and filed in the Center for Drug Evaluation and Research on August 8, 1995, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by September 11, 1995, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: August 11, 1995.

Betty L. Jones,

Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 95–21453 Filed 8–29–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95S–0193]

Pharmacology/Toxicology Electronic Submissions Pilot Project

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the Pharmacology/Toxicology (P/T) Electronic Submissions Pilot Project developed by the Center for Drug Evaluation and Research (CDER). This project is intended to increase the efficiency of both the investigational new drug application (IND) and the new drug application (NDA) review processes by providing for the electronic submission of preclinical P/T study reports. CDER is requesting that interested sponsors submit, on a voluntary basis, electronic copies of P/T study reports containing complete text and graphic material for review in word processor format, in addition to paper submissions.

FOR FURTHER INFORMATION CONTACT:

Regarding general information about the pilot project: Joseph F. Contrera, Center for Drug Evaluation and Research (HFD–400), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4750.

Regarding technical information about participation in the pilot program: Patricia A. Sylvia, Center for Drug Evaluation and Research (HFD–72), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3695.

SUPPLEMENTARY INFORMATION: CDER is exploring ways in which electronic submissions can be used to increase the efficiency of the drug review process. A key part of this process is the review of preclinical animal studies, most of which are conducted during the IND phase of the application. CDER has established a pilot project requesting that sponsors voluntarily submit electronic copies of P/T study reports, in addition to paper submissions. These reports would contain complete text and graphic material for review in word processor format. Electronic submissions of P/T study reports would allow for efficient storage and the capacity to retrieve, copy, and print pertinent sections of submissions for review.

This pilot project is expected to be most useful during the IND review process because the large proportion of preclinical P/T studies is submitted during this period. The agency believes that increasing the efficiency of the IND review process will have a positive effect on the NDA review process. If this pilot project is successful, CDER may consider acceptance of only electronic submissions. In the **Federal Register** of August 31, 1994 (59 FR 45160), FDA published a proposed rule entitled ''Electronic Signatures; Electronic Records.'' This pilot project is consistent with the goals of the proposed rule.

A description of the pilot project, as well as the general format and media specifications for electronic submissions, follows:

The Center for Drug Evaluation and Research (CDER) Pharmacology/Toxicology (P/T) Electronic Submissions

I. Background

CDER is exploring ways in which electronic submissions can be used to increase the efficiency of the drug review process. A key part of this process is the review of preclinical animal studies, most of which are conducted during the IND phase of the application. The Information Technology (IT) Subcommittee of the CDER Pharmacology/Toxicology Coordinating Committee (the P/T IT Subcommittee) is responsible for furthering the concept of electronic submissions for P/T reviews. In November 1994, after discussions between FDA and the Pharmaceutical Research and Manufacturers of America, three firms agreed to submit electronic preclinical P/T reports to CDER. In addition, CDER optically scanned P/T reports that were submitted in paper form, prepared reviews of these submissions electronically, and evaluated the utility of receiving the P/T submissions electronically. As a result of this experience, space has been allocated on the CDER Local Area Network (LAN) for P/T submissions and reviews, and the P/T IT Subcommittee agreed to solicit additional preclinical P/T electronic submissions from sponsors.

Each CDER reviewer is responsible for many IND's and NDA's that are in various stages of development and assigned different priorities. As a result, study reports may be stored in reviewers' offices for considerable periods of time until they can be reviewed. In addition, reviews often contain the results of multiple studies from amendments to an IND submitted at different times. This requires the storage, retrieval, collation, and merging of information from several studies into a single review. Electronic submissions of P/T reports would allow for efficient storage and the capacity to retrieve, copy, and print pertinent sections of submissions for review.

II. Objectives of Electronic Submission Pilot Project

A. Facilitate the Rapid and Convenient Retrieval of Information Contained in Submissions and Minimize Storage Space

A major time-consuming task for reviewers is searching through the large volume of paper submissions to find relevant documents when they are needed. Electronic documents and appropriate document

retrieval software make possible indexing of documents by content and the rapid retrieval of documents containing the desired information. The reviewer can electronically survey the document and copy or print those sections of the document that contain the required information. Electronic submissions will reduce the short-term and long-term storage space requirements and facilitate long-term retrieval of information.

B. Facilitate the Writing of Reviews

Currently, tabular or graphic material derived from a sponsor's paper submissions are either optically scanned and merged into a review or photocopied and physically pasted into a printed paper copy of a review. In the latter case, the table will not appear in electronic archival copies of the reviews. Electronic submissions will facilitate the ability of reviewers to copy portions of text, ''cut and paste'' tables or graphs, and incorporate them into a review. They will also allow the transfer of digital photographic images of histopathology or other images into a review in the near future.

C. Obtain Experience with Reviewing Electronic P/T Submissions and Make Recommendations for Expansion of the Pilot Program to Routine Use, Including Possible Elimination of Paper Submissions

The P/T IT Subcommittee intends to gain experience with the review of electronic P/T submissions, evaluate that experience, and develop recommendations on how electronic submissions can be used most efficiently in the P/T program. If electronic submissions can be successfully incorporated, CDER may consider acceptance of only electronic submissions. (See 59 FR 45160, August 31, 1994.) During the initial phase of the pilot program, CDER has a goal of receiving at least 10 toxicology study reports electronically. CDER now has sufficient LAN capacity and staff experience to review these submissions. CDER plans to complete the initial phase of the pilot project and issue a final report with recommendations by the end of 1995.

III. General Specifications for the Electronic Submission of Pharmacology and Toxicology Reports

A. Eligible Submissions

All preclinical P/T study reports are eligible for electronic submission. A paper copy must also be submitted.

B. Desirable Electronic Capabilities

—Complete text, tables, and graphics.
—Word search capability within a document and, if possible, between documents.
—Copy, print, cut, and paste capability.
—Index and abstract or document summary containing major subject and topic key words to facilitate document search and retrieval.

C. Hardware Specifications

—Optical disks (CDROM).
—Read only DOS diskettes.
—DOS 6.0 compatible hard disks.
—Tape, 4/8 millimeter.
—Hardware should be discussed with the Division of Information Systems Design (DISD) before submission.

D. Software Specifications

—WordPerfect 5.1 (DOS) or 6.0a (for Windows) or Microsoft Word 6.0.
—ASCII text with associated graphic format files (e.g., TIFF or equivalent for tables and graphics).
—Text/tabular format for tables is preferred.

E. Reviewer Access

Electronic submissions will be loaded into the CDER LAN by DISD. Electronic submissions will be accessible on personal computer workstations by authorized reviewers via the CDER LAN.

Dated: August 23, 1995.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 95–21452 Filed 8–29–95; 8:45 am]
BILLING CODE 4160–01–F

National Institutes of Health (NIH)

National Institute on Aging; Notice of Meeting of the National Advisory Council on Aging

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Council on Aging, National Institute on Aging, Wednesday, September 20, 1995, to be held at the National Institutes of Health, Building 1, Wilson Hall, Bethesda, Maryland. This meeting will be open to the public from 8:00 a.m. to 3:00 p.m. for a status report by the Director, NIA; a report on the Biology of Aging Program; a report on the Working Group on Program; and for a discussion of the NIA budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting of the Council will be closed to the public from 3:00 p.m. to adjournment for the review, discussion and evaluation of grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June McCann, Committee Management Officer for the National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, Maryland 20892 (301/496–9322), will provide a summary of the meeting and a roster of committee members upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. McCann at (301) 496–9322, in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: August 23, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–21485 Filed 8–29–95; 8:45 am]
BILLING CODE 4140–01–M

National Institute of Nursing Research; Notice of Meetings of the National Advisory Council for Nursing Research and its Subcommittees

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Council for Nursing Research, National Institute of Nursing Research, National Institutes of Health and its Subcommittee on September 7–8, 1995.

The meetings will be open to the public as indicated below. Attendance will be limited to space available.

The meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of meetings, rosters of committee members, and other information may be obtained from the Executive Secretary listed below. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Name of Committee: National Advisory Council for Nursing Research.
Date of Meeting: September 7–8 1995.
Place: National Institutes of Health, Building 31, Conference Room 6, Bethesda, MD.
Open: September 7, 1:00 p.m. to 5:30 p.m.
Agenda: NINR Director's Report, Discussion: NIH Office of Behavioral & Social Sciences Research, Report of the Planning Subcommittee, Research Centers Program.

Open: September 8, 8:30 a.m. to 11:00 a.m.
Agenda: Biennial Reort of the NACNR, Scientific Report: Alzheimers Disease.
Closed: September 8, 11:00 a.m. to adjournment.
Agenda: Review, Discussion and Evaluation of Grant Applications.
Executive Secretary: Dr. Ernest Marquez, NINR, NIH, Building 45, Room 3AN–12, Bethesda, MD 20892.

Name of Committee: Planning Subcommittee.
Date of Meeting: September 7, 1995.
Place: National Institutes of Health, Building 31, Conference Room 5B03, Bethesda, MD.
Open: 8:00 a.m. to 12:00 p.m.
Agenda: Discussion of long-term and strategic planning and policy issues.
Executive Secretary: Dr. Ernest Marquez, NINR, NIH, Building 45, Room 3AN–12, Bethesda, MD 20892.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health)

Dated: August 22, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–21483 Filed 8–29–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Behavioral and Neurosciences.
Date: September 7, 1995.
Time: 12:00 p.m.
Place: NIH, Rockledge II, Room 5194, Telephone Conference.
Contact Person: Dr. Keith Murray, Scientific Review Administrator, 6701 Rockledge Drive, Room 5194, Bethesda MD 20892, (301) 435–1256.

Name of SEP: Behavioral and Neurosciences.
Date: September 25, 1995.
Time: 3:00 p.m.
Place: NIH, Rockledge II, Room 5170, Telephone Conference.
Contact Person: Dr. Luigi Giacometti, Scientific Review Administrator, 6701 Rockledge Drive, Room 5170, Bethesda MD 20892, (301) 435–1246.

Name of SEP: Multidisciplinary Sciences.
Date: October 10, 1995.
Time: 8:00 a.m.
Place: Ramada Inn, Bethesda, MD.
Contact Person: Dr. Donald Schneider, Scientific Review Administrator, 6701 Rockledge Drive, Room 5104, Bethesda MD 20892, (301) 435–1165.

Name of SEP: Multidisciplinary Sciences.
Date: October 30–31, 1995.
Time: 8:30 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Houston Baker, Scientific Review Administrator, 6701 Rockledge Drive, Room 5208, Bethesda MD 20892, (301) 435–1175.

Name of SEP: Multidisciplinary Sciences.
Date: November 6–7, 1995.
Time: 8:30 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Houston Baker, Scientific Review Administrator, 6701 Rockledge Drive, Room 5208, Bethesda MD 20892, (301) 435–1175.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meetings due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 24, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–21484 Filed 8–29–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–020–05–1060–04: G5–201]

Oregon: Wild Horse Gathering Schedule Meeting Notice

AGENCY: Bureau of Land Management (BLM), DOI.

ACTION: Burns District Office: Statewide wild horse gathering schedule public meeting.

SUMMARY: In accordance with Public Law 92–195, this notice sets forth the public meeting date to discuss the use of helicopters in gathering wild horses and the proposed gathering schedule in Oregon for FY96.

DATES: September 14, 1995—2:00 p.m. to 3:30 p.m.

ADDRESSES: The meeting will take place at the BLM Burns District Office in Hines, Oregon.

FOR FURTHER INFORMATION CONTACT: Michael T. Green, District Manager, Burns District, Bureau of Land Management, HC 74–12533 Hwy 20 West, Hines, Oregon 97738, Telephone (503) 573–4400.

SUPPLEMENTARY INFORMATION: The use of helicopters to gather wild horses throughout southeastern Oregon in FY96 will be discussed along with other aspects of the program and adoption process. Information concerning the gathering of all Oregon wild horse herds will be presented at the meeting. The total number of horses expected to be gathered will be between 300 and 500 depending on the availability of funds and the capability of the Burns District to process and adopt out the horses gathered.

This meeting is open to the public. Persons interested in making an oral statement at this meeting are asked to notify the District Manager, Burns District Office, HC 74–12533 Hwy 20 West, Hines, Oregon 97738 by September 7, 1995. Written Statements must be received by this date.

Summary minutes of the meeting will be available for public inspection and duplication within 30 days following the meeting.

Dated: August 21, 1995.

Michael T. Green,

District Manager.

[FR Doc. 95–21549 Filed 8–29–95; 8:45 am]

BILLING CODE 1060–04–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0030), Washington, DC 20503, telephone 202–395–7340.

Title: State Process for Designating Areas Unsuitable for Surface Coal Mining Operations, 30 CFR Part 764.

OMB approval number: 1029–0030.

Abstract: This part establishes the minimum requirements for designating areas unsuitable for all or certain types of surface coal mining operations. The information will aid the regulatory authority in the decision process to approve or disapprove a request to designate an area as unsuitable for surface coal mining or to terminate such a designation. The information will also be used to maintain a data base and inventory system.

Bureau form number: None.

Frequency: On occasion.

Description of respondents: Persons petitioning to have land designated as unsuitable for surface coal mining operations or to have such a designation terminated, and State regulatory authorities who process petitions, and compile and maintain a data base and inventory system.

Estimated completion time: 1,781 hours.

Annual responses: 6.

Annual burden hours: 9,105.

Bureau clearance officer: John A. Trelease 202–208–2617.

Dated: July 10, 1995.

Andrew F. DeVito,

Chief, Rules and Legislation Staff.

[FR Doc. 95–21481 Filed 8–29–95; 8:45 am]

BILLING CODE 4310–05–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0024), Washington, DC 20503, telephone 202–395–7340.

Title: Procedures and Criteria for Approval or Disapproval of State Program Submissions 30 CFR 732.

OMB approval number: 1029–0024.

Abstract: This part establishes the procedures and criteria for approval and disapproval of State program submissions. Section 732.16 requires the State to establish a system of reporting to the Office of Surface Mining Reclamation and Enforcement (OSM) information collected by the State, and section 732.17 requires notification to be made of any significant changes to the State program.

Bureau form number: None.

Frequency: Quarterly and on occasion.

Description of Respondents: State Regulatory Authorities.

Estimated completion time: 9 hours.

Annual Responses: 120.

Annual Burden Hours: 1,080.

Bureau Clearance Officer: John A. Trelease, 202–208–2617.

Dated: July 10, 1995.

Andrew F. DeVito,

Chief, Rules and Legislation Staff.

[FR Doc. 95–21482 Filed 8–29–95; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–377]

Certain Microprocessors Having Alignment Checking and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 24, 1995, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Intel Corporation, 2200 Mission College Boulevard, Santa Clara, California 95052–8119. A letter supplementing the complaint was filed on August 11, 1995. The complaint, as supplemented, alleges a violation of section 337 based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain microprocessors having alignment checking and products containing same by reason of infringement of claims 8 and 9 of U.S. Letters Patent 5,201,043. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Thomas L. Jarvis, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2568.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10.

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on August 22, 1995, *ordered* that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain microprocessors having alignment checking or products containing same by reason of alleged infringement of claims 8 or 9 of U.S. Letters Patent 5,201,043, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Intel Corporation, 2200 Mission College Boulevard, Santa Clara, California 95052–8119.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Eurone (HK) Company Limited, Rm 1416 Fotan Industrial Centre, 26–28 Au Pui Wan St., Fotan, Sha Tin, New Territory, Hong Kong

Eurone L A, Incorporated, 2654 Durfee Avenue, El Monte, California 91732.

(c) Thomas L. Jarvis, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Room 401J, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to §§ 201.16(d) and 210.13(a) of the Commission's Rules, 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: August 24, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–21528 Filed 8–29–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32736]

Norfolk and Western Railway Company—Purchase and Operation Exemption—Consolidated Rail Corporation Between Fort Wayne and Warsaw, IN

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts Norfolk and Western Railway Company from the prior approval requirements of 49 U.S.C. 11343–45 to purchase and operate three line segments totaling approximately 50.15 miles of track owned by Consolidated Rail Corporation between Fort Wayne and Warsaw in Allen, Whitley, and Kosciusko Counties, IN. The line segments consist of: (1) Conrail's main line track between milepost 319.2 at Fort Wayne and milepost 363.0 at Warsaw; (2) the GR&I industrial track between milepost 93.3 and milepost 97.8 in Fort Wayne; and (3) the Fourth Street industrial track between milepost −0.9 and milepost 0.95 in Fort Wayne.

DATES: This exemption is effective on September 14, 1995. Petitions for stay must be filed by September 6, 1995 and petitions to reopen must be filed by September 19, 1995.

ADDRESSES: Send pleadings referring to Finance Docket No. 32736 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue NW., Washington, DC 20423; and (2) Robert S. Natalini, Consolidated Rail Corporation, Two Commerce Square-16A, 2001 Market Street, Philadelphia, PA 19101–1416, and Robert J. Cooney, Norfolk Southern Corporation, Three Commercial Place, Norfolk VA 23510–2191.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue NW., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: August 16, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–21509 Filed 8–29–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Revision of a Currently Approved Collection

(1) Victims of Crime Act, Crime Victims Assistance Grant Program, Subgrant Award Report.

(2) Form 7390–2A. Office of Justice Programs, United States Department of Justice.

(3) Primary: State, Local or Tribal Government. Other: None. The information requested is necessary to ensure compliance with statutory criteria which allows the Director of the Office of Victims of Crime to collect performance data from recipients of VOCA victim assistance grant funds. The affected public includes up to 57 states and territories administering the crime victims assistance provisions of the Victims of Crime Act.

(4) 57 annual respondents will provide 2,520 annual responses.

(5) 360 annual burden hours.

(6) Not applicable under section 3504(h) of Public Law 96–511. Public comment on this item is encouraged.

Dated: August 24, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–21489 Filed 8–29–95; 8:45 am]

BILLING CODE 4410–18–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

New Collection

(1) COPS Community Policing to Combat Domestic Violence Initiative Application (''COPS/DV Initiative'' Application).

(2) Form COPS 014/01. Community Oriented Policing Services, United States Department of Justice.

(3) Primary: State, Local or Tribal Government. Other: None. The COPS/DV Initiative Application will determine eligibility of law enforcement agencies to receive federal funding for one-year grants to support projects dedicated to using innovated community policing strategies to combat domestic violence. Applicants will partner with community services organizations or victims' advocates entities to implement.

(4) 800 annual respondents 8.0 hours per response.

(5) 6400 annual burden hours.

(6) Not applicable under section 3504 (h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: August 24, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–21488 Filed 8–29–95; 8:45 am]

BILLING CODE 4410–21–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated July 5, 1995, and published in the **Federal Register** on July 13, 1995, (60 FR 36164), Applied Science Labs, Division of Alltech Associates, Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, 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
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
4-Methylaminorex (cis isomer) (1590)	I
Lysergic acid diethylamide (7315)	I
Mescaline (7381)	I
3,4-Methylenedioxyamphetamine (7400)	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402)	I
3,4-Methylenedioxy-N-ethylamphetamine (7404)	I
3,4-Methylenedioxymethamphetamine (7405)	I
N-Ethyl-1-phenylcyclohexylamine (7455)	I
1-(1-Phenylcyclohexyl)pyrrolidine (7458)	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470)	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbonitrile (8603)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Benzoylecgonine (9180)	II
Morphine (9300)	II
Oxymorphone (9652)	II

No comments or objection 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, Section 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: August 21, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–21456 Filed 8–29–95; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Notice of Registration

By Notice dated July 5, 1995, and published in the **Federal Register** on July 13, 1995, (60 FR 36164), Applied Science Labs, Division of Alltech Associates, Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of basic classes of controlled substances listed below:

Drug	Schedule
Heroin (9200)	I
Morphine (9300)	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, Section 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: August 21, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–21457 Filed 8–29–95; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 12, 1995, Cambridge Isotope Lab, 50 Frontage Road, Andover, Massachusetts 01810, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Codeine (9050)	II
Methadone (9250)	II
Morphine (9300)	II

The firm plans to manufacture the controlled substances for isotope labeled standards for drug analysis.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 30, 1995.

Dated: August 21, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–21458 Filed 8–29–95; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 17, 1995, Celgene Corporation, 7 Powder Horn Drive, Warren, New Jersey 07059, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2,5-Dimethoxyamphetamine (7396).	I
Amphetamine (1100)	II

The firm plans to manufacturer small quantities of 2,5-Dimethoxyamphetamine using biocatalysis to develop, manufacture and sell high value added compounds to pharmaceutical and agrochemical industries and Amphetamine for distribution of the bulk active substance to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacturer such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 30, 1995.

Dated: August 21, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–2145 Filed 8–29–95; 8:45 am]

BILLING CODE 4410–09–M

Federal Bureau of Investigation

DNA Advisory Board Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given that the DNA Advisory Board (DAB) will meet on September 20, 1995, from 9 a.m. until 5 p.m. at The Rockefeller University, Abby Aldrich Rockefeller Hall, Cohn Library, 1230 York Avenue, New York, NY 10021. All attendees will be admitted only after displaying personal identification which bears a photograph of the attendee.

The DAB's scope of authority is: To develop, and if appropriate, periodically revise, recommended standards for quality assurance to the Director of the FBI, including standards for testing the proficiency of forensic laboratories, and forensic analysts, in conducting analysis of DNA; To recommend standards to the Director of the FBI which specify criteria for quality assurance and proficiency tests to be applied to the various types of DNA analysis used by forensic laboratories, including statistical and population genetics issues affecting the evaluation of the frequency of occurrence of DNA profiles calculated from pertinent population database(s); To recommend standards for acceptance of DNA profiles in the FBI's Combined DNA Index System (CODIS) which take account of relevant privacy, law enforcement and technical issues; and, To make recommendations for a system for grading proficiency testing performance to determine whether a laboratory is performing acceptably.

The topics to be discussed at this meeting include: a review of minutes from the first two meetings; revised scope of authority for the DAB; a discussion of revisions to draft DAB by-laws; a review of the National Institute of Justice's (NIJ) DNA proficiency testing solicitation; an update on current forensic DNA technology; an overview of the FBI's Combined DNA Index System (CODIS); and a review of draft DNA testing standards based on current

guidelines issued by the technical working group on DNA analysis methods.

The meeting is open to the public on a first-come, first seated basis. Anyone wishing to address the DAB must notify the Designated Federal Employee (DFE) in writing at least twenty-four hours before the DAB meets. The notification must include the requestor's name, organizational affiliation, a short statement describing the topic to be addressed, and the amount of time requested. Oral statements to the DAB will be limited to five minutes and limited to subject matter directly related to the DAB's agenda, unless otherwise permitted by the Chairman.

Any member of the public may file a written statement for the record concerning the DAB and its work before or after the meeting. Written statements for the record will be furnished to each DAB member for their consideration and will be included in the official minutes of a DAB meeting. Written statements must be type-written on 8½″ × 11″ xerographic weight paper, one side only, and bound only by a paper clip (not stapled). All pages must be numbered. Statements should include the Name, Organizational Affiliation, Address, and Telephone number of the author(s). Written statements for the record will be included in minutes of the meeting immediately following the receipt of the written statement, unless the statement is received within three weeks of the meeting. Under this circumstance, the written statement will be included with the minutes of the following meeting. Written statements for the record should be submitted to the DFE.

Inquiries may be addressed to the DFE, Dr. Randall S. Murch, Chief, Scientific Analysis Section, Laboratory Division, Tenth Street Northwest, Washington, DC 20535, (202) 324–4416, FAX (202) 324–1462.

Dated: August 23, 1995.

Randall S. Murch,

Chief, Scientific Analysis Section, Federal Bureau of Investigation.

[FR Doc. 95–21444 Filed 8–29–95; 8:45 am]

BILLING CODE 4410–02–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (95–08)]

NASA Advisory Council (NAC), Minority Business Resource Advisory Committee (MBRAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Minority Business Resource Advisory Committee.

DATES: September 27, 1995, 9 a.m. to 4 p.m.

ADDRESSES: NASA Headquarters, Room 9H40, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas, III, Office of Small and Disadvantaged Business Utilization, National Aeronautics and Space Administration, Room 9K70, 300 E Street SW., Washington, DC 20546, (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Call to Order
—Reading of Minutes
—Update on NASA SDB Program
—Overview of proposed Space Shuttle contract consolidations
—Public Comment
—Proposed MBRAC Recommendations
—Subcommittee Reports
—New Business
—Adjourn

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: August 24, 1995.

Danalee Green,

Chief, Management Controls Office.

[FR Doc. 95–21506 Filed 8–29–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice (95–080)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Alan Neuman Productions, Inc., of Los Angeles, California, has requested an exclusive license to practice the invention described and claimed in U.S. Patent Application No. 08/298, 699, NASA Case No. MSC–22,360–1 entitled ''Absorbent Pads for Containment, Neutralization and Clean-Up of Spills Containing Chemically Reactive Agents,'' which was filed on August 31, 1994, by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Mr. Hardie R. Barr, Patent Attorney, NASA Johnson Space Center.

DATES: Responses to this Notice must be received by October 30, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Hardie R. Barr, NASA Johnson Space Center, Mail Code HA, Houston, TX 77058; telephone number (713) 483–1003.

Dated: August 22, 1995.

Edward A. Frankle,

General Counsel.

[FR Doc. 95–21507 Filed 8–29–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice (95–079)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that LinCom Corporation of Houston, Texas, has requested a partially exclusive license to practice the invention described and claimed in U.S. Patent No. 5,311,422, entitled ''General Purpose Architecture for Intelligent Computer Aided Training.'' This patent is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Mr. Hardie R. Barr, Patent Attorney, NASA Johnson Space Center.

DATES: Responses to this Notice must be received by October 30, 1995.

FOR FURTHER INFORMATION CONTACT:

Mr. Hardie R. Barr, NASA Johnson Space Center, Mail Code HA, Houston, TX 77058; telephone number (713) 483–1003.

Dated: August 22, 1995.

Edward A. Frankle,

General Counsel.

[FR Doc. 95–21508 Filed 8–29–95; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499]

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas; South Texas Project, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the Commission's regulations at 10 CFR Part 50, Appendix J to Houston Lighting & Power Company (HL&P) acting on behalf of itself and for the City Public Service Board of San Antonio (CPS), Central Power and Light Company (CPL), and City of Austin, Texas (COA) (the licensees), for operation of the South Texas Project, Units 1 and 2, located in Matagorda County, Texas.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant an exemption from a requirement of Section III.D.3 of Appendix J to 10 CFR Part 50, which requires that Type C tests shall be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years. This exemption would allow the licensee to perform the required Type C tests while the plant is at power.

The proposed action is in accordance with the licensee's application for exemption dated May 25, 1995.

The Need for the Proposed Action

Section III.D.3 of Appendix J to 10 CFR Part 50 states that Type C tests shall be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years. However, the licensee states that during shutdown, resources are at a premium. The licensee, therefore, desires the option to perform Type C testing at times other than during shutdown. The proposed exemption would allow the option to perform Type C testing at power. Minimal safety benefit would be realized by only performing the Type C tests during each reactor shutdown for refueling because the conditions of the testing are the same regardless of when it is performed. Without this exemption, the licensee would not be allowed to reduce an unintentional regulatory burden that has minimal impact on safety.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the exemption would not significantly increase the probability or amount of expected containment leakage, and that containment integrity would thus be maintained.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with 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. 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 related to the operation of South Texas Project, Units 1 and 2,'' dated August 1986.

Agencies and Persons Consulted

In accordance with its stated policy, on July 5, 1995, the staff consulted with the Texas State official, Arthur C. Tate of the Bureau of Radiation Control, Texas Department of Health, 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 May 25, 1995, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

Dated at Rockville, Maryland, this 23rd day of August 1995.

For the Nuclear Regulatory Commission.

Thomas W. Alexion,

Project Manager, Project Directorate IV–1, Division of Reactor Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 95–21495 Filed 8–29–95; 8:45 am]

BILLING CODE 7590–01–P

Nuclear Safety Research Review Committee

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

The Nuclear Safety Research Review Committee (NSRRC) will hold its next meeting on September 25–26, 1995. The location of the meeting will be in Room T–2B3, Two White Flint North (TWFN) Building, 11545 Rockville Pike, Rockville, MD.

The meeting will he held in accordance with the requirements of the Federal Advisory Committee Act (FACA) and will be open to public attendance. The NSRRC provides advice to the Director of the Office of Nuclear Regulatory Research (RES) on matters of overall management importance in the direction of the NRC's program of nuclear safety research. The main purposes of this meeting are (a) to review the NRC's current safety research program plans and priorities based on user needs; (b) to discuss the nature and role of regulatory safety research in support of NRC regulatory responsibility; and (c) to discuss the NSRRC role in items (a) and (b).

The planned schedule is:

Monday, September 25

9:30–9:45 Introductory remarks
9:45–12:00 Nature and role of NRC research
1:15–5:30 Continued discussion on the nature and role of NRC research

Tuesday, September 26

8:30–12:00 Role and functions of the NSRRC

1:15–3:30 Continued discussion on the role and functions of the NSRRC

3:30–4:30 Plans for subsequent meetings

Participants in parts of the discussion will include NRC staff as necessary.

Members of the public may file written statements regarding any matter to be discussed at the meeting. Members of the public may also make requests to speak at the meeting, but permission to speak will be determined by the Committee chairperson in accordance with procedures established by the Committee. A verbatim transcription will be made of the NSRRC meeting and a copy of the transcript will be placed in the NRC's Public Document Room in Washington, DC.

Any inquiries regarding this notice, any subsequent changes in the status and schedule of the meeting, the filing or written statements, requests to speak at the meeting, or for the transcript, may be made to the Designated Federal Officer, Dr. Jose Luis M. Cortez (telephone: 301–415–6596), between 8:15 am and 5:00 pm.

Dated at Rockville, Maryland this 24th day of August, 1995.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Federal Advisory Committee Management Officer.

[FR Doc. 95–21492 Filed 8–29–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–387 and 50–388]

Pennsylvania Power and Light Company; Correction

The March 29, 1995, **Federal Register** contained a ''Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing,'' for the Susquehanna Steam Electric Station. This notice corrects the notice published in the **Federal Register** on March 29, 1995, (60 FR 16192). The second sentence of the description section should read as follows: Specifically, for the refueling floor exhaust duct and wall exhaust duct radiation monitors, the proposed change would modify the applicable operational condition during specific control rod testing evolutions which are core alterations and would indicate that the operability requirement change does not apply during shutdown margin demonstrations.

Dated at Rockville, Maryland, this 22nd day of August 1995.

For the Nuclear Regulatory Commission.

Leonard N. Olshan,

Acting Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–21493 Filed 8–29–95; 8:45 am]

BILLING CODE 7590–01–P

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from August 4, 1995, through August 18, 1995. The last biweekly notice was published on August 16, 1995 (60 FR 42597).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By September 29, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW.,

Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: August 3, 1995

Description of amendments request: The proposed amendment changes would add the analytical method supplement entitled ''Fuel Rod Maximum Allowable Gas Pressure,'' CEN-372-P-A, dated May 1990, and its associated Nuclear Regulatory Commission Safety Evaluation Report, dated April 10, 1990, to the list of analytical methods in TS 6.9.1.10 used to determine the PVNGS core operating limits.

Basis for proposed no significant hazards consideration determination: As requied by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident. The proposed change adds an NRC approved methodology and its associated Safety Evaluation Report (SER), to the list of analytical methods used to determine the core operating limits. The use of this methodology ensures that the consequences of an accident remain within the limits established by existing analyses. They do not alter any of the assumptions or bounding conditions currently in the UFSAR.

The U3C6 ECCS performance analysis included the analysis of the impact of the maximum calculated fuel rod gas pressures on the timing of cladding rupture and on the peak cladding temperature. This analysis concluded that the peak cladding temperature for Cycle 6 remained below that of the analysis of record and that the peak cladding temperature continued to occur at

low burnup, specifically the burnup corresponding to the maximum initial fuel stored energy.

In addition to the LOCA analysis a DNB propagation analysis was performed to demonstrate that DNB propagation does not occur during postulated accidents that experience DNB when pressure in a fuel pin is higher than the system pressure. This analysis was performed using the fuel rod strain model described in CEN-372-P-A.

Based on these analyses, there is no increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident. Accordingly, no new failure modes have been defined for any plant system or component important to safety nor has any new limiting failure been identified as a result of the proposed change. The intent of the proposed change is to utilize a new analytical method to ensure that the consequences of any equipment malfunction remain within the limits of existing analyses resulting in no impact on radiological consequences.

The impact of the maximum fuel rod gas pressures calculated for U3C6 was evaluated as part of the Cycle 6 ECCS performance analysis. Except for the highest burnup analyzed, the time of cladding rupture decreased as the initial fuel rod gas pressure increased with burnup. However, the peak cladding temperature occurred at the burnup with the maximum initial fuel stored energy. The analysis also determined that the ECCS performance analysis for U3C6 is bounded by that of the reference cycle analysis.

An evaluation was conducted to ensure that fuel would not experience DNB propagation when the pressure in a fuel pin is higher than the system pressure. DNB was shown not to propagate by demonstrating that the degree of cladding deformation is no more than the limit defined by the fuel rod maximum pressure Topical Report (CEN-372-P-A).

Therefore, it can be concluded that the proposed change to Section 6.9.1.10 does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change adds an NRC approved Topical Report (methodology) and its associated SER, to the list of analytical methods used to determine core operating limits. The use of the new methodology ensures that safety margins are maintained within the results of existing calculations. Since the core operating limits will continue to be established by an NRC approved methodology and will provide adequate core protection, the proposed amendment does not involve a significant reduction in the margin of safety.

Analyses were conducted to determine the impact of higher fuel rod pressure on ECCS performance and DNB propagation. The results of the analyses show that the effects of higher fuel rod pressure are bounded by previous results.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involve no significant hazards consideration. Local Public Document Room location: Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999

NRC Project Director: William H. Bateman

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: July 13, 1995

Description of amendments request: The proposed amendments would revise the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Technical Specifications (TSs) Section 5.2.1, ''Fuel Assemblies.'' The current TSs only allow fuel that is clad with either zircaloy or ZIRLO. The proposed change would allow the use of cladding material other than zircaloy or ZIRLO with an approved exemption. Thus, the proposed change will eliminate the need for future amendments to allow the use of different cladding material for which the Commission has issued an exemption.

Basis for proposed no significant hazards consideration determination: As requied by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Calvert Cliffs Technical Specification 5.2.1, Fuel Assemblies, states that fuel rods are clad with either zircaloy or ZIRLO. This reflects the requirements of 10 CFR 50.44, 50.46, and 10 CFR [Part] 50, Appendix K, which also restrict fuel rod cladding materials to zircaloy or ZIRLO. Baltimore Gas and Electric Company proposes to insert fuel assemblies into Calvert Cliffs Unit 1 which have some fuel rods clad in zirconium alloys that do not meet the definition of zircaloy or ZIRLO for testing purposes and has applied for an exemption to the regulations to allow that change. The proposed change to the Calvert Cliffs Technical Specifications will allow the use of cladding materials that are not zircaloy or ZIRLO with an approved exemption in accordance with 10 CFR 50.12.

The proposed change to the Unit 1 and Unit 2 Technical Specifications will allow the use of fuel rod cladding materials other than zircaloy or ZIRLO as long as those materials have been approved by an exemption to the regulations. To obtain approval of new cladding materials, 10 CFR 50.12 requires that the applicant show that the proposed exemption is authorized by law, is consistent with the common defense and security, will not present an undue risk to the public health and safety; and is accompanied by special circumstances.

Under the proposed change, any fuel rod cladding materials that are not zircaloy or ZIRLO must still be approved by the Nuclear Regulatory Commission (NRC) prior to use under 10 CFR 50.12. This change to the Technical Specifications allows the NRC to approve the use of cladding materials that are not either zircaloy or ZIRLO under 10 CFR 50.12 and not require an additional approval under 10 CFR 50.90. As such, the proposed change eliminates a duplicative regulatory requirement and would have no effect on the probability or consequences of an accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed change eliminates a duplicated approval requirement and would have no effect on the possibility of a new or different type of accident. The proposed change to the Technical Specifications would allow the NRC to approve the use of fuel rod cladding materials that are not either zircaloy or ZIRLO under 10 CFR 50.12 and not require an additional approval under 10 CFR 50.90.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The proposed change eliminates a duplicated approval requirement and will have no effect on the margin of safety. The proposed change to the Technical Specifications would allow the NRC to approve the use of fuel rod cladding materials that are not either zircaloy or ZIRLO under 10 CFR 50.12, and not require an additional approval under 10 CFR 50.90.

Therefore, the proposed change does not involve a significant reduction in a margin safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and

Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Ledyard B. Marsh

Commonwealth Edison Company, Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Units 1 and 2, Will County, Illinois Docket Nos. STN 50-454 and STN 50-455, Byron Station, Units 1 and 2, Ogle County, Illinois Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station,Units 2 and 3, Grundy County, Illinois Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendment requests: April 24, 1995

Description of amendment requests: The licensee proposes to amend Section 6 of the Technical Specifications of all ComEd stations to make the following changes: (1) delete the ''Review, Investigative and Audit Functions'' sections, in their entirety, and relocate these requirements to appropriate sections of the ComEd Quality Assurance Topical Report, (2) change titles to reflect the reorganization of ComEd's Nuclear Operations Division, and (3) miscellaneous administrative and editorial changes.

Basis for proposed no significant hazards consideration determination: As requied by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(1) The proposed relocation of the ''Review, Investigative and Audit Functions'' sections of Technical Specifications to the QA Topical Report does not affect any accident initiators or precursors, and does not change or alter the design assumptions for the systems and components used to mitigate the consequences of an accident.

The relocation of these sections is consistent with the recommended changes specified in the October 25, 1993 letter from W. T. Russell (USNRC) to the Chairpersons of the Owner Groups' Technical Specifications Committees, entitled, ''Content of Standard Technical Specifications, Section 5.0, Administrative Controls''.

Relocating these requirements to the QA Topical Report will continue to ensure that proposed future changes to these requirements will receive proper regulatory oversight. NRC review of the Quality Assurance Program is governed by 10CFR50.54. 10CFR50.54(a)(3) states: ''Changes to the quality assurance program description that do not reduce the commitments must be submitted to the NRC in accordance with the requirements of 50.71. Changes to the quality assurance program description that do reduce the commitments must be submitted to NRC and receive NRC approval prior to implementation, ...'' Based on these 10CFR50.54 requirements, appropriate licensee and regulatory control of the requirements in the subject relocated Technical Specification sections will be maintained.

(2) The proposed title and organizational changes to Section 6 of Technical Specifications do not affect any accident initiators or precursors and do not change or alter the design assumptions for the systems or components used to mitigate the consequences of an accident.

Commonwealth Edison's organizational changes allow for increased senior management attention and oversight of station activities. Position titles and associated responsibilities have changed to increase the company's efficiency in the management of its nuclear stations. These administrative changes do not reduce any requirements or commitments. The proposed changes enhance the administrative controls necessary to ensure safe plant operation.

(3) Other proposed administrative/editorial changes simply make corrections or provide needed clarification prompted by the reorganization. These changes provide consistency with station procedures, programs, other Technical Specifications, and Standard Technical Specifications. They are administrative in nature and do not impact any accident previously evaluated in the UFSAR.

In conclusion, none of the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(1) The proposed relocation of the ''Review, Investigative and Audit Functions'' sections of Technical Specifications to the QA Topical Report does not affect the design or operation of any system, structure, or component in the plant. There are no changes to parameters governing plant operation and no new or different type of equipment will be installed that could give rise to a new or different kind of accident that was previously evaluated.

The proposed changes are considered to be administrative or programmatic in nature and do not affect equipment or components that could initiate an accident. All administrative commitments being relocated to the QA Topical Report will continue to receive appropriate regulatory oversight pursuant to 10CFR50.54.

(2) The proposed title and organization changes do not affect the design or operation of any system, structure, or component in the plant. There are no changes to parameters governing plant operation; no new or different type of equipment will be installed. The proposed changes are considered to be administrative changes that will enhance the performance of organizations responsible for the safe operation of the plant to respond to plant transients or emergencies. All responsibilities described in Technical Specifications for management activities will continue to be performed by qualified individuals.

(3) All other proposed changes are administrative in nature and do not create the possibility of a new or different kind of accident from any accident previously evaluated.

In conclusion, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed changes do not involve a significant reduction in a margin of safety.

(1) The proposed changes are administrative or programmatic in nature and do not affect the margin of safety for any safety parameters and setpoints addressed in Technical Specifications. The assumptions, initial conditions and methodologies used in the accident analyses remain unchanged, therefore, accident analyses results are not impacted.

Placing these requirements in QA Topical Report will continue to ensure that proposed future changes to these requirements will receive proper regulatory oversight pursuant to 10CFR50.54.

(2) The proposed title and organizational changes are administrative in nature and do not affect the margin of safety for any Technical Specification. The initial conditions and methodologies used in the accident analyses remain unchanged, therefore, accident analyses results are not impacted.

(3) All other proposed changes are administrative in nature and have no impact on the margin of safety for any Technical Specification.

In conclusion, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481; for Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Dresden, Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450; for LaSalle, Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021; for Zion, Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: Robert A. Capra

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: June 8, 1995

Description of amendment request: The proposed amendments would revise Technical Specifications Section 3/4.8, Electrical Power Systems, and the associated Bases for LaSalle County, Byron, and Braidwood Stations. The proposed changes revise surveillance and administrative requirements associated with emergency diesel generators (EDGs) in accordance with the guidance of NRC Generic Letter 94-01, ''Removal of Accelerated Testing and Special Reporting Requirements for Emergency Diesel Generators,'' Generic Letter 93-05, ''Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation,'' and Regulatory Guide (RG) 1.9, ''Selection, Design, Qualification, and Testing of Emergency Diesel Generator Units Used as Class 1E Onsite Electric Power Systems at Nuclear Power Plants.'' The proposed changes include: (1) eliminating increased testing requirements for EDGs, (2) eliminating special reporting requirements for EDGs, (3) eliminating the semi-annual fast load test and replacing it with a requirement to load EDGs semi-annually in accordance with the vendor recommendations for all test purposes other than the refueling outage Loss of Offsite Power (LOOP) tests, (4) de-coupling the 24-hour endurance run and the LOOP/loss-of-coolant (LOCA) (LOOP only for LaSalle) sequencing requirements for the hot start test, (5) removing RG 1.108 references to testing requirements, (6) eliminating testing requirements when an EDG becomes inoperable due to an inoperable support system, an independently testable component, or preplanned maintenance or testing, or if there is not a potential common mode failure for the remaining diesel generator, (7) deleting the requirement for inspecting the EDGs in accordance with procedures prepared in conjunction with its manufacturer's recommendations, and (8) making editorial changes.

Basis for proposed no significant hazards consideration determination: As requied by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated:

The proposed changes do not affect accident initiators or precursors and do not alter the design assumptions affecting the ability of the EDGs to mitigate the consequences of an accident.

Deleting the special reporting requirements from the Technical Specifications is administrative. ComEd will continue to notify the Commission of significant EDG failures in accordance with 10 CFR 50.72 and 50.73 criteria.

Excessive testing requirements have proven to be a contributor to increased equipment degradation. Removing inappropriate and redundant requirements increases EDG reliability and enhances the ability of EDGs to mitigate the consequences of an accident. Implementing ComEd's alternative to the maintenance rule for the EDGs provides additional assurance that high EDG performance will be maintained.

EDG equipment degradation will be reduced by eliminating the semi-annual fast load test for EDGs in accordance with the vendor recommendations for test purposes other than the refueling outage Loss of Offsite Power (LOOP) tests. This improves EDG reliability and availability and further enhances their ability to mitigate the consequences of an accident. The LOOP test would still be performed to provide assurance that the EDG is capable of responding to a LOOP as assumed in the accident analyses.

De-coupling the 24 hour endurance test and the LOOP/LOCA (for LaSalle, LOOP) sequencing test requirements for the hot start test has no effect on accident mitigation. Demonstrating diesel generator hot restart capability without loading the engine does not invalidate or reduce the effectiveness of the hot restart test. The hot restart test can be conducted in any plant condition since its performance at power will have no adverse effect on plant operations.

The proposed editorial changes are administrative in nature. They improve readability and provide consistency with current industry guidance.

Therefore, the proposed changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated:

The proposed changes do not alter the ability of the EDGs to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in plant safety analyses. The proposed changes have no impact on component or system interactions, or the plant design basis.

Instrumentation setpoints, starting, sequencing, and loading functions associated with EDGs are not affected by the proposed changes. Furthermore, combining the alternate EDG system maintenance rule implementation program with the proposed amendment will enhance both the availability and the performance of the EDGS.

Therefore, there is not a potential for creating the possibility of a new or different type of accident from any accident previously evaluated.

3) Involve a significant reduction in a margin of safety:

The proposed changes do not increase the probability or consequences of an accident, and there is no impact on equipment design or operation. The proposed changes do not affect the results of accident and transient analyses. Plant and system response to an initiating event will remain in compliance within the assumptions of safety analyses. There is no associated change to the type, amount, or control of radioactive effluents, nor is there an associated increase in individual or cumulative occupational radiation exposure. There is no effect upon the capabilities of the associated systems to perform their intended functions within the allowed response times assumed in safety analyses.

The proposed changes are compatible with plant operating experience and are consistent with the guidance provided in NUREG-1366, Generic Letters 93-05 and 94-01, and Regulatory Guide 1.9. In two instances ComEd's proposed changes deviate from these guidance documents. However, the changes are consistent with the intent of the documents or other NRC guidance documents. Eliminating excessive testing requirements can improve safety by reducing challenges to plant systems and reducing equipment wear and degradation. While the proposed changes affect surveillance intervals; there are no changes to the methods used to perform the surveillances.

EDG reliability and availability will be improved by the proposed changes. The surveillances will continue to demonstrate the ability of the EDGs to perform their intended function of providing electrical power to the emergency safety systems needed to mitigate design basis transients. No margin of safety is reduced.

Guidance has been provided in ''Final Procedures and Standards on No Significant Hazards Considerations,'' Final Rule, 51 FR 7744, for the application of standards to license change requests for determination of the existence of significant hazards considerations. This document provides examples of amendments which are and are not considered likely to involve significant hazards considerations. These proposed amendments most closely fit the example of a change which may either result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptance criteria with respect to the system or component specified in the standard review plan.

This proposed amendment does not involve a significant relaxation of the criteria used to establish safety limits, a significant

relaxation of the bases for the limiting safety system settings, or a significant relaxation of the bases for the limiting conditions for operations. The proposed change does not reduce the margin of safety as defined in the basis for any Technical Specification.

Therefore, based on the guidance provided in the Federal Register and the criteria established in 10 CFR 50.92(c), ComEd has concluded that the proposed change does not constitute a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481; for LaSalle, Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Robert A. Capra

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendment requests: August 30, 1994, as supplemented August 4, 1995.

Description of amendment requests: As a result of findings by a Diagnostic Evaluation Team inspection performed by the NRC staff at the Dresden Nuclear Power Station in 1987, Commonwealth Edison Company (ComEd, the licensee) made a decision that both the Dresden Nuclear Power Station and sister site Quad Cities Nuclear Power Station needed attention focused on the existing custom Technical Specifications (TS) used.

The licensee made the decision to initiate a Technical Specification Upgrade Program (TSUP) for both Dresden and Quad Cities. The licensee evaluated the current TS for both Dresden and Quad Cities against the Standard Technical Specifications (STS) contained in NUREG-0123, ''Standard Technical Specifications General Electric Plants BWR/4.'' The licensee's evaluation identified numerous potential improvements such as clarifying requirements, changing TS to make them more understandable and to eliminate interpretation, and deleting requirements that are no longer considered current with industry practice. As a result of the evaluation, ComEd has elected to upgrade both the Dresden and Quad Cities TS to the STS contained in NUREG-0123.

The TSUP for Dresden and Quad Cities is not a complete adaption of the STS. The TSUP focuses on (1) integrating additional information such as equipment operability requirements during shutdown conditions, (2) clarifying requirements such as limiting conditions for operation and action statements utilizing STS terminology, (3) deleting superseded requirements and modifications to the TS based on the licensee's responses to Generic Letters (GL), and (4) relocating specific items to more appropriate TS locations.

The August 30, 1994, and August 4, 1995, applications proposed to upgrade only Section 3/4.2 (Instrumentation) of the Dresden and Quad Cities TS.

Basis for proposed no significant hazards consideration determination: As requied by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because:

In general, the proposed amendment represents the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis. Implementation of these changes will provide increased reliability of equipment assumed to operate in the current safety analysis, or provide continued assurance that specified parameters remain within their acceptance limits, and as such, will not significantly increase the probability or consequences of a previously evaluated accident.

Some of the proposed changes to the current Technical Specifications (CTS) represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. The proposed amendment for Dresden and Quad Cities Station's Technical Specification Section 3/4.2 are based on BWR-STS (NUREG-0123, Revision 4 ''Standard Technical Specifications General Electric Plants BWR/4) guidance or NRC accepted changes at later operating BWR plants. Any deviations from BWR-STS and CTS requirements do not significantly increase the probability or consequences of any previously evaluated accident for Dresden and Quad Cities Station. These proposed changes are consistent with the current safety analyses and have been previously determined to represent sufficient requirements for the assurance and reliability of equipment assumed to operate in the safety analysis, or provide continued assurance that specified parameters remain within their acceptance limits. As such, these changes will not significantly increase the probability or consequences of a previously evaluated accident.

The associated systems that make up the Instrumentation Systems are not assumed in any safety analysis to initiate any accident sequence for both Dresden and Quad Cities Stations; therefore, the probability of any accident previously evaluated is not increased by the proposed amendment. In addition, the proposed surveillance requirements for the proposed amendments to these systems are generally more prescriptive than the current requirements specified within the Technical Specifications. These more prescriptive surveillance requirements increase the probability that the Instrumentation Systems will perform their intended functions. Therefore, the proposed TS will improve the reliability and availability of all affected systems and reduce the consequences of any accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously evaluated because:

In general, the proposed amendment represents the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis. Others represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. These changes do not involve revisions to the design of the station, other than technically valid trip setpoint changes. Some of the changes may involve revision in the operation of the station; however, these changes provide additional restrictions which are in accordance with the current safety analyses, or are to provide for additional testing or surveillances which will not introduce new failure mechanisms beyond those already considered in the current safety analyses. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment for Dresden and Quad Cities Station's Technical Specification Section 3/4.2 is based on BWR-STS guidelines or NRC accepted changes at later operating BWR plants. The proposed amendment has been reviewed for acceptability at the Dresden and Quad Cities Nuclear Power Stations considering similarity of system or component design versus the BWR-STS or later operating BWRs. Any deviations from BWR-STS or CTS requirements do not create the possibility of a new or different kind of accident than previously evaluated for Dresden and Quad Cities Stations. No new modes of operation are introduced by the proposed changes. Various surveillance requirements are changed to reflect improvements in technique, frequency of performance or operating experience at later plants. Proposed changes to action statements in many places add requirements that are not in the present technical specifications or adopt

requirements that have been used at other operating BWRs with designs similar to Dresden and Quad Cities. The proposed changes maintain at least the present level of operability. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The associated systems that make up the Instrumentation Systems are not assumed in any safety analysis to initiate any accident sequence for Dresden or Quad Cities Stations. In addition, the proposed surveillance requirements for affected systems associated with the Instrumentation Systems are generally more prescriptive than the current requirements specified within the Technical Specifications; therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in the margin of safety because:

In general, the proposed amendment represents the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis. Others represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. Some of the later individual items may introduce minor reductions in the margin of safety when compared to the current requirements. However, other individual changes are the adoption of new requirements which will provide significant enhancement of the reliability of the equipment assumed to operate in the safety analysis, or provide enhanced assurance that specified parameters remain within their acceptance limits. These enhancements compensate for the individual minor reductions, such that taken together, the proposed changes will not significantly reduce the margin of safety.

The proposed amendment to Technical Specification Section 3/4.2 implements present requirements in accordance with the guidelines set forth in the BWR-STS. Any deviations from BWR-STS and CTS requirements do not significantly reduce the margin of safety for Dresden and Quad Cities Stations. The proposed changes are intended to improve readability, usability, and the understanding of technical specification requirements while maintaining acceptable levels of safe operation. The proposed changes have been evaluated and found to be acceptable for use at Dresden and Quad Cities based on system design, safety analysis requirements and operational performance. Since the proposed changes are based on NRC accepted provisions at other operating plants that are applicable at Dresden and Quad Cities and maintain necessary levels of system or component readability, the proposed changes do not involve a significant reduction in the margin of safety.

The proposed amendment for Dresden and Quad Cities Stations will not reduce the availability of systems associated with the Instrumentation Systems when required to mitigate accident conditions; therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: for Dresden, Morris Public Library, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: Robert A. Capra

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: March 8, 1995, as supplemented June 1, 1995

Description of amendment request: The proposed amendments would revise the secondary undervoltage setpoint.

Basis for proposed no significant hazards consideration determination: As requied by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve an increase in the probability of occurrence or consequences of any accident previously evaluated.

The proposed amendment does not change the fundamental function or capability of the Secondary Undervoltage protection as described in UFSAR section 8.3. Inadvertent or spurious operation of the Secondary Undervoltage protection function will initiate loading of the safe shutdown loads on the diesel generators and is not assumed to initiate an accident. The proposed Secondary Undervoltage setpoints are low enough to prevent spurious actuations given the expected off site grid voltages.

This change does not affect the initiators or precursors of any accident previously evaluated. This change will not increase the likelihood that a transient initiating event will occur because transients are initiated by equipment malfunction and/or catastrophic system failure. The change in setpoints for the Secondary Undervoltage protection system does involve some changes to existing plant equipment (such as transformer tap changes and Circulating Water pump excitation circuit changes). However, all changes to existing plant equipment have been or will be evaluated in accordance with the requirements of 10CFR50.59 prior to installation, to determine that no unreviewed safety questions exist with regard to the plant changes.

Since any design changes have been or will be determined to be acceptable per 10CFR50.59 prior to installation and no new plant equipment will be installed, the probability of occurrence of accidents previously evaluated will not increase.

With Zion Station's new Auxiliary Power System configuration and the proposed Secondary Undervoltage setpoints, the probability of a Loss of Off-Site Power (LOOP) is actually reduced since the original Auxiliary Power System configuration and Secondary Undervoltage setpoints required a higher grid voltage to ensure that safety related loads would be powered from Off-Site power sources during a design basis accident.

The consequences of accidents previously evaluated are not increased. The proposed change does not affect the required level of availability or systems required to mitigate the accidents considered in the Analyses. Administrative controls will be in place to ensure that the installed setpoints are low enough to ensure that the Emergency Diesel Generators are not unnecessarily challenged. The proposed changes will increase the level of confidence that the ESF equipment will be capable of starting and operating during a design basis accident with degraded off-site grid voltage. The increase in the level of confidence is the result of the more rigorous methodology used to determine limited ESF bus voltages, given the minimum expected off-site AC voltage. Based on the previous discussion, it is determined that there will be no significant increase in the consequences of any accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any previously analyzed.

The proposed Secondary Undervoltage setpoint change does not change the design of the Secondary Undervoltage protection system or its function to protect against degraded offsite power. Actuation of the Secondary Undervoltage protection system will initiate a sequence of events that will start the Emergency Diesel Generator (EDG) for the associated ESF bus, strip all loads from the bus, open all feed breakers to the bus, close the Emergency feed breaker (thus energizing the bus from the EDG), and initiate sequenced starting of the Safe Shutdown equipment supplied by the bus, including a Service Water pump, Component Cooling Water pump, Auxiliary Feedwater pump, and Reactor Containment Fan Cooler(s), as applicable.

The proposed change does not involve the addition of any new or different types of equipment, nor does it involve the operation of equipment required for safe operation of the facility in a manner different from those addressed in the Final Safety Analysis Report. No safety related equipment or function will be altered as a result of this proposed change. Because no new failure modes are introduced, the proposed amendment does not create a new or different kind of accident from any previously analyzed in the UFSAR.

Based on the above discussion, the proposed amendment does not create a new or different kind of accident from any previously analyzed in the UFSAR.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed amendment will allow the Secondary Undervoltage setpoint to be conservatively established based on new engineering calculations which consider the lowest expected offsite grid voltage and operation of all required ESF equipment under design basis accident loading conditions.

The proposed Secondary Undervoltage setpoints will provide increased confidence that adequate bus voltage will be available to support starting and operation of all required ESF loads. The proposed setpoint includes worst case instrument error to ensure that the lowest possible voltage will not be lower than the degraded voltage analytical limits. Additionally, the proposed setpoints are low enough to prevent spurious actuations due to expected fluctuations in the grid voltage. The new setpoints are based on a minimum expected grid voltage of 343 kV, with added margin. The proposed changes will provide an increase in the level of protection that currently exists and will ensure the margin of safety is adequately maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Robert A. Capra

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: August 3, 1995

Description of amendment request: The proposed amendment will add an one-time footnote to Technical Specification (TS) Section 3/4.7.12, ''Ultimate Heat Sink,'' to increase the allowed outage time from 6 hours to 18 hours for the months of August and September. In addition, also for the months of August and September, the maximum service water limit will be elevated from 90°F to 95°F.

Basis for proposed no significant hazards consideration determination: As requied by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed addition of a 12 hour time period to monitor the ultimate heat sink temperature to the Technical Specification Limiting Condition for Operation action statements does not involve an increase in the probability of an accident previously evaluated. The probability of an accident previously evaluated is not increased by a short-term increase in the ultimate heat sink temperature. An evaluation has been performed that safe shutdown will be achieved and maintained for a loss of normal AC power event with the additional consideration of a single failure with service water inlet temperatures as high as 95°F. In addition, an evaluation of the credible FSAR Chapter 15 events with AC power available and no isolation of non-essential service water loads has been performed that demonstrates that safe shutdown will be achieved and maintained. There has been no significant increase in the consequences of these events previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed technical specification change does not create the possibility of a new or different kind of accident previously analyzed. The addition of a 12 hour time period to monitor the ultimate heat sink temperature increases the amount of time that is allowed for the plant to be in Hot Standby from 6 to 18 hours should the ultimate heat sink temperature increase above 90°F. This extension of the time allowed for the plant to be in Hot Standby does not change the plant configuration. As such, the change does not create the possibility of a new or different kind of accident previously evaluated.

3. Involve a significant reduction in the margin of safety.

The proposed technical specification change does not involve a significant reduction in the margin of safety. The addition of a 12 hour time period to monitor the ultimate heat sink temperature increases the time required for the plant to be in Hot Standby from 6 to 18 hours should the ultimate heat sink temperature exceed 90°F. An evaluation has been performed to demonstrate that the risk significance associated with the increased action time is very low. In addition, safe shutdown capability has been demonstrated for service water inlet temperatures as high as 95°F.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, CT 06457

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270

NRC Project Director: Phillip F. McKee

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of amendment request: May 5, 1995

Description of amendment request: The proposed amendment would change the surveillance frequency of radiation area, and effluent and process monitors from monthly to quarterly; and the required frequency for minimum exercise of control element assemblies also from monthly to quarterly.

Basis for proposed no significant hazards consideration determination: As requied by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. Extending surveillance test intervals as proposed will reduce the probability of inadvertent reactor scrams and ensuing challenges to safety systems. This is accomplished by reducing the occasions and thus the total time that the subject systems are removed from their ''normal'' configuration and placed into the required ''test'' configuration. In addition, the probability of test-induced failures, or failures caused by human error, is likewise decreased. Thus, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Extending surveillance test intervals as proposed will not require installation of any new or different equipment, and will not alter or otherwise modify existing plant equipment. Thus, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Independent research has found that equipment failures and personnel errors during several types of surveillance tests caused a significant number of reactor scrams and attendant unnecessary challenges to safety equipment. The results of this research have been corroborated by the licensee's plant specific operating experience. The licensee concludes that the reduced test intervals proposed in this amendment remain sufficient to ensure known phenomena, such as instrument setpoint drift and random hidden failures, remain within the assumptions of the safety analysis. Thus, the proposed change does not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c)

are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, ME 04578

Attorney for licensee: Mary Ann Lynch, Esquire, Maine Yankee Atomic Power Company, 329 Bath Road, Brunswick, ME 04011

NRC Project Director: Phillip F. McKee

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: July 24, 1995.

Description of amendment request: The proposed amendment would delete Table 3.4-1, ''Reactor Coolant System Pressure Isolation Valves'' from the Seabrook Station, Unit No. 1 Technical Specification section 3.4.6.2. Reference to Table 3.4-1 also would be deleted from Limiting Condition for Operation 3.4.6.2 f and from Surveillance Requirement 4.4.6.2.2. The information contained in Table 3.4-1 would be relocated to the Technical Requirements Manual.

Basis for proposed no significant hazards consideration determination: As requied by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because they do not in any way alter the operability or surveillance requirements for pressure isolation valves. The proposed changes merely delete a listing of valves which are designated as pressure isolation valves in accordance with the definition provided in 10 CFR Part 50. Therefore, neither the probability nor consequences of previously evaluated accidents are affected.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because they do not affect in any way the manner by which the facility is operated or make any changes in structures, systems, or components which could affect the operational characteristics of the facility.

C. The proposed changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed changes do not affect the operability requirements or surveillance testing of any pressure isolation valve and do not affect in any way the manner by which the facility is operated or involve equipment or features which affect the operational characteristics of the facility.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, NH 03833

Attorney for licensee: Lillian M. Cuoco, Esquire, Northeast Utilities Service Company, Post Office Box 270, Hartford CT 06141-0270

NRC Project Director: Phillip F. McKee

Northeast Nuclear Energy Company (NNECO), Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of amendment request: July 28, 1995

Description of amendment request: The proposed amendment adds Technical Specifications (TS) to Section 3.10, Refueling and Spent Fuel Handling. Specifically, the proposed TS (with applicability, action, and surveillance requirements) will require that: (1) the reactor be subcritical for at least 100 hours before the start of reactor refueling operations, (2) the spent fuel pool bulk temperature be maintained less than or equal to 140°F, and (3) two trains of shutdown cooling be operable during reactor refueling operations. In support of the request, NNECO proposes to: (1) use the ORIGEN2 code to more accurately predict decay heat loads from the spent fuel, (2) use the ONEPOOL code to credit the effect of evaporative cooling on the spent fuel pool bulk temperature, and (3) take credit for both trains of shutdown cooling to assist the spent fuel pool cooling system during refueling outages. In addition, the proposed amendment modifies the table of contents and associated Bases section to reflect the changes.

Basis for proposed no significant hazards consideration determination: As requied by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed changes in accordance with 10CFR50.92 and concluded that the changes do not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not compromised. The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed license amendment will allow NNECO to use the shutdown cooling system (SCS) to assist the spent fuel pool cooling (SFPC) system to cool the spent fuel pool during refueling outages. This amendment request does not affect: the number of spent fuel bundles allowed in the spent fuel pool, spent fuel pool criticality analysis, structural analysis of the spent fuel pool, or radiological release scenarios.

The proposed license amendment also allows NNECO to use ORIGEN2 and ONEPOOL codes. The ORIGEN2 code more accurately predicts decay heat loads from the spent fuel in the spent fuel pool. The ONEPOOL code credits the effect of evaporative cooling on the spent fuel pool bulk temperature. The use of these codes will improve the accuracy of predicting spent fuel pool bulk temperatures during normal and abnormal refueling scenarios.

The use of the SCS to assist the SFPC system to cool the spent fuel pool will allow the movement of spent fuel to begin 100 hours after reactor shutdown. The existing accident analysis for a dropped spent fuel bundle during refueling bounds this situation as the analysis assumed a decay time of 24 hours.

The three new proposed technical specifications will provide sufficient controls on the movement of spent fuel into the spent fuel pool, bulk temperature of the spent fuel pool and operability of the shutdown cooling system to operate within analysis assumptions during refueling operations at Millstone Unit No. 1.

Therefore, based on the above, the use of the SCS to assist the SFPC system to cool the spent fuel pool during refueling outages, the use of the ORIGEN2 code, the use of the ONEPOOL code, and the addition of three technical specifications will not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed license amendment to use the SCS to assist the SFPC system to cool the spent fuel pool will allow SCS train B to cool the spent fuel pool in a method similar to train A.

The proposed license amendment to use ORIGEN2 and ONEPOOL codes to predict spent fuel pool bulk temperatures will increase the accuracy of analyzing normal and abnormal refueling scenarios.

The three new proposed technical specifications will sufficiently control refueling operations to support analyzed accident scenarios.

Therefore, the use of the SCS to assist the SFPC system to cool the spent fuel pool, the use of the ORIGEN2 code, the use of ONEPOOL code and the addition of three technical specifications do not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in the margin of safety.

The proposed license amendment to use the SCS to assist the SFPC system to cool the spent fuel pool will allow the crediting of the SCS and SFPC system to remove heat from

the spent fuel pool during normal refueling scenarios. The analysis demonstrates that this cooling configuration will maintain the spent fuel pool bulk temperature below the pool design limit of 140°F with a postulated single active failure.

The addition of the train B SCS cross-tie does not adversely affect the existing design basis of the SCS to remove sensible and decay heat from the reactor water, cool it from 280°F to 125°F within 24 hours, and to maintain the reactor water at 125°F.

The proposed license amendment to use ORIGEN2 and ONEPOOL codes will improve the accuracy of predicting spent fuel pool bulk temperatures during normal and abnormal refueling scenarios.

The thermal hydraulic analysis most limiting time to boil calculation of 5.4 hours for loss of all forced cooling to the spent fuel pool is consistent with assumed operator response times for similar scenarios.

The three new proposed technical specifications will ensure that the margin of safety established by engineering analysis of refueling operations is maintained.

Therefore, based on the above, the use of the SCS to assist the SFPC system to cool the spent fuel pool, the use of the ORIGEN2 code, the use of the ONEPOOL code, and the addition of three technical specifications does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270

NRC Project Director: Phillip F. McKee

Northeast Nuclear Energy Company, et al., Docket Nos. 50-245, 50-336 and 50-423, Millstone Nuclear Power Station, Unit Nos. 1, 2, and 3, New London, Connecticut

Date of amendment request: August 4, 1995

Description of amendment request: The proposed license amendments will modify the Administrative Controls Section (Section 6) of the Millstone Unit Nos. 1, 2, and 3 Technical Specifications to allow the Plant Operations Review Committee (PORC) and Site Operations Review Committee (SORC) to direct its efforts in the review of more critical safety matters which affect day-to-day operation. This will be accomplished by the establishment of a Station Qualified Reviewer Program (SQRP) and the reassignment of certain procedure approvals to designated managers in lieu of approval by PORC/SORC.

Basis for proposed no significant hazards consideration determination: As requied by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

...These proposed changes do not involve an SHC because the changes do not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

These changes are administrative in nature. They do not involve any modifications to plant systems and do not alter the method of operation of any plant equipment. The change involves the establishment of a SQRP for the review of plant procedures, programs or changes thereto that do not involve a 10CFR50.59 evaluation.

Implementing a SQRP will not result in a degradation of the current level of procedure review. PORC/SORC will retain the responsibility for reviewing any document for which a 10CFR50.59 evaluation is required. Personnel selected to be SQRs [Station Qualified Reviewers] will possess the technical experience and expertise to provide a thorough technical review as required by plant procedures. These personnel, and the managers authorized to approve these procedures, will be designated in writing by the Unit Director or the Senior Vice President - Millstone Station. Procedures or classes of procedures that can be reviewed per the SQRP will be specified in writing by the Unit Director or the Senior Vice President - Millstone Station. Procedures will receive an appropriate cross-disciplinary review when necessary.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed technical specification changes do not change the design or function of any plant structure, system, or component, nor do they introduce any new failure modes. As stated above, the implementation of a SQRP will not degrade the quality of plant procedures.

There are no modifications to plant structures, systems, or components associated with these proposed changes, and the operation of plant equipment and systems remain unchanged. Since the changes proposed in this license amendment request do not revise existing plant structures, systems, or components, do not change the manner in which the plant is operated and, do not change the manner in which the plant will respond to any design basis accidents, the proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

The changes proposed in this proposed license amendment request do not affect the ability of any system to perform its safety-related function. As described above, these proposed changes are administrative in nature. They do not change any plant operating parameters or design features and do not reduce the level of effectiveness of any existing administrative controls. The proposed change will not result in changes to the bases for any technical specification. The establishment of the SQRP will continue to provide for the adequate review of procedures. In addition, another direct benefit of this program is that the amount of material presented to PORC/SORC will decrease. The reduction in the amount of material presented to PORC/SORC for review will allow the PORC/SORC to focus on safety significant issues. Since none of the assumptions in the technical specifications bases are affected by the changes presented in this license amendment request, the margin of safety which exists in the current technical specifications is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270

NRC Project Director: Phillip F. McKee

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: June 22, 1995

Description of amendment request: The proposed changes modify the facility requirements for thermal-hydraulic instability avoidance and protection to address concerns over reactor fuel performance during instability events. Changes are proposed to the Technical Specifications to utilize the flow biased Average Power Range Monitor high neutron flux scram and a power-flow map exclusion region consistent with one of the NRC approved BWR Owners' Group solutions. In addition, a change to correct an error in the Average Planar Linear Heat Generation Rate during single loop operation is also proposed.

Basis for proposed no significant hazards consideration determination: As requied by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

a. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The implementation of BWR Owner's Group long term stability solution Option 1-D at Monticello does not modify the assumptions contained in the existing accident analysis. The use of an exclusion region and the operator actions required to avoid and minimize operation inside the region do not increase the possibility of an accident. Conditions of operation outside of the exclusion region are within the analytical envelope of the existing safety analysis. The operator action requirement to exit the exclusion region upon entry minimizes the probability of an oscillation occurring. The actions to drive control rods and/or to increase recirculation flow to exit the region are maneuvers within the envelope of normal plant evolutions. The flow based scram has been analyzed and will provide automatic fuel protection in the event of a core wide instability. Thus, each proposed operating requirement provides defense in depth for protection from an instability event while maintaining the existing assumptions of the accident analysis. The proposed change to the method by which the MAPLHGR [maximum average planar linear heat-generation rate] is obtained for single loop operation is consistent with the analysis performed for the Average Power Range Monitor/Rod Block Monitor Technical Specifications (ARTS) program. The analysis performed in support of the ARTS program demonstrated that the limits established assure compliance with fuel limits. Therefore, this amendment will not cause a significant increase in the probability or consequences of an accident previously evaluated for the Monticello plant.

b. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

As stated above, the proposed operating requirements either mandate operation within the envelope of existing plant operating conditions or force specific operating maneuvers within those carried out in normal operation. Since operation of the plant with all of the proposed requirements is within the existing operating basis, an unanalyzed accident will not be created through implementation of the proposed change. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident.

c. The proposed amendment will not involve a significant reduction in the margin of safety.

Each of the proposed requirements for the plant thermal-hydraulic stability provides a means for fuel protection. The combination of avoiding possible unstable conditions and the automatic flow biased reactor scram provides an in-depth means for fuel protection. Therefore, the individual or combination of means to avoid and suppress an instability supplements the margin of safety. The operating limits established for the single loop operation MAPLHGR provide an acceptable margin of safety as demonstrated in NEDC-30492, ''Average Power Range Monitor, Rod Block Monitor and Technical Specification Improvement (ARTS) Program for Monticello Nuclear Generating Plant-April 1984.'' The proposed amendment will not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: John N. Hannon

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: July 5, 1995

Description of amendment request: The proposed amendment, part of the Monticello Surveillance Test Interval/ Allowed Outage Time (STI/AOT) Program, extends the surveillance test intervals and allowable out-of-service times for selected instrumentation. The proposed changes are intended to minimize unnecessary testing and remove excessively restrictive out-of-service times that could potentially degrade overall plant safety and availability.

Basis for proposed no significant hazards consideration determination: As requied by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The maximum failure frequency change is for the ECCS Actuation Instrumentation as identified by General Electric topical report NEDC-30936P-A, and Monticello specific report RE-006. These reports concluded core damage frequency changed by less than 4% when STIs were increased to once per 3 months, AOTs for surveillance were increased to 6 hours, and AOTs for repair were increased to 24 hours. Since this small increase was within the guideline of acceptability stated in NEDC-30936P-A, and Monticello only proposes to increase the repair AOT to 12 hours rather than 24 hours, this amendment will not cause a significant increase in the probability or consequences of an accident previously evaluated for the Monticello plant (see RE-006).

The drift analysis determined the associated instrumentation would not be adversely effected with the longer calibration intervals. Pertinent process parameters including instrument drift will still be within acceptance criteria with the longer surveillance intervals.

The recirculation flow meters and flow instrumentation are not used in any safety or accident analysis. Therefore, no analysis would be changed by increasing the calibration interval to once per cycle.

b. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

These changes only affect the instrument STI and AOT times. No changes are being made to the functions of the instrumentation. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident.

c. The proposed amendment will not involve a significant reduction in the margin of safety.

These changes will improve the performance of equipment and are intended to reduce the potential for equipment failures due to unnecessary testing. The safety limits and the limiting safety system setpoints will not be affected by these changes. No safety margins are affected, therefore, the drift will remain within the margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: John N. Hannon

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station,Unit No. 1, Washington County, Nebraska

Date of amendment request: August 4, 1995

Description of amendment request: This proposed amendment would revise the Technical Specifications (TS) for the requirements for the containment radiation high signal (CRHS) and the safety injection and refueling water (SIRW) tank low signal (STLS) contained in TS 2.15, Tables 2-3 and 2-4. Specification 3.1, Table 3-2 will also be revised to include administrative changes to the CRHS surveillance

methods to be consistent with the applicable surveillance functions. The Basis for Specification 2.15 is being revised to clarify that the number of installed channels for CRHS is two. The term ''SOURCE CHECK'' is being deleted from the Definitions section.

Basis for proposed no significant hazards consideration determination: As requied by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The Omaha Public Power District (OPPD) proposes to revise Technical Specification (TS) 2.15, Table 2-3 by revising the requirement for placing the Safety Injection Refueling Water (SIRW) tank low level channel(s) in the tripped condition to placing them in the bypassed condition. Due to the derived signal, if a channel was in the tripped condition and a single failure occurred, (that being one channel of STLS on either A or B circuits), a premature SIRW tank low signal (STLS) would be generated. During a design basis accident (DBA) with a valid Containment Pressure High Signal (CPHS) or Pressurizer Pressure Low Signal (PPLS), this single failure would prevent the contents of the SIRW tank from being injected into the reactor coolant system. The resulting logic of placing the SIRW tank low level channels in BYPASS rather than TRIP would not cause a premature switchover of the high pressure safety injection pumps to the containment sump and it would not prevent the switchover when needed.

OPPD also proposes to revise TS 2.15, Table 2-4, by reducing the number of minimum operable Containment Radiation High Signal (CRHS) channels from two to one. This proposed change revises the requirements of TS 2.15 to coincide with changes to the TS and Offsite Dose Calculation Manual (ODCM) that were implemented by TS Amendment 152. The Engineered Safety Feature (ESF) actuation system supervisory A and B safeguard initiation channels will not be affected by this proposed TS change. The minimum level of engineered safeguards performance acceptable for the DBA, (i.e., minimum safeguards) will continue to be maintained in accordance with IEEE 279 - 1971, ''Criteria for Protection Systems for Nuclear Power Generating Stations.''

Included in this change are administrative revisions to TS 3.1, Table 3-2, for replacing the current surveillance methods for checking and testing the CRHS instrumentation with the defined terms ''CHANNEL CHECK'' and ''CHANNEL FUNCTIONAL TEST,'' respectively. These proposed revisions are administrative in nature and reflect TS-defined terminology for the instrumentation surveillance methods utilized to ensure that the CRHS instrumentation is operable. A channel check requires a qualitative determination of acceptable operability by observation of channel behavior during normal plant operation. A channel functional test requires the injection of a simulated signal into the channel to verify that it is operable, including any alarm and/or trip initiating actions. Other proposed administrative changes include deleting the term ''SOURCE CHECK'' from the TS Definitions section as source check will no longer be used in the FCS TS and adding verbiage to the TS 2.15 Basis for clarifying that the number of installed channels for CRHS is two.

Therefore, the proposed change, as described above, would not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

There will be no physical alterations to the plant configuration, changes to setpoint values, or changes to the implementation of setpoints or limits as a result of the proposed changes to TS 2.15, Tables 2-3 and 2-4. The proposed revisions to TS 3.1, Table 3-2 are administrative changes to make the TS more accurately reflect defined terminology and the methods utilized to ensure that the CRHS instrumentation is operable. The proposed TS revisions do not require any changes to the present methods of verifying CRHS instrumentation operability. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

There are no changes to the equipment or plant operations as a result of the changes being made to the number of minimum operable CRHS channels. The proposed changes to the STLS will require that the inoperable channel be placed in BYPASS rather than TRIP. This action would ensure that a single failure would not cause a premature safety injection switchover to the containment sump and would not prevent switchover when needed. Therefore, this proposed change does not reduce a margin of safety.

The proposed revisions to TS 3.1, Table 3-2 are administrative changes to make the TS more accurately reflect defined terminology and the methods utilized to ensure that the CRHS instrumentation is operable. The proposed TS revisions do not require any changes to the present methods of verifying CRHS instrumentation operability. The proposed changes to the Definitions and TS 2.15 Basis sections are administrative in nature. Therefore, these proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: Perry D. Robinson, Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: William H. Bateman

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: June 22, 1995

Description of amendment request: The amendments would revise the Technical Specifications 3.4.1.4 and 3.9.8.2 by deleting footnotes and associated information regarding Service Water header operation and its support function for Residual Heat Removal operation. These footnotes and associated information had been placed in the Technical Specifications because of the concern about Service Water system piping integrity in the mid-1980's.

Basis for proposed no significant hazards consideration determination: As requied by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Even though one service water loop will be out for maintenance, both loops of residual heat removal (RHR) will be kept operable, consistent with the requirements of STS (NUREG 1431). A minimum of two RHR, two component cooling (CC), and two service water (SW) pumps, powered from two different vital busses, will be kept operable.

Only one component cooling heat exchanger will be operable since only one service water loop is operable. The CC heat exchangers for both Units 1 and 2 have a very high reliability. The primary heat transfer surfaces of the heat exchangers are made of titanium; no material problems have been experienced in ten years of service.

The remaining active components that, through misoperation, could potentially defeat RHR capability are, (1) the motor operated valves in RHR or SW that could develop a ''hot short'' and subsequently close and (2) the air operated temperature/ flow control valves of the CC heat exchangers. Additional actions will be taken to effectively eliminate the possibility of these single point valves from failing and defeating RHR capability. The motor operator breakers will be tagged open during MODES 5 and 6, except for flooding the cavity, when the RHR suction valves must be closed. The CC Heat Exchanger air operated temperature/flow control valves fail open, or as is, on loss of air which is the safe position. Operators will monitor critical temperatures; this equipment is accessible if any corrective action is required. Thus, with one service water header out of service, the intent of the

technical specifications as defined in the bases section (to have a single failure proof RHR system) is met with the proposed system configuration. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do not create the possibility of a new or different kind of accident from any previously evaluated.

The catastrophic failure of a moderate energy Class 3 piping system is not a credible event, based on the upgraded reliability of the system, the redundancy of active components, the elimination of single failure points, and on the industry and regulatory positions established for this type of system. Since SW is a Class 3 moderate energy system, the only postulated passive failure mode is a leakage crack. In accordance with Generic Letter (GL) 91-18 and GL 90-05, a leak in the SW system, following acceptable evaluation, does not constitute a failure that causes the loss of capability to perform it's intended safety function. A moderate energy Class 3 piping leak does not cause the system to be declared inoperable. Therefore, the proposed changes do not create the possibility of a new or different type of accident from any previously evaluated.

3. Do not involve a significant reduction in a margin of safety.

RHR redundancy is maintained; no credible single failure point exists that could cause a nonrecoverable loss of SW. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW, Washington, DC 20005-3502

NRC Project Director: John F. Stolz

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: September 15, 1992, as supplemented April 20, 1993, April 26, 1995, and July 27, 1995.

Description of amendment request: The proposed amendment would revise Technical Specifications (TSs) 3.1.1.4, 3.1.1.6, and 4.3.4, and add a Basis to address Generic Letter (GL) 90-06. GL 90-06 represents the technical resolution of Generic Issue (GI) 70, ''Power Operated Relief Valve and Block Valve Reliability,'' and GI 94, ''Additional Low Temperature Overpressure Protection for Light Water Reactors.'' The resolution of these issues proposes new requirements and TS changes that enhance the reliability of power-operated relief valves (PORVs) and block valves along with TS changes that will provide additional low-temperature overpressure protection (LTOP).

Basis for proposed no significant hazards consideration determination: As requied by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

There is no significant increase in the probability or consequences of an accident previously evaluated because the accident conditions and assumptions are not significantly affected by the proposed change.

The proposed change to action statement 3.1.1.4a(i) [proposed to be renumbered to 3.1.1.6c] to include the removal of power from a closed block valve will provide additional assurance to preclude any inadvertent opening of the block valve at a time in which the PORV may not be operable to assure RCS [reactor coolant system] integrity.

The provision of the generic letter requires, with one or both PORV(s) inoperable to initiate shutdown actions if PORV operability is not restored within 72 hours or 1 hour respectively. RG&E [Rochester Gas and Electric Corporation] does not address these shutdown actions, but rather will concentrate on re-establishing valve operability. If the block valve(s) and power are not removed within 1 hour shutdown provisions must be initiated. [***].

Proposed action statement 3.1.1.4a(ii) [proposed to be renumbered to 3.1.1.6d] includes a provision to place the block valves associated PORV(s) switch in manual control due to an inoperable block valve(s). This requirement precludes the automatic opening for an overpressure event to avoid the potential for a stuck-open PORV at a time that the block valve is open and inoperable. [***].

The proposed change of maintaining power to closed block valves could potentially increase the probability of an inadvertent opening of a block valve. The safety impact is, however, not significant since the proposed changes are only applicable if the PORV is inoperable due to excessive seat leakage (proposed action 3.1.1.6b). [***].

Proposed action statement 3.1.1.6b establishes reactor coolant pressure boundary integrity for a PORV that has excessive seat leakage and is therefore considered operable to perform its intended safety function. [***].

Proposed Surveillance Requirement 4.3.4.3 addresses operability of the Nitrogen System by demonstration of the PORVs at least once per 18 months by operating the PORVs through a complete cycle of full travel. [***].

Based on the above efforts, the proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated.

The possibility of a new or different kind of accident from any previously evaluated is not created. In matters related to nuclear safety, all accidents continue to bound previous analyses. The proposed changes do not add or modify any equipment design nor do the proposed changes involve any significant operational changes to any plant systems.

The proposed amendment does not involve a significant reduction in the margin of safety as defined in the basis for any technical specification because the results of the accident analyses which are documented in the UFSAR [Updated Final Safety Analysis Report] continue to bound operation under the proposed changes so that there is no safety margin reduction. [***].

Therefore, the proposed changes do not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610

Attorney for licensee: Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005

NRC Project Director: Ledyard B. Marsh

Sacramento Municipal Utility District (SMUD), Docket No. 50-312, Rancho Seco Nuclear Station, Sacramento County, California

Date of amendment request: June 20, 1995 and as amended August 14, 1995

Description of amendment request: The proposed amendment (PA-191) would permit SMUD to change the Fuel Storage Building load handling limits to allow placing the shield plugs on the dry shielded cannisters in order to permit transfer of spent fuel assemblies from the spent fuel pool (SFP) to the Rancho Seco Independent Spent Fuel Storage Installation.

Basis for proposed no significant hazards consideration determination: As requied by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

PA-191 will not create a significant increase in the probability or consequences of an accident previously evaluated in the Safety Analysis Report (SAR), because dropping the dry shielded canister (DSC) top shield plug over a DSC loaded with 24 spent fuel assemblies is not considered a credible event. Also, the gantry crane is designed such

that it can only handle loads over the SFP cask pit area and can not move a load over the SFP fuel storage racks.

PA-191 will not create the possibility of a new or different type of accident than previously evaluated in the SAR, because the proposed Permanently Defueled Technical Specification heavy load handling exceptions do not create a new credible accident scenario. Dropping the DSC top shield plug and damaging spent fuel assemblies is not considered a credible event.

PA-191 will not involve a significant reduction in the margin of safety, because the proposed heavy load handling exceptions do not create a credible accident scenario.

The NRC staff has reviewed the licensee's analyses of June 20, 1995 and August 14, 1995. The August 14 submittal enhanced these analyses by providing design details regarding the significant safety factors built into the crane and other lifting hardware. Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Central Library, Government Documents 828 I Street, Sacramento, CA 95814

Attorney for licensee: Dana Appling, Esq. Sacramento Municipal Utility District, P. O. Box 15830, Sacramento, CA 95852-1830

NRC Project Director: Seymour H. Weiss

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: July 17, 1995

Description of amendment requests: The licensee proposes to revise surveillance requirements associated with Technical Specifications 3/4.3.1, ''Reactor Protective Instrumentation,'' and 3/4.3.2, ''Engineered Safety Feature Actuation System Instrumentation.'' The surveillance interval is to be increased to 120 days for performance of channel functional tests for certain reactor protective system and engineered safety feature actuation system instrumentation. The proposed change also revises Bases 3/4.3.1, ''Reactor Protective and Engineered Safety Features Actuation System Instrumentation,'' to reflect the new interval.

Basis for proposed no significant hazards consideration determination: As requied by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change would extend the current sequential Channel Functional Test (CFT) surveillance interval for Plant Protective System (PPS) instrumentation and Nuclear Instrumentation (NI). This change does not involve any changes to plant equipment or operation. The proposed change actually maintains or decreases the PPS system unavailability. PPS uncertainty and setpoint modifications will account for the new surveillance interval. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This amendment request does not involve any change to plant equipment or operation. The PPS system is used for monitoring and mitigation of evaluated accidents. Increasing the availability of the PPS system, as proposed in this amendment request, will not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

This amendment does not change the manner in which safety limits, limiting safety settings, or limiting conditions for operation are determined. This amendment request will increase Reactor Protective System and Engineered Safety Features Actuation System availability. Therefore, this amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713

Attorney for licensee: T. E. Oubre, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, California 91770

NRC Project Director: William H. Bateman

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: August 7, 1995 (TS 95-12)

Description of amendment request: The proposed change would correct various errors of an editorial nature that have been identified in the technical specifications and remove the provisions that have exceeded their allowed time interval for implementation or the required conditions no longer exist.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revisions do not change the TS requirements, plant setpoints or functions, or plant operating practices. These changes provide clarifications to the existing TSs by correcting editorial errors and removing provisions that no longer apply in the specifications. The probability or consequences of an accident will not be increased by providing the proposed verbiage corrections that are editorial and nonintent.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

No plant functions or compliance activities associated with the TS requirements have been affected by the proposed editorial changes. Therefore, the possibility of a new or different kind of accident is not created.

3. Involve a significant reduction in a margin of safety.

The proposed changes will not alter TS setpoint values or functions. The proposed corrections will enhance the application of TS requirements and will support the margin of safety provided by the TSs. Therefore, the margin of safety will not be reduced by the proposed revisions.

The NRC has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: August 7, 1995 (TS 95-17)

Description of amendment request: The proposed change would relocate the heat flux hot channel factor penalty of two percent from Surveillance Requirement 4.2.2.2.e.1 to the Core Operating Limits Report and add a reference to the factor to Specification 6.9.1.14.5. Also, Specification 6.9.1.14.a.2 would be revised to reference Revision 1A of Westinghouse Commercial Atomic Power (WCAP) 10216-P-A, ''Relaxation of Constant Axial Offset Control - F_Q Surveillance Technical Specifications,'' dated February 1994.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change involves only the manner in which the penalty factors for $F_Q(Z)$ would be specified (i.e, a burnup-dependent factor specified in the Core Operating Limits Report [COLR] versus a constant factor specified in the TS). This is simply used to account for the fact that $F_Q(Z)$ may increase between surveillance intervals. These penalty factors are not assumed in any of the initiating events for the accident analyses. Therefore, the proposed change will have no effect on the probability of any accidents previously evaluated. The penalty factors specified in the COLR will be calculated using NRC-approved methodology and will therefore continue to provide an equivalent level of protection as the existing TS requirement. Therefore, the proposed change will not affect the consequences of any accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change does not involve a physical alteration to the plant (no new or different kind of equipment will be installed) or alter the manner in which the plant would be operated. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change will continue to ensure that potential increases in $F_Q(Z)$ over a surveillance interval will be properly accounted for. The penalty factors will be calculated using NRC-approved methodology. Therefore, the proposed change will not involve a reduction in margin of safety.

The NRC has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: August 7, 1995 (TS 95-18)

Description of amendment request: The proposed change would revise the titles of various administrative positions found in Section 6.0 of the Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c).

Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes only involve the administrative titles of management positions in TVA [Tennessee Valley Authority]. Plant equipment and operating practices are not affected by the proposed administrative changes. Therefore, there is no increase in the probability or consequences of an accident.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

Plant features are not impacted by the proposed revision; therefore, this revision can not create the possibility of a new or different accident.

3. Involve a significant reduction in a margin of safety.

Plant setpoints and features that establish and maintain the margin of safety for SQN are not involved in the proposed administrative TS change. Therefore, the margin of safety is not reduced by the proposed change.

The NRC has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.Local Public Document Romm location: Chattanooga-Hamilton County Library,1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: August 7, 1995 (TS 95-03)

Description of amendment request: The proposed change would modify Technical Specifications (TS) 3/4.1.3, ''Movable Control Assemblies,'' and Bases 3/4.1.3. The proposed change addresses operation with a rod urgent failure condition (the control rods are out-of-service because of failures external to the individual rod drive mechanisms; i.e., programming circuitry, but the control rods remain operable), including limited operation with one control or shutdown bank inserted up to 18 steps below its insertion point. In addition, the surveillance interval for rod movement verifications would be increased from 31 days to 92 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c).

Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Allowing for continued operation during diagnosis and repair as a result of electronic or electrical malfunctions of the rod control system is acceptable, since the design safety function of the control rods (reactor trip will remain unaffected during the diagnosis and repair period. During the extended

troubleshooting and repair period, the requirements for control rod alignment, insertion limits (except for a small allowed deviation for one bank) and shutdown margin will be maintained. The small deviation from the control rod insertion limits allowed for one bank, for up to 72 hours, will not adversely impact the current TS requirements for normal operation core power distributions. The proposed changes do not affect the ability of the control rods to perform their intended safety function (rods remain trippable) when a safety system setting is reached. No new or unique accident precursors be introduced by the proposed changes. Therefore, the probability and consequences of accidents related to or dependent on control rod operation will remain unaffected.

The proposed change will result in a small increase in the probability, that at any given time, a control or shutdown bank will be inserted slightly below (i.e., up to 18 steps) its insertion limit. However, by design, the control and shutdown banks will continue to meet the safety analysis criterion for steady state and American Nuclear Society (ANS) Condition II (moderate frequency) transients. The allowed insertion is not a malfunction of equipment important to safety in this case; therefore, the probability of such a malfunction is not increased. Limiting the allowed time for operation with the rod control system out-of-service, but with the rods trippable and with a control or shutdown bank below the insertion limit, eliminates the need for consideration of this condition coincident with any of the low frequency (ANS Condition III or IV) design basis accidents.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

There are no new failure mechanisms associated with plant operation for an extended period to perform diagnosis and repair on the rod control system. Limited periods of operation with immovable, but trippable control rods, does not involve any modification to the operational limits or physical design of the involved systems. There are no new accident precursors created because of the allowed diagnosis and repair period.

3. Involve a significant reduction in a margin of safety.

The results of the current accident analyses are not impacted by the change. In addition, the margin of safety as defined in the basis of the TS has not been reduced because current core design limits continue to be met for the accidents of concern. Therefore, the margin of safety is not impacted.

The NRC has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: June 23, 1995

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Surveillance Requirements 4.1.3.1.2, 4.4.6.2.2.b, 4.4.3.2, 4.6.2.1.d, 4.6.4.2, and Table 4.3-3 in accordance with guidance provided in NRC Generic Letter (GL) 93-05, ''Line Item Technical Specification Improvements to Reduce Surveillance Requirements for Testing During Power Operations.'' Additionally, the proposed amendment would revise TS 4.1.1.1.1, 4.1.1.2, 3/4.1.3.1 and associated Bases to implement portions of the Standard Technical Specifications - Westinghouse Plants, NUREG-1431.

Basis for proposed no significant hazards consideration determination: As requied by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed Technical Specification changes do not involve a significant hazards consideration per 10 CFR 50.92 because operation of Callaway Plant with the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

All changes are in accordance with the recommendations of NRC Generic Letter 93-05, Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation or NUREG 1431, Standard Technical Specifications - Westinghouse Plants. None of the changes affects accident initiators and each has been evaluated against Callaway Plant operating experience.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed Technical Specification changes do not modify any equipment nor create any potential accident initiators. The changes per GL 93-05 involve Technical Specification surveillance frequencies and do not alter the methodology nor associated acceptance criteria. The changes per NUREG-1431 do not create any accident initiators and are consistent with Callaway design and operation.

3. Involve a significant reduction in a margin of safety.

The surveillance frequency changes were recommended via GL 93-05 and are compatible with Callaway Plant experience. The changes per NUREG-1431 do not impact the margin of safety. The Shutdown margin requirements and associated safety margins are unaffected by these changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: June 26, 1995

Description of amendment request: The proposed amendment would revise the allowed outage time for component cooling water motor operated containment isolation valves, remove the list of containment isolation valves, and allow containment penetration check valves to be used as isolation devices.

Basis for proposed no significant hazards consideration determination: As requied by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed revision to TS 3/4.6 to remove the listing of containment isolation valves, revise the ACTION Statement for the CCW MOVs, and credit penetration check valves as isolation devices does not involve a significant hazards consideration because operation of Callaway Plant with this change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes simplify the TS, meet the regulatory requirements for control of containment isolation and are consistent with the guidelines of GL 91-08. The information contained in Table 3.6-1 has not been changed, but only relocated to a different controlling document. This is an administrative change which should result in improved plant practices and have no impact on plant operations. Addition of the footnote to allow up to 12 hours for valve testing does not affect the severity of any accident previously evaluated. The proposed revision to the TS will not adversely impact plant safety since the second barrier of the two required is still available to provide isolation between the containment atmosphere or the reactor coolant system and the outside atmosphere.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

There are no design changes being made that would create a new type of accident or malfunction and the method and manner of plant operation remain unchanged. Addition of the footnote to allow up to 12 hours for valve testing does not affect the severity of any accident previously evaluated. The additional time provides assurance that the inoperable valve is in proper working order prior to returning it to OPERABLE condition.

3. Involve a significant reduction in a margin of safety.

There are no changes being made to the safety limits or safety system settings that would adversely impact plant safety. Containment isolation will still be maintained as provided by the second isolation valve to ensure that the release of radioactive material to the environment will be consistent with the assumptions used in the analyses for a LOCA. This will assure that containment integrity is maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: July 25, 1995

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3/4.8.1 and its associated Bases to improve overall emergency diesel generator reliability and availibility.

Basis for proposed no significant hazards consideration determination: As requied by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant hazards consideration because operation of Callaway Plant with these changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

These proposed changes do not involve a change in the operational limits or physical design of the emergency power system. Emergency diesel generator operability and reliability will continue to be assured while minimizing the number of required emergency diesel generator starts. Also, emergency diesel generator reliability will be enhanced by minimizing severe test conditions which can lead to premature failures.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

These proposed changes do not involve a change in the operational limits or physical design of the emergency power system. The performance capability of the emergency diesel generator will not be affected. Emergency diesel generator reliability and availability will be improved by the implementation of the proposed changes. There is no actual impact on any accident anaiysis.

3. Involve a significant reduction in the margin of safety.

These proposed changes do not involve a change in the operational limits or physical design of the emergency power system. The performance capability of the emergency diesel generator will not be affected. Emergency diesel generator reliability and availability will be improved by the implementation of the proposed changes. No margin of safety is reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: November 29, 1994

Description of amendment request: The proposed change would revise and update the NA-1&2 Environmental Protection Plan (EPP) to reflect current obligations to the Commonwealth of Virginia, revise portions of the transmission corridor rights-of-way erosion control program for clarification and to be consistent with the state regulations, eliminate inconsistencies, and delete obsolete material. Specifically, references to National Pollutant Discharge Elimination System (NPDES) permits are changed to reflect the correct permit title, Virginia Pollutant Discharge Elimination System (VPDES). Vegetation and aquatic biota studies referred to in the EPP were satisfactorily completed on or before June 24, 1986. The discussion of the detailed subject matter in these studies is removed because it is extraneous information. A reference to 10 CFR 51.5(b)(2) (which does not exist) is corrected to 10 CFR 51.60(b)(2). The explicit reporting requirements for unusual or important environmental events are replaced with the reporting requirement which the NRC has required pursuant to 10 CFR 50.72 (b)(2)(vi). Therefore, the reporting inconsistency (EPP requires report to NRC within 24 hours, whereas the 10 CFR 50.72 requires a four hour report to the NRC) is resolved. The description of the audit program to be utilized for auditing the EPP is replaced by referring to the Audit Program established in accordance with 10 CFR 50, Appendix B. Another inconsistency is eliminated by revising the two year records retention requirement for erosion control inspection field logs to five years. This makes the requirement consistent with EPP Section 5.2, Records Retention. References to the State Water Control Board are updated to that agency's successor, the Department of Environmental Quality. Additionally, the licensee's obligation to comply with Virginia regulations concerning erosion and sediment control within the transmission corridor rights-of-way are recognized to eliminate redundancy with previous EPP commitments. The Virginia Soil and Water Conservation Board is recognized as the regulatory authority concerning erosion within the transmission corridor rights-of-way. The Virginia Soil and Water Conservation Board reviews and approves erosion and sediment control specifications submitted by utilities on an annual basis.

Basis for proposed no significant hazards consideration determination: As requied by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, operation of the North Anna Power Station in accordance with the EPP changes will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The likelihood that an accident will occur is neither increased or decreased by the proposed changes to the EPP. Sufficient controls are established to ensure that environmental controls impacting safety-related structures, systems, and components are maintained current and accurate. The only potentially credible accident which might be affected is the Loss of Offsite Power (if erosion were severe

enough to undermine the bases of a transmission tower). Each of the three 500 KV transmission lines connected to North Anna Power Station can supply sufficient power to the site. This limits the effect that one transmission tower has on safe operation of the nuclear facility. However, the erosion noted to date has not been severe enough to make such an accident credible. Additionally, each of the 500 KV transmission lines are inspected for material condition annually. Although the intent of this inspection is not soil erosion (the annual erosion inspections are currently conducted by another group who specializes in land management), evidence of severe erosion would be noted and addressed as appropriate. Therefore, this EPP change will not impact the function or method of operation of plant equipment. Thus, a significant increase in the probability of a previously analyzed accident does not result due to this change. Nuclear station systems, equipment, or components are not affected by the proposed changes. Thus, the consequences of a malfunction of equipment important to safety previously evaluated in the UFSAR [Updated Final Safety Analysis Report] are not increased by this change.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve changes to the physical plant or operations. ... the proposed EPP changes do not contribute to accident initiation and therefore do not produce a new accident scenario or produce a new type of equipment malfunction. Also, this EPP change does not alter any existing accident scenarios. The proposed changes do not affect nuclear plant equipment or its operation, and thus do not create the possibility of a new or different kind of accident. Therefore, the proposed changes do not create the possibility of a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety. The EPP does not have a formal basis description other than the discussion in the FES-OL [Final Environmental Statement-Operating License]. The FES-OL discusses the non-radiological impacts of facility construction and operation on the environment. The discussion indicates that the environment will be managed to a stabilized condition during the operations phase, and a program will be implemented to maintain the environment in a stabilized condition. This intent is not altered by the proposed changes to the EPP. The proposed changes do not affect nuclear plant equipment or its operation, and thus do not involve any reduction in the margin of safety.

Therefore, use of the proposed EPP would not involve any reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219

NRC Project Director: David B. Matthews

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: July 26, 1995

Description of amendment request: The proposed changes would revise the Technical Specifications (TS) for the North Anna Power Station, Units No. 1 and No. 2 (NA-1&2). Specifically, the proposed changes would increase the pressurizer safety valve lift setpoint tolerance as well as reduce the pressurizer high pressure reactor trip setpoint and allowable value.

The licensee has prepared a safety evaluation which justifies increasing the current TS pressurizer safety valve (PSV) at-power (Modes 1-3) lift setpoint tolerance from plus or minus 1% as-found and plus or minus 1% as-left to +2%/-3% average as-found with no single valve outside plus or minus 3% as-found and plus or minus 1% per valve as-left. The as-found value is based on testing, the results of which are expressed as an error (i.e., positive or negative percentage deviation from the nominal lift setpoint). The errors of the tested valves are summed and the result divided by the number of valves tested. This result is compared to the acceptable range of +2% to -3%. No single valve is allowed to be outside of the plus or minus 3% tolerance.

The safety evaluation also supports an increase to the Hot Shutdown (Mode-4) required PSV lift setpoint tolerance from plus or minus 1% as-found and plus or minus 1% as-left to plus or minus 3% per valve as-found and plus or minus 1% per valve as-left. These proposed changes will provide greater operational flexibility in meeting periodic test requirements established by the safety analyses.

A concurrent reduction in the pressurizer high pressure reactor trip setpoint and allowable value of TS Table 2.2-1 are also proposed. These changes ensure that the analysis results for the loss of external load accident continue to meet the acceptance criteria with the higher PSV tolerance.

The Loss of Load, Locked Rotor, and Rod Withdrawal event analyses demonstrate that increasing the at-power PSV lift setpoint tolerance to +2%/-3% average as-found with no single valve outside plus or minus 3% as-found and plus or minus 1% per valve as-left does not result in a transient pressure in excess of the overpressure safety limit. Further, the increased setpoint tolerance does not adversely impact the DNBR [departure from nucleate boiling ratio] results of any North Anna UFSAR [Updated Final Safety Analysis Report] Chapter 15 transient analysis. Mode 4 overpressure protection is adequate with one PSV with a tolerance of plus or minus 3%.

Finally, the increased PSV setpoint tolerances and reduction of the high pressurizer pressure reactor trip setpoint do not present any operational considerations which would significantly impact the performance of the plant during normal operation or during postulated accident conditions. In summary, each pertinent safety criterion was evaluated for the proposed TS changes, and all were found to be acceptable.

Basis for proposed no significant hazards consideration determination: As requied by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, operation of North Anna Power Station in accordance with the proposed Technical Specifications changes will not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

Affected safety related parameters were analyzed for a change to North Anna 1 and 2 Technical Specifications 3.4.2 and 3.4.3 and Table 2.2-1 item 10. It was determined that the overpressure safety limits would not be exceeded in the most limiting overpressure transients (Loss of Load, Locked Rotor, and Rod Withdrawal events) with the as-found pressurizer safety valve lift setpoint tolerance increased to an average of +2%/-3%, no single valve outside of [plus or minus] 3%, and the 25 psi reduction in the Pressurizer High Pressure Reactor Trip setpoint. The DNBR results of transients impacted by the proposed setpoint tolerance increase meet the acceptance criterion after accounting for the impact of the proposed changes. The increased setpoint tolerance will not result in an inadvertent opening of the pressurizer safety valves. Mode 4 overpressure protection is adequate with one PSV with a tolerance of [plus or minus] 3%.

2. Create the possibility of a new or different kind of accident from any accident previously identified.

The proposed change to North Anna 1 and 2 Technical Specifications 3.4.2 and 3.4.3 and Table 2.2-1 item 10 does not involve any changes which would introduce any new or unique operational modes or accident precursors. Only the allowable tolerance about the existing PSV lift setpoint will be changed, along with a reduction in the

pressurizer high pressure reactor trip setpoint.

3. Involve a significant reduction in a margin of safety.

It was determined that the most limiting overpressure transients do not result in maximum pressures in excess of the overpressure safety limits. The DNBR results of transients impacted by the proposed setpoint tolerance increase meet the acceptance criterion after accounting for the impact of the proposed changes. Therefore, the margin of safety is unchanged by the proposed increase in the safety valve setpoint tolerances.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219

NRC Project Director: David B. Matthews

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: July 26, 1995

Description of amendment request: The proposed change would revise the Technical Specifications (TS) for the North Anna Power Station, Units No. 1 and No. 2 (NA-1&2). Specifically, the change would clarify the TS to allow switching of charging and low-head safety injection pumps during unit shutdown conditions. The proposed changes would also allow additional methods of rendering these same pumps incapable of injecting into the reactor coolant system (RCS) when required for low-temperature conditions. NA-1&2 is equipped with three charging pumps. These charging pumps provide inventory control, normal boration to the RCS, and flow to the reactor coolant pump seals. They also act as the high-head safety injection pumps during accident conditions. During certain shutdown conditions, it is necessary to render two of the three charging pumps inoperable to maintain the low-temperature overpressure protection (LTOP) design bases assumptions. This provides assurance that a mass addition pressure transient can be relieved by the operation of a single pressurizer power-operated relief valve (PORV). Low-temperature overpressure protection for each NA-1&2 unit is provided by two pressurizer PORVs.

During shutdown conditions, periodic surveillance testing of the charging pumps is required by the NA-1&2 TS. Also during shutdown conditions, it may be desirable to switch from one charging pump to another to allow for other activities such as maintenance or testing.

The current NA-1&2 TS associated with charging pumps during shutdown conditions are very restrictive and do not allow sufficient latitude for surveillance testing or pump switching. The current NA-1&2 TS specifically state in the surveillance requirements that the method used to render a charging pump inoperable is to place the pump control switch in the pull-to-lock position. This requirement would not allow for surveillance or post-maintenance testing of the inoperable charging pumps since this switch is used to start those pumps.

Therefore, the licensee proposes to modify NA-1&2 TS to allow more than one charging pump to be operable and capable of injecting into the RCS for pump switching operations. Additionally, the methods used to render charging pumps inoperable will be expanded to allow for post-maintenance and surveillance testing.

Basis for proposed no significant hazards consideration determination: As requied by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, operation of North Anna Power Station in accordance with the proposed Technical Specifications changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Allowing more than one charging pump to be operable and capable of injecting into the RCS during RCS low temperature operation for pump switching for post-maintenance and surveillance testing does not increase the probability of occurrence or the consequences of any previously analyzed accident. Pump switching operations will be under the direct administrative control of a licensed operator and will only be for a short duration of time. Any situation that could result in an excessive RCS mass addition would be immediately recognized by the operator and remedial action would be taken to prevent challenges to RCS integrity. Using methods such as opening the charging pump power supply breaker or closing the charging pump discharge valve(s) to render a charging pump inoperable will ensure that these pumps will not be capable of injecting water into the RCS. These alternate methods are as effective as placing the control switches in the pull-to-lock position.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Allowing more than one charging pump to be operable and capable of injecting into the RCS during low-temperature operation for pump switching for post-maintenance and surveillance testing does not involve any physical modifications of the plant nor result in a change in a method of operation. Licensed operator control of charging pump switching operations will continue to ensure that the RCS will not be challenged by excessive mass addition events. Using methods other than placing charging pump control switches in the pull-to-lock position to render the pump inoperable will still ensure that only one pump will be capable of injecting into the RCS during low temperature operations. Therefore, a new or different type of accident is not made possible.

3. Involve a significant reduction in a margin of safety.

Allowing more than one charging pump to be operable and capable of injecting into the RCS during RCS low temperature operation for pump switching for post-maintenance and surveillance testing does not affect any safety limits or limiting safety system settings. The alternate methods of rendering pumps inoperable provide the same level of assurance that the pump is incapable of flowing into the RCS as placing the pump control switch in the pull-to-lock position. System operating parameters remain unaffected. The availability of equipment required to mitigate or assess the consequence of an accident is not reduced. Safety margins are, therefore, not decreased.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied.Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219

NRC Project Director: David B. Matthews

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: July 20, 1995

Description of amendment request: The proposed amendments would: 1) revise three Reactor Protection System/ Engineered Safety Features Actuation Systems channel trip setpoint limits, 2)

add a new setpoint limit for high high steam generator water level, and 3) incorporate editorial changes to revise the measurement units of one setpoint limit and to delete certain references to two-loop operation.

Basis for proposed no significant hazards consideration determination: As requied by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:Specifically, operation of Surry Power Station with the proposed change will not:

(1) Involve a significant increase in either the probability of occurrence or consequences of any accident or equipment malfunction scenario which is important to safety and which has been previously evaluated in the Updated Safety Analysis Report (UFSAR). The effect of the proposed change is to ensure that actual plant setpoints remain conservative consistent with respect to accident analysis assumptions. The proposed change requires safety system actuation limits that are more conservative than those currently in Technical Specifications. The change does not invalidate currently implemented station setpoints or currently applicable accident analysis assumptions regarding these setpoints. Consequently, the results and conclusions of the current UFSAR accident analyses are not affected by these changes. The proposed Technical Specifications change revises setpoints used to mitigate accidents and therefore has no bearing on the probability of an accident. Further, the change ensures that the setpoints used to mitigate an accident bound the setpoints used in the accident analyses. Therefore, the probability of an accident or consequences of an accident is not adversely affected as a result of this change.

(2) Create the possibility of a new or different type of accident than those previously evaluated in the UFSAR. Implementing the proposed Technical Specifications setpoint limits cannot create the possibility of an accident of a different type than was previously evaluated in the UFSAR. Since actual plant setpoints are not being affected, new accident precursors will not be introduced. Furthermore, spurious challenges to safety systems are also not expected to increase in frequency as a result of these changes since actual setpoints installed in the plant are not being changed. Consequently, no new accident precursors are created as a result of the new Technical Specifications setpoint limits.

(3) Involve a significant reduction in a margin of safety. Since the results of the existing UFSAR accident analyses remain bounding, safety margins are not impacted. The proposed Technical Specifications setpoint limits ensure plant setpoints remain conservative and consistent with design base accident analysis assumptions including appropriate instrument channel uncertainties due to harsh environmental conditions. Therefore, the margin of safety as defined in the Technical Specifications bases is unaffected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219

NRC Project Director: David B. Matthews

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: July 25, 1995

Description of amendment request: This license amendment request proposes to revise Technical Specification 4.0.5a and Bases Section 3/4.4.10 to delete the clause ''(g), except where specific written relief has been granted by the Commission pursuant to 10 CFR Part 50, Section 50.55a(g)(6)(i).'' This proposed change is consistent with NUREG-1482, ''Guidelines for Inservice Testing and Nuclear Power Plants.''

Basis for proposed no significant hazards consideration determination: As requied by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposed change would remove the wording ''...(g), except where specific written relief has been granted by the Commission pursuant to 10 CFR Part 50, Section 50.55a(g)(6)(i).'' The Inservice Inspection and Testing Programs are described in the technical specifications pursuant to 10 CFR 50.55a. In addition, the proposed change, in accordance with NUREG-1431 and NUREG-1482, would provide relief to the ASME Code requirement in the interim between the time of submittal of a relief request until the NRC has issued a safety evaluation and granted the relief. The change being proposed is administrative in nature and does not affect assumptions contained in plant safety analyses, the physical design and/or operation of the plant, nor does it affect any technical specification that preserves safety analysis assumptions. Any relief from the approved ASME Section XI Code requirements will require a 10 CFR 50.59 evaluation to ensure no technical specification changes or unreviewed safety questions exist. Therefore, operation of the facility in accordance with the proposed change would not affect the probability or consequences of an accident previously analyzed.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed change would remove the wording ''...(g), except where specific written relief has been granted by the Commission pursuant to 10 CFR Part 50, Section 50.55a(g)(6)(i).'' The Inservice Inspection and Testing Programs are described in the technical specifications pursuant to 10 CFR 50.55a. In addition, the proposed change, in accordance with NUREG-1431 and NUREG-1482, would provide relief to the ASME Code requirement in the interim between the time of submittal of a relief request until the NRC had issued a safety evaluation and granted the relief. The change being proposed is administrative in nature and will not change the physical plant or the modes of operation defined in the facility license. The change does not involve the addition or modification of equipment nor does it alter the design or operation of plant systems. Any relief from the approved ASME Section XI Code requirements will require a 10 CFR 50.59 evaluation to ensure no technical specification changes or unreviewed safety questions exist. Therefore, operation of the facility in accordance with the proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

This proposed change would remove the wording ''...(g), except where specific written relief has been granted by the Commission pursuant to 10 CFR Part 50, Section 50.55a(g)(6)(i).'' The Inservice Inspection and Testing Programs are described in the technical specifications pursuant to 10 CFR 50.55a. In addition, the proposed change, in accordance with NUREG-1431 and NUREG-1482, would provide relief to the ASME Code requirement in the interim between the time of submittal of a relief request until the NRC has issued a safety evaluation and granted the relief. The change being proposed is administrative in nature and will not alter the bases for assurance that safety-related activities are performed correctly or the basis for any technical specification that is related to the establishment or maintenance of a safety margin. Any relief from the approved ASME Section XI Code requirements will require a 10 CFR 50.59 evaluation to ensure no technical specification changes or unreviewed safety questions exist. Therefore, operation of the facility in accordance with the proposed change would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Emporia State University,

William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

NRC Project Director: William H. Bateman

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: August 11, 1995

Description of amendment request: The proposed amendment would remove Technical Specification Section 3.2, ''Makeup and Purification and Chemical Addition Systems,'' and its bases. The pertinent requirements and bases applicable to these systems are being incorporated in the TMI-1 Updated Final Safety Analysis Report (UFSAR).

Date of publication of individual notice in **Federal Register:** August 18, 1995 (60 FR 43172)

Expiration date of individual notice: September 18, 1995

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: April 6, 1995, and superseded on August 7, 1995

Description of amendments request: Amend the Sequoyah Nuclear Plant, Units 1 and 2 Technical Specification (TS) to revise the numerical values for the overtemperature and overpower delta-temperature equation constants in TS Table 2.2-1, Reactor Trip System Instrumentation Trip Setpoints.

Date of publication of individual notice in the **Federal Register:** August 15, 1995 (60 FR 42187)

Expiration date of individual notice: September 14, 1995

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application 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 to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. 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, and at the local public document rooms for the particular facilities involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: May 2, 1995

Brief description of amendments: The amendments remove from the technical specifications (TS) plant elevations for the minimum water volume required in the spent fuel pool and relocate them to site procedures. The TS amendment also includes two changes to correct administrative errors in the TS.

Date of issuance: August 7, 1995

Effective date: August 7, 1995

Amendment Nos.: Unit 1 - Amendment No. 97 ; Unit 2 - Amendment No. 85; Unit 3 - Amendment No. 68

Facility Operating License Nos. NPF-41, NPF-51, and NPF-74: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 5, 1995 (60 FR 35060) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 7, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: January 25, 1993, as supplemented on December 28, 1993, September 13, 1994, January 13, 1995, and May 25, 1995. The supplemental submittals did not expand the scope of the original **Federal Register** notice or change the no significant hazards determination.

Brief description of amendments: The amendments allow unit entry into Operational Condition 1 (Power Operation) from Operational Condition 2 (Startup) with up to eight inoperable control rods, provided those control rods are not inoperable due to being immovable or untrippable.

Date of issuance: August 11, 1992

Effectove date: August 11, 1992

Amendment Nos.: 178 and 209

Facility Operating License Nos. DPR-71 and DPR-62.

Date of initial notice in **Federal Register:** July 7, 1993 (58 FR 36428) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 11, 1995.Significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: April 5, 1995, as supplemented July 31, 1995

Brief description of amendment: The amendment revises various portions of TS 3/4.9, Refueling Operations, to be consistent with NUREG-1431, ''Standard Technical Specifications, Westinghouse Plants,'' and allows the relocation of applicable sections from the TS that do not meet the Commission screening criteria for retention.

Date of issuance: August 9, 1995

Effectove date: August 9, 1995

Amendment No.: 61

Facility Operating License No. NPF-63. Amendment revises the Technical Specifications

Date of initial notice in **Federal Register:** May 10, 1995 (60 FR 24906) The July 31, 1995 letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 9, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: January 13, 1995

Brief description of amendments: The amendments revise the pressure alarm setpoint allowable values for the emergency core cooling system (ECCS) and reactor core isolation cooling (RCIC) system ''keep filled'' pressure instrumentation channels. The purpose of the change is to lower the setpoint allowable values for these parameters to more realistic values based upon calculations performed by the licensee reflecting design changes and system performance. Also, the term ''setpoint'' is being changed to ''setpoint allowable value'' to clarify the use of the values. Additionally, two administrative/ editorial changes are included to delete technical specification footnotes which are no longer applicable.

Date of issuance: August 15, 1995

Effectove date: Immediately, to be implemented within 90 days.

Amendment Nos.: 105 and 91

Facility Operating License Nos. NPF-11 and NPF-18: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 1, 1995 (60 FR 11128) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 15, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348

Duke Power Company, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: February 24, 1994, as supplemented by letters dated April 19, May 25, August 25, 1994, January 4, January 27, February 22, March 15, April 19, and May 31, 1995

Brief description of amendments: The amendments provide surveillance requirements for a planned modification to the Keowee emergency power generators' underground power path breaker closing logic.

Date of issuance: August 15, 1995

Date of issuance: August 15, 1995

Effectove date: As of the date of issuance to be implemented within 30 days

Amendment Nos.: 210, 210, and 207

Facility Operating License Nos. DPR-38, DPR-47, and DPR-55: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 30, 1994 (59 FR 14887) The April 19, May 25, August 25, 1994, January 4, January 27, February 22, March 15, April 19, and May 31, 1995, letters provided clarifying information that did not change the scope of the February 24, 1994, application and initial no proposed significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 15, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: March 30, 1995, as supplemented May 5, 1995 and June 19, 1995

Brief description of amendments: These amendments relate to separation of the 24-hour emergency diesel generator test and hot restart test from the loss of offsite power test.

Date of issuance: August 8, 1995

Effectove date: August 8, 1995

Amendment Nos.: 175 and 169Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 23, 1995 (60 FR 27339), and July 5, 1995 (60 FR 35072) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 8, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: April 15, 1995, as supplemented by letters on May 20, 1994, and March 8, 1995

Brief description of amendment: The amendment revises Technical Specification Section 6.5.3, ''AUDITS,'' by removing the specified frequency for internal audits. These frequency specifications will now be located in Appendix E of the GPU Nuclear Operational Quality Assurance Plan (1000-PLN-7200.01). A minor editorial change has been incorporated into TS 6.5.1.14 correcting a reference in response to a finding in the Operational Safety Team Inspection (OSTI) report of December 23, 1993.

Date of issuance: August 7, 1995

Effectove date: As of the date of issuance to be implemented within 30 days

Amendment No.: 181

Facility Operating License No. DPR-16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 25, 1994 (59 FR 27056)

The letters of May 20, 1994, and March 8, 1995, provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated August 7, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: April 19, 1994, supplemented March 8, 1995

Brief description of amendment: The amendment revises the TMI-1 Technical Specification (TS) Section 6.5.3 to remove the specified frequency of various licensee-conducted audits, including those related to quality assurance, fire protection, security, emergency preparedness, and offsite dose calculations. The frequencies for conduct of these audits will now be specified in the licensee's Operational Quality Assurance Plan, which requires NRC approval for significant changes. The Commission has determined that these audit frequencies need not be in the TS to assure public health and safety.

Date of issuance: August 14, 1995

Effectove date: August 14, 1995

Amendment No.: 195

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 8, 1994 (59 FR 29627) The March 8, 1995, submittal provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated August 14, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: December 13, 1994, as supplemented April 3, 1995

Brief description of amendment: The amendment revises Table 3.6.1.2-1 to allow a maximum leakage of 24.0 scfh for each of the 8 main steam isolation valves instead of the current 6.0 scfh.

Date of issuance: August 10, 1995

Effectove date: As of the date of issuance to be implemented within 60 days

Amendment No.: 67

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** January 18, 1995 (60 FR 3675) The April 3, 1995, letter provided clarifying information that did not change the initial no proposed significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 10, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: March 15, 1995 (published in Federal Register as March 15, 1994) as supplemented by letter dated August 5, 1995

Brief description of amendments: These amendments modify the Susquehanna Steam Electric Station Technical Specification Table 3.6.3-1, Primary Containment Isolation Valves, concerning the scope of Type C testing on specified emergency core cooling system and reactor core isolation cooling containment isolation valves. Specifically, the subject valves on systems which terminate below the minimum water level of the suppression pool will no longer require Type C testing but will instead be tested using requirements of the American Society of Mechanical Engineers' Section XI Code.

Date of issuance: August 15, 1995

Effectove date: August 15, 1995

Amendment Nos.: 149 and 119

Facility Operating License Nos. NPF-14 and NPF-22. The amendments revised the Technical Specifications.The supplemental letter did not change the proposed no significant hazards consideration determination nor the Federal Register notice.

Date of initial notice in **Federal Register:** April 26, 1995 (60 FR 20521) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 15, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: March 31, 1995, as supplemented by letter dated June 22, 1995

Brief description of amendments: These amendments delete from the Technical Specifications of each unit, the operational condition restriction in Surveillance Requirement 4.8.1.1.2.d.7, which requires that 24-hour emergency diesel generator testing be performed with at least one unit in operational condition 4 or 5 (cold shutdown or refueling).

Date of issuance: August 15, 1995

Effectove date: Units 1 and 2, effective as of the date of issuance and shall be implemented within 60 days

Amendment Nos.: 150 and 120

Facility Operating License Nos. NPF-14 and NPF-22. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 26, 1995 (60 FR 20523) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 15, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: November 21, 1994, as supplemented by letters dated February 21, 1995, March 28, 1995, April 10, 1995, May 24, 1995, and June 23, 1995

Brief description of amendments: These amendments change the Technical Specifications for the two units by deleting reference to the main steamline isolation valve (MSIV) leakage control system and its associated primary containment isolation valves, and increase the allowable leakage rate for any MSIV and the total maximum

pathway leakage for all four main steam lines.

Date of issuance: August 15, 1995

Effectove date: Units 1 and 2 as of date of issuance and shall be implemented within 30 days

Amendment Nos.: 151 and 121

Facility Operating License Nos. NPF-14 and NPF-22. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 4, 1995 (60 FR 503) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 15, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: March 2, 1995

Brief description of amendment: The amendment extends the surveillance test intervals for the snubber systems to support 24-month operating cycles. Surveillance test interval extensions are denoted as being performed ''every 24 months'' or ''at least once per 24 months'' consistent with the guidance provided in Generic Letter (GL) 91-04, ''Changes in Technical Specification Surveillance Intervals to Accommodate 24-Month Fuel Cycle,'' dated April 2, 1991. The NRC staff has determined that the proposed Technical Specification changes are in accordance with GL 91-04, and are, therefore, acceptable.

Date of issuance: August 8, 1995

Effectove date: As of the date of issuance to be implemented within 30 days

Amendment No.: 226

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 10, 1995 (60 FR 24916) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 8, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: February 5, 1993, supplemented April 13, June 11 and November 17, 1993

Brief description of amendments: The amendment eliminates the Steam/Feedwater Flow Mismatch and Low Steam Generator Water Level Reactor Trip due to the installation of the digital feedwater control system incorporating a median signal selector.

Date of issuance: August 7, 1995

Effectove date: Unit 1, as of the date of issuance, to be implemented by the startup following the twelfth refueling outage, Unit 2, as of the date of issuance, to be implemented by the startup following the current outage

Amendment Nos.: 173 and 154

Facility Operating License Nos. DPR-70 and DPR-75: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 28, 1993 (58 FR 25864) The April 13, June 11, and November 17, 1993 submittals provided clarifying information that did not change the initial proposed no significant hazards consideration determination.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 7, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: March 11, 1994

Description of amendment request: The amendment decreases the allowable time for operation with one inoperable residual heat removal (RHR) relief valve from 7 days to 72 hours. This amendment request has been submitted in response to Generic Issue 94 as discussed in Generic Letter 90-06.

Date of issuance: August 11, 1995

Effectove date: August 11, 1995

Amendment No.: 125

Facility Operating License No. NPF-12: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** June 22, 1994 (59 FR 32236) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 11, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, 300 Washington Street, Winnsboro, South Carolina 29180

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: February 14, 1994 (TXX-94045), as supplemented by letter dated May 23, 1995 (TXX-95147)

Brief description of amendments: The amendments incorporated appropriate references to and provisions of the new 10 CFR Part 20 regulations. These changes revised a definition and aspects of radiological effluent technical specifications, clarified the administrative specification for reporting individual annual exposures greater than 100 mrem by work/job function, and revised the administrative specifications for providing alternative measures for control of access to high radiation areas and designating record retention for radioactive shipments.

Date of issuance: August 11, 1995

Effectove date: August 11, 1995

Amendment Nos.: Unit 1 - Amendment No. 42; Unit 2 - Amendment No. 28

Facility Operating License Nos. NPF-87 and NPF-89. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 28, 1994 (59 FR 22016) The additional information contained in the supplemental letter dated May 23, 1995, was clarifying in nature and thus, within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determinations. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 11, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: March 31, 1994, as supplemented by letters dated September 9, 1994, and June 22, 1995

Brief description of amendment: The amendment modifies the requirements for avoidance and protection from thermal hydraulic instabilities to be

consistent with the Boiling Water Reactor (BWR) Owners Group long-term solution Option I-D described in the Licensing Topical Report, ''BWR Owners Group Long-Term Stability Solutions Licensing Methodology, NEDO-31960 June 1991'' and NEDO-31960, Supplement 1, Dated March 1992. NEDO-31960 and NEDO-31960, Supplement 1, were accepted by the NRC staff in a letter to L.A. England (BWR Owners Group) dated July 12, 1993.

Date of issuance: August 9, 1995

Effectove date: As of the date of issuance to be implemented within 30 days

Amendment No.: 146

Facility Operating License No. DPR-28. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 4, 1995 (60 FR 507) The September 9, 1994, and June 22, 1995, submittals provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 9, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301

Dated at Rockville, Maryland, this 23rd day of August.

For The Nuclear Regulatory Commission

Elinor G. Adensam,

Acting Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation

[Doc. 95–21389 Filed 8–29–95; 8:45 am]

BILLING CODE 7590–01–F

[Docket No. 40–0299]

Federal Register Notice of Amendment To Change Reclamation Milestone Dates in Source Material License SUA–648 Held by Umetco Minerals Corporation

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Amendment of Source Material License SUA–648 to change reclamation milestone dates.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission has amended Umetco Mineral Corporation's (Umetco's) Source Material License SUA–648 to change the reclamation milestone dates. This amendment was requested by Umetco by letter dated April 21, 1995, and its receipt by NRC was noticed in the **Federal Register** on June 21, 1995.

The license amendment modifies License Condition 59 to change the completion dates for four site-reclamation milestones. The new dates approved by the NRC extend completion of (1) placement of final radon barrier on the A–9 Impoundment by one year, and (2) placement of erosion protection on the Inactive Impoundment, the A–9 Impoundment, and the Heap Leach Impoundment by one year. Umetco attributes the delays to (1) NRC's re-examination of cover design for performance with current standards and practices, and (2) short construction season at the Gas Hills site. Based on review of Umetco's submittal, the NRC staff concludes that the delays are attributable to factors beyond the control of Umetco, the proposed work is scheduled to be completed as expeditiously as practicable, and the added risk to the public health and safety is not significant.

An environmental assessment is not required since this action is categorically excluded under 10 CFR 51.22(c)(11), and an environmental report from the licensee is not required by 10 CFR 51.60(b)(2).

SUPPLEMENTARY INFORMATION: Umetco's license, including an amended License Condition 59, and the NRC staff's technical evaluation of the amendment request are being made available for public inspection at the Commission's Public Document Room at 2120 L Street, NW (Lower Level), Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Mohammad W. Haque, High-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6640.

Dated at Rockville, Maryland, this 21st day of August 1995.

Joseph J. Holonich,

Chief, High-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–21494 Filed 8–29–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36139; File No. SR–CHX–95–19]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change, by the Chicago Stock Exchange, Inc. Relating to the Chicago Match

August 23, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 27, 1995, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change, and on August 22, 1995, filed Amendment No. 1 to the proposed rule change,[1] as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend Article XXVII of the Exchange's Rules to increase the number of daily matches in the Chicago Match to two.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On November 30, 1994, the Commission approved a proposed rule of the Exchange that created the Chicago Match, an institutional trading system

[1] *See* Letter from David T. Rusoff, Attorney, Foley & Lardner, to Elisa Metzger, Attorney, SEC, dated August 22, 1995.

that integrates an electronic order match system with a facility for brokering trades (SR–CHX–93–19; Release No. 34–35030). As originally filed, the rules contemplated only one match occurring per trading day.

The purpose of the proposed rule change is to amend the Chicago Match rules to accommodate two matches per trading day. As before, the matches will occur mid-day during the Exchange's primary trading session.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–95–19 and should be submitted by September 20, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–21501 Filed 8–29–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36150; File No. SR–MSRB–95–13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Fee Assessments and Reporting of Sales or Purchases, Pursuant to Rules A–13, A–14, and G–14

August 23, 1995.

Pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(2), notice is hereby given that on August 11, 1995, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change (File No. SR–MSRB–95–13). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing amendments to three of its rules to make certain changes in the fees assessed to brokers, dealers and municipal securities dealers (''dealers'') that engage in municipal securities activities regulated by the Board. The proposed amendments relate to the following rules: rule A–13, which currently provides for fee assessments based on underwriting activity; rule A–14, which provides for an annual fee paid by dealers to the Board; and rule G–14, which currently requires reporting of certain transactions in municipal securities to the Board for purposes of public price reporting and market surveillance. The proposed amendments are collectively referred to hereafter as ''the proposed rule change.'' The Board has planned that the proposed rule change will become effective October 1, 1995, to coincide with the beginning of the Board's 1996 fiscal year. The Board accordingly requests the Commission to approve the proposed rule change in such time as to allow it to become effective on that date.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board 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 texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

The purpose of the proposed rule change is to help provide sufficient revenues to fund Board operations and to allocate fees among dealers in a manner that, compared to the current fee structure, more accurately reflects each dealer's involvement in the municipal securities market. The proposed rule change would accomplish these purposes by: amending rules A–13 and G–14 to institute a new assessment of $.01 per $1,000 par value on all interdealer transactions that are required to be reported to the Board under rule G–14; amending rule A–13 to lower the current underwriting assessment from $.03 per $1,000 to $.02 per $1,000; and amending rule A–14 to increase the annual fee assessed to dealers from $100 to $200 per dealer.

The Current Fee Structure

The Board currently levies three types of fees that are generally applicable to dealers. Rule A–12 provides for a $100 initial fee paid once by a dealer when it enters the municipal securities business. Rule A–14 provides for an annual fee of $100 from each dealer who conducts municipal securities business during the year. Rule A–13 provides for an underwriting assessment, based on the par value of a dealer's participation

in primary offerings of municipal securities.

Rule A–12 and A–14 fees have been the same since their adoption in 1975 and 1977, respectively. The rule A–13 underwriting assessment fee historically has varied, based on new issue volume in the market and the Board's revenue needs. The underwriting assessment has ranged from a high of $.05 per $1,000 in 1976 to a low of $.01 per $1,000 in 1988. Since 1991, it has been set at $.03 per $1,000 par value for primary offerings of most long-term securities.[1] In 1992, a lower rate of $.01 per $1,000 was instituted for primary offerings of certain short-term securities.[2] The Board now bills dealers monthly for A–13 fees, based upon official statements sent to the Board under rule G–36.[3]

The rule A–13 underwriting assessment fee provides over ninety percent of Board revenues. The Board originally adopted the underwriting assessment so that the fee would best reflect each dealer's involvement in the municipal securities market, based on then-available data. Although there are exceptions, it is generally true that the activity of individual dealers in the underwriting business provides a rough gauge of their general transaction activity and overall participation in the market. However, even when originally adopting rule A–13 in 1976, the Board recognized that basing the rule A–13 fees exclusively on dealer participation in new issue offerings was an imperfect means to measure a dealer's participation in the market because, among other things, it does not reflect market activity occurring after the purchase of a new issue from an issuer. Notwithstanding this fact, a fee based on underwriting participation has, until now, been the best available means to create verifiable assessments that generally reflect a dealer's participation in that market.

The Transaction Reporting Program Now Provides a New Mechanism to Measure a Dealer's Participation in the Market

In January 1995, the Board launched Phase I of its Transaction Reporting Program. Under an amendment to rule G–14, on reporting of transactions, which became effective November 9, 1994,[4] dealers are required to report their inter-dealer transactions to the Board for use in the Transaction Reporting Program. This data is used for daily, public price and volume reporting and for the maintenance of a ''surveillance database'' of inter-dealer transactions which supports enforcement of the Board and Commission rules. Phases II and III of the Transaction Reporting Program, now scheduled for implementation in 1996 and 1997 respectively, will address the reporting of institutional customer and retail customer transactions.[5]

The surveillance database component of the Transaction Reporting Program now provides the Board, for the first time, with information on essentially all inter-dealer transactions executed in the municipal securities market. The Board accordingly believes that this data should be used to adjust the fees levied under rule A–13 so that those fees will more accurately reflect each dealer's participation in the market.

Need for Revenue Increases

In addition to the Board's desire to allocate assessments more accurately based on dealer participation in the market, the proposed rule change also is necessary to address a projected shortfall in Board revenues. The Board's current reliance on underwriting fees for the bulk of its revenues, combined with the sharp decline in new issue volume,[6] require Board action to bring projected revenues and expenses into balance. Because of declines in new issue volume, the Board's revenues from rule A–13 underwriting assessments have declined from about eight million dollars in fiscal year (''FY'') 1993 to approximately six million dollars in FY94,[7] and are projected to be approximately four million dollars in FY95. Since, as noted, the rule A–13 fees provide approximately ninety percent of Board revenues, this situation requires the Board action to adjust revenues to meet necessary expenditures.

The Board's expenses over the next several years will include costs of the Board's traditional rulemaking activities, and in addition will be affected by the development and continued operation of programs that support the Board's rules and the statutory purposes set forth in section 15B of the Securities Exchange Act. Several of these programs operate within the Board's Municipal Securities Information Library System. These include the Transaction Reporting Program, which provides transparency reports and maintains the market surveillance database, the Continuing Disclosure Information System for the collection and dissemination to the market of material event notices, and the Official Statement/Advance Refunding Document System, which maintains a comprehensive collection of official statements and escrow agreements, and provides electronic dissemination and archiving of such documents. These programs, along with the Board's rulemaking activities, professional qualification program and arbitration program, are expected to result in total expenses of approximately six-and-one-half million dollars in FY95 and approximately eight million dollars in FY96.

Revenue Effect of the Proposed Rule Change

Based on the Board's projection that FY96 inter-dealer transaction volume will be about $400 billion, the proposed transaction fee would add about $4 million per year to the Board's revenues in FY96. The lowering of the underwriting assessment fee by $.01 per $1,000, based on a projected new issue volume of $130 billion in FY96, would reduce expected revenue by approximately $1.3 million. The increase in the annual fee from $100 to $200 would result in an increase of approximately $275,000 in additional revenue. Accordingly, the Board estimates that the proposed rule change would create a net revenue increase from these sources of approximately $3 million for FY96. Together with fees assessed for users of the Municipal Securities Information Library and other

[1] As used in rule A–13, ''primary offering'' is defined as in Exchange Act Rule 15c2–12 on municipal securities disclosure. Primary offerings that have been assessed at $.03 per $1,000 under rule A–13 since 1991 are those municipal securities with a final stated maturity of two years or more and an aggregate par value of $1,000,000 or more. Since 1992, rule A–13 has, in addition, exempted from fee assessments those primary offerings which have a final stated maturity of nine months or less or which are ''puttable'' to an issuer at least as frequently as every nine months until maturity.

[2] Since 1992, the A–13 assessment has been $.01 per $1,000 for primary offerings with a final stated maturity of nine months or more, but less than two years, and $.01 per $1,000 for primary offerings which are puttable every two years or less. (The exemptions stated in the previous footnote have remained in effect.) The present proposed rule change does not affect the assessment fee for such offerings.

[3] Rule G–36 requires the underwriters of primary offerings to deliver the official statement, if one is produced for the primary offering, to the Board within 10 days of the date of sale.

[4] *See* Securities Exchange Act Release No. 34955 (November 9, 1994).

[5] *See* ''Transaction Reporting Program for Municipal Securities: Phase II,'' *MSRB Reports,* Vol. 15, No. 1 (April 1995), at 11–15.

[6] New issues of long-term municipal securities totalled $292 billion in 1993 and $165 billion in 1994. Based on new issue volume to date, the Board projects a total in 1995 of about $130 billion. *See* ''A Decade of Municipal Finance,'' *The Bond Buyer,* August 7, 1995, at 39.

[7] *See* ''Financial Statements—Fiscal Years Ended September 30, 1994 and 1993,'' *MSRB Reports,* Vol. 15, No. 1 (April 1995), at 57.

miscellaneous revenue sources, the total revenues under the proposed rule change are estimated to closely match expected expenses in FY96.

The volatility of new issue volume from year to year prevents an accurate prediction of the potential need for additional fee adjustments in FY97 and beyond. The Board has and will continue to examine new issue volume projections each year as part of its annual budget process. The Board intends to review in future years the possible uses of additional transaction data that will be provided by Phases II (institutional customer trades) and III (retail customer trades) of the Transaction Reporting System as mechanisms to adjust dealer fees even more equitably, based upon dealer participation in the market.

Billing Procedures for the Transaction Fee

Rule G–14 requires each inter-dealer transaction that is eligible for automated comparison to be reported to the Board through the National Securities Clearing Corporation (''NSCC''), the central facility provider for the automated comparison process. The Transaction Reporting Procedures under rule G–14 place primary responsibility for trade reporting on each dealer that executes an inter-dealer transaction (the ''executing dealer''). However, the rule G–14 Transaction Reporting Procedures allow executing dealers who are not direct members of NSCC to use other mechanisms to report transactions. Some executing dealers report transactions directly to NSCC through other dealers that are members of NSCC (''clearing dealers''). This is typically the case in an introducing/clearing broker arrangement.[8]

Rule G–14 generally requires both the ''buy'' and ''sell side'' of an inter-dealer transaction to report their transaction to the Board. Under the proposed rule change, the Board will bill only the seller in each transaction. The Board will bill only for those trades for which the buy and sell sides ultimately agree on trade details such as price, transaction amount and par value. Dealers will receive bills monthly.

The Board recently amended the rule G–14 Transaction Reporting Procedures to require each dealer reporting a transaction to include the identity of both executing dealers in the transaction, as well as both clearing dealers.[9] Compliance with this rule change however, has not yet reached a level at which the executing dealers can always be reliably identified from the information reported to the Board. Therefore, the Board will bill clearing dealers directly, providing with each bill information on the transaction volume associated with each executing broker that can be reliably identified based on the information submitted by the clearing broker, as well as information about any residual transaction volume that cannot be reliably associated with any executing broker.[10] The clearing dealer will be responsible for timely payment of the entire fee to the Board on behalf of the executing dealers for which it reports transactions. The Board expects clearing dealers to pass through these fees to executing dealers based upon transaction volume and this is provided for in the proposed change to rule A–13. As improvements are made in the timely and correct reporting of transactions under rule G–14, including correct identification of executing brokers, the Board will consider revisions in this procedure to accommodate direct billing of executing brokers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change affects all dealers equally and according to the same terms. Therefore, the Board does not believe that the proposed rule change places any burden on competition that is not necessary or appropriate, given the purposes of the Act.

The transaction fee on inter-dealer transactions will affect dealers in general proportion to their volume of inter-dealer transactions, and in particular, in proportion to the number and par value of transactions in which the dealer is the seller, rather than the buyer, of municipal securities in the inter-dealer market. The reduction in the underwriting assessment will offset, or partially offset, the transaction fee for dealers with underwriting businesses. However, for those dealers that previously did no underwriting business, the transaction fee may constitute a substantial net increase in fees paid to the Board. For example, for brokers' brokers the transaction fee will constitute a new fee based on the brokers' broker's activity in the market. However, the Board believes that the $.01 per $1,000 level of the fee is not unduly burdensome in light of the prominence of brokers' brokers in the municipal securities market. The Board also notes that this fee will affect all brokers' brokers equally.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Board has requested that the proposed rule change be effective October 1, 1995, to coincide with the beginning of the Board's 1996 fiscal year.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

[8] Some dealers also report transactions indirectly to NSCC through other clearing agencies registered with the Commission (*e.g.*, Midwest Clearing Corporation and Stock Clearing Corporation of Philadelphia).

[9] *See* ''Reporting Inter-Dealer Transactions to the Board: Rule G–14,'' *MSRB Reports*, Vol. 15, No. 2 (July 1995), at 15–17 (File No. SR–MSRB–95–22).

[10] Two specific compliance problems may result in trade reports that, although accurate with respect to price and par value, are unreliable with regard to identifying the executing brokers. First, a clearing dealer may agree with, or ''stamp,'' the data submitted to NSCC by its contra-party, to indicate it agrees with certain details of the trade (par value, price, etc.). However, currently the dealer who ''stamps'' the trade data does not necessarily agree with the executing brokers identified by the contra-party. Second, a clearing dealer may simply fail to identify correctly its own executing broker in its submission. These practices will become less common as the industry complies more fully with the dealer identification requirement.

provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–95–13 and should be submitted by September 20, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–21498 Filed 8–29–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36145; File No. SR–NASD–93–38]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Interim Injunctive Relief in Intra-Industry Disputes and Certain Other Changes to the NASD Code of Arbitration Procedure

August 23, 1995.

On August 11, 1995,[1] the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder.[3] The proposed rule change amends the Code of Arbitration Procedure (''Code'')[4] by: (1) amending Sections 22 and 44; and (2) adding a new Section 47 to the Code as a one year pilot program relating to procedures governing applications for interim injunctive relief in intra-industry disputes under Section 8 of the Code.[5]

Notice of the proposed rule change, together with the substance of the proposal as amended by Amendment No. 1, was provided by issuance of a Commission release (Securities Exchange Act Release No. 34355, July 12, 1994) and publication in the **Federal Register** (59 FR 36465, July 18, 1994). Six comment letters were received.[6] This order approves the proposed rule change.

I. Introduction

The rule change approved today is intended to provide a pilot system within the NASD arbitration forum to process requests for temporary injunctive relief. The NASD has indicated that certain NASD member firms have been seeking injunctions in court against registered representatives who move to other firms, presumably to enforce non-competition covenants.[7] The rule change approved today is intended principally to facilitate the disposition of employment disputes and related disputes concerning whether such registered representatives may transfer their accounts to their new firms.[8]

II. Description of Proposed Rule Change

A. Section 22—Peremptory Challenge to Arbitrator Who Handled Request for Injunction

Section 22[9] has been amended to except proceedings for injunctive orders under new Section 47 from the provision granting a party one peremptory challenge to an arbitrator. As discussed further *infra,* the NASD has stated that this provision is intended to ensure that there are no unnecessary delays in processing requests for temporary injunctive relief.

B. Section 44—Non-refundable Surcharge for Expedited Proceedings

Section 44 imposes a non-refundable surcharge of $2,500 on all parties in an expedited proceeding. The rule change provides for expedited proceedings in connection with a request for interim injunctive relief under new Section 47 and as a result of a court granting injunctive relief. The rule change amends Section 44(h) to provide that the total surcharge of $2,500 is to be paid initially only by the party or parties requesting expedited proceedings.

Under new Section 47(g), an arbitration will proceed in an expedited manner if a court has issued a temporary injunction even if no party has requested expedited proceedings. Accordingly, for purposes of the assessment of fees in Section 44(h), a party will be deemed to have requested expedited proceedings if a court issues a temporary injunction for which it has applied.[10] In addition, the rule change provides that the arbitrator may require a party to reimburse another party for a surcharge it has paid.

C. Section 47—Procedure for Granting Interim Injunctive Relief

The introduction to new Section 47 states that arbitrators may grant interim injunctive relief in intra-industry disputes and clarifies the ability of parties to seek temporary injunctive relief in court if they wish. The introduction states that parties may seek either an ''interim injunction'' or a ''permanent injunction'' within the arbitration process, that new Section 47 contains the procedure for obtaining an interim injunction, and notes that subsection (g) of new Section 47 describes the effect of court-imposed temporary injunctions on an arbitration proceeding. A party that seeks temporary injunctive relief with respect to an intra-industry dispute must file a claim for permanent relief with respect to the same dispute simultaneously with the Director of Arbitration (''Director''), even if the request for temporary injunctive relief has been made in court.[11] Finally, the introduction clarifies that Section 25(a) governs

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[11] 17 CFR 200.30–3(a)(12).

[1] The NASD initially submitted the proposed rule change on July 13, 1993. Amendment No. 1 made technical changes to the text of the rule. *See* Letter form Suzanne E. Rothwell, Associate General Counsel, NASD, to Selwyn Notelovitz, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation, SEC (February 8, 1994). Amendments Nos. 2 and 3, submitted after publication of notice of the proposed rule change in the **Federal Register**, also were minor clarifying and technical amendments, the text of which may be examined in the Commission's Public Reference Room. *See* Letter from Elliott R. Curzon, Assistant General Counsel, NASD, to Ethan Corey, Attorney, Over-the-Counter Regulation, Division of Market Regulation, SEC (April 28, 1995) and Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation, SEC.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] *NASD Manual,* Code of Arbitration Procedure, (CCH) ¶¶ 3701 *et seq.*

[5] *NASD Manual,* Code of Arbitration Procedure, Art. II, Sec. (CCH) ¶ 3708.

[6] *See* Letter from David E. Rosedahl, Managing Director and General Counsel, Piper Jaffray, Inc. (''Piper'') to Brandon Becker, Director, Division of Market Regulation, Commission, dated March 31, 1994; Letter from Michael J. McAllister, Esq., Lane & Mittendorf (''Lane'') to Jonathan G. Katz, Secretary, Commission, dated July 29, 1994; Letter from John W. Shaw, Esq. and Matthew V. Bartle, Esq., Bryan Cave on behalf of Sutro & Co. to Jonathan G. Katz, Secretary, Commission, dated August 8, 1994 (''Bryan Cave Letter''); Letter from Joel E. Davidson, Senior Vice President and Deputy General Counsel, PaineWebber Incorporated (''PaineWebber'') to Jonathan G. Katz, Secretary, Commission, dated August 8, 1994 (''PaineWebber Letter''); Letter from Cliff Palefsky, Esq., National Employment Lawyers Association (''NELA'') to Jonathan Katz, Secretary, Commission, dated August 10, 1994; Letter from Walter Baumgardner, Esq. (''Baumgardner'') to Jonathan Katz, Secretary, Commission, dated February 17, 1995.

[7] *See* Letter from Elliott R. Curzon, Assistant General Counsel, NASD to Ethan Corey, Attorney, Division of Market Regulation, SEC (December 16, 1994) (available in Commission's Public Reference Room).

[8] *Id.*

[9] *NASD Manual,* Code of Arbitration Procedure, Art. III, Sec. 22 (CCH) ¶ 3722.

[10] *See* Amendment No. 2, *supra* n. 1.

[11] *Id.*

requests for injunctive relief as part of the final award.[12]

While new Section 47 permits parties to seek temporary injunctive relief in court, Section 6 of the Code[13] provides that ''no party shall commence any suit, action or proceeding against any other party touching upon any of the matters referred to arbitration pursuant to this Code.'' The NASD has stated that it interprets Section 6 to bar only parallel actions in court seeking to litigate the substance of the dispute in arbitration.[14] Given that temporary injunctions do not constitute a final disposition on the merits of a matter, the NASD has stated that Section 6 should not operate to prohibit parties from seeking temporary injunctions in court.

Subsection (a) provides that applications for interim injunctions will be heard by a single arbitrator. Subsection (b) requires the party seeking interim injunctive relief to make a clear showing that it is likely to succeed on the merits, that it will suffer irreparable injury unless the relief is granted, and that the balancing of the equities lies in its favor. The NASD has stated that these standards are intended to mirror those traditionally employed by many courts. Subsection (c) lists the documents that must be filed to apply for interim injunctive relief. A party must file a Statement of Claim, a statement of facts demonstrating the necessity for injunctive relief, and a properly-executed Submission Agreement on the party or parties against whom injunctive relief is sought.

Subsection (d) sets forth the procedure and timetable for handling applications for interim injunctive relief. Under subsection (d)(1), an expedited timetable is provided for handling applications for Immediate Injunctive Orders, which the NASD intends to be analogous to court-issued temporary restraining orders, in that the party against whom an Immediate Injunctive Order is sought is not required to respond to the application. In such cases, the Director must attempt to schedule a hearing within one to three business days after receipt of the application. Information required to be given to parties may be sent by facsimile transmission, and the hearing may be held by telephone or in person in a limited number of cities, at the discretion of the arbitrator or the Director. The NASD has stated that it contemplates holding such hearings in New York, Chicago and San Francisco. Under the subsection, the arbitrator will attempt to grant or deny the application within one business day after the hearing and record are closed. The duration of an Immediate Injunctive Order will be determined by the arbitrator, but must expire not later than the date of the issuance or denial of a Regular Injunctive Order (if any) or a decision on the merits of the entire controversy.

The NASD has stated that it will act to ensure that Immediate Injunctive Orders do not remain in effect for an extended period of time pending a decision on the merits of the entire controversy.[15] The NASD has stated that it will advise and train arbitrators reviewing applications for Immediate Injunctive Orders that they should consider setting short time limits on the duration of such orders. The NASD also has stated that it will advise parties who have been enjoined that they may seek reconsideration (including termination or limitation) of an Immediate Injunctive Order at any stage of the proceedings and that it will monitor cases in which Immediate Injunctive Orders have been granted to determine whether any party is being disadvantaged unfairly while the order remains in effect.

Subsection (d)(2) establishes procedures and timetables for handling applications for Regular Injunctive Orders, which the NASD intends to be analogous to court-issued preliminary injunctions. This subsection requires the Director to schedule a hearing within three to five business days after the response is filed or due to be filed, whichever is earlier. Failure to file a response will not, however, delay the hearing, and the responding party may choose to present evidence at the hearing whether or not it has previously filed a response. As in subsection (d)(1), hearings may be held by telephone or in selected cities. Regular Injunctive Orders expire as determined by the arbitrator, but not later than the date of a decision on the merits of the underlying controversy.

The NASD has stated that it will advise and train arbitrators reviewing applications for Regular Injunctive Orders that they should consider limiting the duration of an order to remove incentives for the applicant to delay proceedings on the merits of the underlying controversy.[16] The NASD also has stated that it will advise parties who have been enjoined that they may seek reconsideration (including termination or limitation) of the Regular Injunctive Order at any stage of the proceedings.

New Section 47(e) permits unlimited challenges for cause to the single arbitrator appointed to hear the application for an interim injunction, but prohibits peremptory challenges. Moreover, peremptory challenges may not be made later to an arbitrator who heard an application for an injunctive order and who subsequently is appointed to participate on the arbitration panel hearing the same arbitration on the merits. As noted above, the NASD represents that the elimination of peremptory challenges is intended to promote the expedited nature of temporary injunctive proceedings, while still preserving the parties' rights to challenge an arbitrator for cause.

New Section 47(f) requires the arbitration of the underlying controversy to proceed in an expedited manner according to a timetable and procedures specified by the arbitration panel. This continues the expedited treatment of cases in which interim injunctive relief has been granted, to provide a faster resolution of the merits of the dispute. The Subsection requires the Director to appoint a panel immediately following the issuance of an Immediate Injunctive Order or Regular Injunctive Order.[17] The Subsection also permits the arbitrators to specify procedures and time limitations for actions by the parties different from those specified in the Code.[18] Thus, for example, arbitrators may permit parties to serve requests for information on other parties pursuant to Subsection 32(b)[19] immediately rather than waiting for twenty days to elapse. The NASD represents that this is intended to ensure that parties are able to obtain access to necessary information prior to the hearing on the merits.

New Section 47(g) calls for an arbitration to proceed in an expedited manner if a court has issued a temporary injunction. No request for expedited proceedings is required. Subsection (h) permits the arbitrator to require a party to deposit security in an amount that the arbitrator deems proper for the payment of any costs or damages that might be incurred by the adverse party if it were wrongfully enjoined. Any such deposit shall be held in a separate bank trust or escrow account

[12] *NASD Manual*, Code of Arbitration Procedure, Art. III, Sec. 25 (CCH) ¶ 3725.

[13] *NASD Manual*, Code of Arbitration Procedure, Art. I, Sec. 6 (CCH) ¶ 3706.

[14] Amendment No. 3, *supra* n. 1.

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *NASD Manual*, Code of Arbitration Procedure, Art. III, Sec. 32(b) (CCH) ¶ 3732.

for the benefit of the party against whom injunctive relief is sought.[20]

Subsection (i) of new Section 47 contains a ''sunset'' clause under which the pilot program will expire in one year unless the Commission approves any proposed rule change filed by the NASD under Rule 19b–4 to extend the pilot period or to eliminate the expiration date. The NASD has stated that it intends to assess, among other things, whether parties should be restricted to arbitrator-issued interim injunctions during this pilot period. In connection with this review, the NASD has undertaken to provide two reports to the Commission on the usage and operation of new Section 47.[21]

D. Resolution of the Board of Governors

The rule change amends the Resolution of the Board of Governors [22] to provide that failure to comply with any interim injunctive order issued pursuant to new Section 47 will be added to the types of conduct that may be considered to violate Article III, Section 1 of the Rules of Fair Practice.

III. Comments Received

As noted above, the Commission received six comment letters concerning the rule change. Two commenters supported the rule change.[23] Two commenters did not express support for or opposition to the rule change.[24] Two commenters objected to the rule change.[25]

The Bryan Cave Letter asks whether a temporary injunction is intended to refer to a court-issued temporary restraining order, court-issued preliminary injunction or both. The NASD amended the proposed rule change to clarify that the term ''temporary injunction'' is intended to encompass both temporary restraining orders and preliminary injunctions issued by courts and interim injunctions issued by arbitrators.[26]

The Bryan Cave Letter also stated that the new Section does not distinguish clearly between legal standards to be applied in issuing an immediate injunction and a regular injunction. The NASD has stated that it expects the parties to present arguments to the arbitrators to permit them to determine appropriate standards for decision. As noted above, the NASD also has represented that it will train arbitrators hearing applications for interim injunctive relief to ensure that any relief granted does not disadvantage unfairly any party against whom relief is sought.

The Bryan Cave Letter also noted that the NASD intended to hold hearings on immediate injunctive relief in only 3 cities. The Bryan Cave Letter noted that individuals will find it a greater burden to travel for a hearing than will firms. The NASD has represented to the Commission that it will be sensitive to such concerns and will attempt to accommodate parties to the extent possible.[27] In this regard, the NASD has stated that it intends to hold hearings on a telephone basis whenever an in-person hearing would pose an undue burden to a party if the nature of the hearing and the evidence to be presented will permit.

Bryan Cave and PaineWebber noted that Subsections (f) and (g) provide that the arbitration concerning a matter in which either an interim injunction under the section or a court injunction has been issued will be expedited, under a schedule specified by the arbitration panel appointed under the Code. The Bryan Cave Letter and the PaineWebber Letter argued that the NASD should set time parameters for panels as they schedule a hearing on the merits; otherwise, an expedited hearing may not in fact be expedited. As noted above, Section 47 has been amended to require the Director to appoint a panel immediately following the issuance of an Immediate Injunctive Order or Regular Injunctive Order and to permit the arbitrators to specify procedures and time limitations for actions by the parties different from those specified in the Code.

IV. Conclusion

The Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act [28] because the rule change will facilitate the arbitration process in the public interest by codifying authority of arbitrators to grant interim injunctive relief in intra-industry disputes that are subject to NASD arbitration. The Commission believes that it is in the public interest to provide parties with the opportunity to have applications for interim injunctive relief considered in the same forum as hearings on the merits of the dispute.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that File No. SR–NASD–93–38 be, and hereby is, approved on a one-year pilot basis, effective January 3, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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[20] Amendment No. 3, *supra* n. 1.

[21] *Id.*

[22] *NASD Manual,* Code of Arbitration Procedure, (CCH) ¶ 3744.

[23] Piper, Lane.

[24] PaineWebber, NELA.

[25] Bryan Cave, Baumgardner.

[26] Amendment No. 2, *supra* n. 1.

[27] Amendment No. 3, *supra* n. 1.

[28] 15 U.S.C. 78*o*–3.

[Release No. 34–36151; File No. SR–NASD–95–15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to a Statement of Policy To Establish Internal NASD Procedures Delegating to the NASD Staff and the Fixed Income Committee Authority To Review Requests by Members for Exemptions From Rule G–37(b) of the Municipal Securities Rulemaking Board

August 24, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 23, 1995,[1] the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to adopt a statement of policy to establish internal NASD procedures delegating to the NASD staff and the Fixed Income Committee the authority to review requests by members for exemptions from Rule G–37 of the Municipal Securities Rulemaking Board (''MSRB''). MSRB Rule G–37 [2] prohibits members from engaging in municipal securities business if certain political contributions have been made to municipal issuers.[3] Below is the text of

[1] The NASD initially submitted the proposed rule change on April 15, 1995. Amendment No. 1 deleted all portions of the proposed rule change addressing the ability of NASD members to apply to the Commission for review of any denial by the NASD of a member's request for exemption from Municipal Securities Board Rule G–37. Amendment No. 2 revised the proposed rule change to clarify the types of violations of Rule G–37 for which a member could request exemptions.

[2] *MSRB Manual,* General Rules, Rule G–37 (CCH) ¶3681.

[3] The proposed statement of policy would establish internal NASD procedures and would not amend the NASD Code of Procedure or other NASD rules.

the proposed text change. New language is italicized.

Procedure of the Board of Governors for the Granting of Exemptions From MSRB Rule G–37

1. The Board of Governors (''Board'') delegates authority to John E. Pinto, Executive Vice President, Regulation Business Line, to authorize a member of the staff to review requests of NASD members for exemptions pursuant to MSRB Rule G–37(i).

2. The staff authorized to review exemption requests shall issue a written decision to the member which shall set forth the decision and that the member may request a review of the staff decision by the Fixed Income Committee of the NASD within 15 calendar days of the date of the decision.

3. The Board delegates authority to the Fixed Income Committee, or a subcommittee thereof, to review the appeal of a member from a decision of the staff with respect to the member's request for an exemption form MSRB Rule G–37.

4. The review conducted by the staff of the Regulation Business Line and the Fixed Income Committee, or a subcommittee thereof, of a member's request for exemption will be on the written record, including any submissions made by the member in support of its request for exemption.

5. The decision of the Fixed Income Committee, or a subcommittee thereof, may be reviewed by the Board solely upon the request of one or more Governors. Such review, which may be undertaken solely at the discretion of the Board, shall be in accordance with resolutions of the Board governing the review of the Fixed Income Committee decisions. In reviewing any decision of the Fixed Income Committee, the Board may affirm, modify or reverse the decisions of the Fixed Income Committee or remand the matter to the Fixed Income Committee with appropriate instructions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Commission approved MSRB Rule G–37 on April 7, 1994.[4] MSRB Rule G–37(b) prohibits any broker, dealer, or municipal securities dealer from engaging in municipal securities business with any issuer within two years after any contribution to an official of that issuer made by that broker, dealer, or municipal securities dealer, any municipal finance professional associated with that broker, dealer, or municipal securities dealer, or any political action committee controlled by that broker, dealer, or municipal securities dealer. The two year prohibition, however, is not triggered by contributions, by a municipal finance professional to issuer officials for whom that municipal finance professional was entitled to vote if such contribution in total, did not exceed $250 per official per election. Subsequently, on June 3, 1994, the Commission granted accelerated approval to an amendment to MSRB Rule G–37[5] to provide a procedure for a broker, dealer, or municipal securities dealer to seek exemptive relief from MSRB Rule G–37(b) if that broker, dealer, or municipal securities dealer discovers that a prohibited political contribution was made. Pursuant to Release 34–34160, subsection (i) to MSRB Rule G–37 permits the NASD to exempt, conditionally or unconditionally, an NASD member who is prohibited from engaging in municipal securities business with an issuer pursuant to subsection (b) of MSRB Rule G–37 from that prohibition. MSRB Rule G–37(i)(i) provides that the NASD shall consider among other factors, whether such exemption is consistent with the public interest, the protection of investors and the purposes of this rule. MSRB Rule G–37(i)(ii) sets forth further criteria for the granting of the exemption by requiring that the MSRB member have in place procedures designed to ensure compliance with the rule,[6] had no actual knowledge of the contribution made by the dealer, dealer-controlled political action committees and municipal finance professionals so that it can determine where and with whom it may or may not engage in municipal securities business. In addition, the dealer must have information on executive officer contributions and political party payments and consultant hiring practices for disclosure purposes. Moreover, the dealer must ensure that those persons and entities subject to MSRB Rule G–37 are not causing the dealer to violate MSRB Rule G–37. Furthermore, the dealer must ensure that other people and entities hired to assist in municipal securities activities (*e.g.*, consultants) are not being directed to make contributions, or otherwise being used as conduits, in violation of MSRB Rule G–37, has taken appropriate steps to obtain return of the contribution(s), and has taken other remedial measures as may be appropriate.

Release 34–34160 states that the MSRB believes that exemptions from MSRB Rule G–37 should be granted only if a disgruntled employee contributes to an issuer official for the purpose of injuring the member or if an employee makes a number of small contributions during an election cycle (e.g., four years) which, when consolidated, amount to slightly over the $250 de minimis exemption (such as contributions totalling $255). It also states that the MSRB would expect that the exemption not be routinely requested by dealers and that exemptions would be granted by the NASD only in limited circumstances.[7]

In order to implement a procedure for reviewing requests for NASD member exemptions anticipated under MSRB Rule G–37, the NASD proposes to adopt a statement of policy that would establish an NASD internal procedure to grant exemptions from MSRB Rule G–37. The proposed statement of policy would be an internal procedure and would not amend the NASD Code of Procedure or other NASD rules.

The NASD proposes that the initial determination on whether to grant a member's request for exemption from MSRB Rule G–37 be made by the staff of the Regulation Business Line, as assigned by the Executive Vice President of Regulation, which will issue a written decision. If the staff determines to deny the member's request for exemption, the written decision must include a statement advising the member that it has 15 days in which to appeal the initial staff determination to the Fixed Income Committee of the NASD.

The NASD proposes that the Fixed Income Committee, or a subcommittee thereof, be delegated authority by the

[4] Securities Exchange Act Release No. 33868 (April 7, 1994), 59 FR 17621 (April 13, 1994).

[5] Securities Exchange Act Release No. 34160 (June 3, 1994), 59 FR 30376 (June 13, 1994) (''Release 34–34160)''.

[6] The MSRB clarified its view regarding effective compliance procedures for Rule G–37 in a letter dated March 14, 1995 from Christopher A. Taylor, Executive Director, MSRB, to John E. Pinto Jr., Executive Vice President—Regulation, NASD. That letter states that the MSRB believes that Rule G–37 requires a dealer to have information regarding each

[7] Release 34–34160 also states that the MSRB will seek information from the NASD regarding the granting of any exemptions in order to monitor the implementation of this provision, and to determine if any changes are necessary.

Board to review the appeal of a member regarding a NASD staff denial of an exemption from MSRB Rule G–37.

The decision of the Fixed Income Committee, or a subcommittee thereof, may be reviewed by the Board solely upon the request of one or more Governors. Such a review would be undertaken solely at the discretion of the Board and will be in accordance with resolutions of the Board. In reviewing any decision of the Fixed Income Committee, the Board may affirm, modify or reverse a decision of the Fixed Income Committee or remand the matter to the Fixed Income Committee with appropriate instructions.

The NASD believes that the Fixed Income Committee is the appropriate reviewing body as the members of the Fixed Income Committee would have the requisite knowledge regarding the municipal business necessary to weigh the member's argument that the requested exemption would comply with the provisions and intent of MSRB Rule G–37. In addition, the use of the Fixed Income Committee would ensure uniformity throughout the country on the granting of such exemptions which the MSRB intended to be granted very infrequently. The appeal of such matters to a national committee also has the advantage of all determinations being made in one forum, thereby avoiding disparate applications of the exemptive provision that might occur if the NASD's District Business Conduct Committees were assigned this responsibility.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(2) of the Act in that it establishes a procedure to enforce compliance with MSRB Rule G–37 whereby the NASD staff and the Fixed Income Committee may review member requests for exemption from MSRB Rule G–37 and may grant exemptions only within the limited circumstances anticipated by the MSRB and MSRB Rule G–37 as approved by the Commission. Moreover, the NASD believes the proposed rule change is consistent for the reasons discussed above with the provisions of Section 19(g)(1)(B) of the Act, which requires that the NASD, absent reasonable justification or excuse, enforce compliance with MSRB rules.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File Number SR–NASD–95–15 and should be submitted by September 20, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–21500 Filed 8–29–95; 8:45 am]

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[Release No. 34–36140; File No. SR–NYSE–95–08]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 and Amendment No. 2 To Proposed Rule Change Relating to Listed Company Relations Proceedings

August 23, 1995.

I. Introduction

On March 3, 1995, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b-4 thereunder,[2] a proposed rule change to adopt new Rule 103C concerning procedures relating to initiation and conduct of a review of the relationship between a listed company and its specialist organization. On July 14, 1995, the NYSE submitted a letter amendment [3] to the proposed rule change, and on July 28, 1995, submitted a formal amendment to the file.[4]

The proposed rule change was published for comment in Securities Exchange Act Release No. 35650 (April 26, 1995), 60 FR 21578. No comments were received on the proposal. The Commission is approving the proposal and soliciting comments on Amendment No. 1 and Amendment No. 2.

II. Description of the Proposal

The Exchange proposes to adopt new Rule 103C (Listed Company Relations Proceedings) to provide its listed companies and specialist units with a procedure for resolving non-regulatory issues that may arise between them.[5] Proposed Rule 103C contains a formal procedure by which a listed company could make a written notification (known as an ''Issuer Notice'') to the Exchange's New Listings and Client Services Division of its desire to commence a proceeding to mediate and resolve such issues. The Exchange's Quality of Markets Committee

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Howard Kramer, Associate Director, Division of Market Regulation, SEC, dated July 12, 1995 (''Amendment No. 1'').

[4] *See* Amendment No. 1 to File No. SR–NYSE–95–08 (''Amendment No. 2'').

[5] For example, a non-regulatory issue may include misunderstandings with respect to the frequency and adequacy of communications between a company and its specialist unit.

(''QOMC''), a Board of Directors (''Board'') level committee, would be responsible for oversight of the Listed Company Relations Proceeding (''LCRP'') through a subcommittee consisting of the two Exchange vice-chairmen, a senior Exchange official, and two listed company representatives, all of whom would be appointed from the QOMC membership. This subcommittee would work with the listed company and the specialist unit through written submissions and meetings designed to produce an action plan with specific steps for resolution of the matter. These written submissions would include a description of the progress each party has made on the specific steps established by the subcommittee.[6] At regular intervals of three, six and nine months, the subcommittee would work with the parties to resolve their issues. After receiving the written submissions from the parties, the subcommittee will advise the QOMC of the subcommittee's conclusions regarding whether or not the specialist has successfully completed the specific steps established by the subcommittee.[7] The listed company could conclude the LCRP at any time during the process if it believed that matters had been satisfactorily addressed.

If matters were not resolved at the end of one year from the commencement of the LCRP, the listed company could formally request a reassignment of its stock to another specialist unit. The subcommittee would prepare a recommendation to the QOMC as to whether it is in the best interest of the Exchange, regarding the efficient operation of the Exchange, to reassign the stock.[8] The subcommittee's report would indicate whether or not the specialist had successfully completed the specific steps established by the subcommittee.[9]

The QOMC would review the recommendation and give the parties an additional opportunity to present their views in writing. It would then make a recommendation to the Exchange's Board. The Board could also afford the parties an opportunity to present their views in writing. The Board would then consider the efforts taken by the specialist to complete the subcommittee's specific steps and then determine whether the non-regulatory issues that have arisen between the listed company and the specialist are irreconcilable differences, that are not based upon bias or other violations of public policy, and that a reallocation would be in the best business interest of the Exchange.[10] If the Board determined that the stock should be reassigned, the Board would direct the Exchange's Allocation Committee to reallocate the stock. The then current specialist unit and the unit of any specialist member of the Board would not be permitted to apply for allocation of the stock. Proposed Rule 103C also provides that no reference to the LCRP or the Board's action would be retained in the information maintained by the Allocation Committee regarding the then current specialist unit. The rule further provides that the specialist unit subject to a reallocation would not be afforded any preferential treatment in subsequent allocations as a result of a reallocation pursuant to the rule.

III. Solicitation of Comments

Amendment No. 1 states that the Exchange considers actions by the Board pursuant to the procedures in Rule 103C to be reviewable under Section 19(d) of the Act. In addition, Amendment No. 1 clarifies that any Board decision to reallocate stock would be based upon a determination that there are irreconcilable differences between the parties, which are not based upon bias or other violations of public policy, and that such reallocation would be in the best interests of the continued efficient operation of the Exchange's market. Amendment No. 2 clarifies that all written reports will include a description of the progress each party has made on the specific steps established by the subcommittee. In addition, all recommendations regarding the reallocation of a specialist's stock will take into consideration each party's efforts to complete the specific steps established by the subcommittee.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 and Amendment No. 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the Amendments, all written statements with respect to the Amendments that are filed with the Commission, and all written communications relating to the Amendments between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–95–08 and should be submitted by September 20, 1995.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b).[11] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

Proposed Rule 103C provides a form of mediation to resolve non-regulatory issues between listed companies and their specialists. If after one year of meetings and talks between the parties the differences can not be resolved, the listed company's stock may be reallocated to another specialist. While the stock may be reallocated, the procedures in Rule 103C are separate and distinct from the disciplinary proceedings at the Exchange.

The Commission recognizes the Exchange's need to ensure that listed companies and their specialists units have a mechanism to resolve disputes because these disputes could ultimately impinge on the Exchange's business relationship with its listed companies. The Exchange emphasizes that the relationship between a listed company and its specialist unit is a significant one and that while specialist units work to foster and promote sound mutual understanding and effective communications with their listed companies, situations may occasionally arise in which one or both sides cannot easily resolve differences with respect to non-regulatory issues. At the same time, in the past the Commission has noted concerns about contacts between listed companies and their specialists. Although in many instances these contacts can be legitimate and constructive, they also can present concerns about conflicts of interest or

[6] *See* Amendment No. 2, *supra* note 4.

[7] *See* Amendment No. 2, *supra* note 4.

[8] *See* Amendment No. 1, *supra* note 3, and Amendment No. 2, *supra* note 4.

[9] *See* Amendment No. 2, *supra* note 4.

[10] *See* Amendment No. 1, *supra* note 3, and Amendment No. 2, *supra* note 4.

[11] 15 U.S.C. 78f(b).

inappropriate exchange of information between the parties.[12]

The Exchange has addressed these concerns by placing safeguards in Rule 103C that take the form of limitations on the procedures which minimize the possibility that the proposed mechanism will be abused or used for inappropriate purposes. First, the proposed rule contains language that requires the subcommittee, the QOMC, and the Board to review whether the specialist has successfully completed the steps established by the subcommittee to resolve the issues between the specialist and the listed company. By requiring the review of the specialist's efforts to complete the steps established by the subcommittee, it enables a specialist to demonstrate that he or she has made every effort to meet the subcommittee's recommendations and has successfully complied with such recommendations. Moreover, the meticulous steps in a Rule 103C proceeding will enable the Exchange to determine whether the listed company-specialist dispute involved improper activity by either party.

A second limitation on the proposed procedures is the ability of the Board to recommend reallocation of the specialist's stock only when such reallocation would be in the best interest of the continued efficient operation of the Exchange's market. Third, the language of Rule 103C prohibits reallocation of a specialist's stock when the irreconcilable differences between the parties is based upon bias or other violations of public policy. These two qualifications are designed to prevent reallocations on improper grounds and to provide specific standards on when and under what conditions a stock can be reallocated.[13]

The Commission finds good cause for approving the proposed Amendments No. 1 and 2, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of Amendments No. 1 and 2, is appropriate in that original filing was published in the **Federal Register** for comment for the full comment period and no comments were received. In addition, the Amendments provide technical clarifications and additional procedural safeguards. For these reasons, the Commission finds good cause for accelerating approval of the proposed rule change as amended.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NYSE–95–08), including Amendment No. 1 and Amendment No. 2, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–21502 Filed 8–29–95; 8:45 am]

BILLING CODE 8010–01–M

[12] *See e.g.* Section 11(b) of the Act, 15 U.S.C. 78k(b).

[13] These standards are also necessary to provide a basis on which the Board's decision could be reviewed. The Exchange indicates in Amendment No. 1, that it considers the actions by the Board pursuant to these procedures to be reviewable under Section 19(d) of the Act. *See* Amendment No. 1, *supra* note 3.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 2249]

Extension of the Restriction on the Use of United States Passports for Travel to, in, or Through Lebanon

On January 26, 1987, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.73(a)(3), all United States passports, with the exception of passports of immediate family members of hostages in Lebanon, were declared invalid for travel to, in, or through Lebanon unless specifically validated for such travel. This action was taken because the situation in Lebanon was such that American citizens there could not be considered safe from terrorist acts.

I have concluded that Lebanon continues to be an area ''* * * where there is imminent danger to the public health or the physical safety of United States travelers'' within the meaning of 22 U.S.C. 211a and 22 CFR 51.73(a)(3).

Accordingly, all United States passports shall remain invalid for travel to, in, or through Lebanon unless specifically validated for such travel under the authority of the Secretary of State.

This Public Notice shall be effective upon publication in the **Federal Register** and shall expire at the end of six months unless extended or sooner revoked by Public Notice.

Dated: August 22, 1995.

Warren Christopher,

Secretary of State.

[FR Doc. 95–21443 Filed 8–28–95; 11:32 am]

BILLING CODE 4710–10–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended August 11, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–95–381
Date Filed: August 7, 1995
Parties: Members of the International Air Transport Association
Subject: TC23 Telex Mail Vote 752. Korea-Romania fares, r-1—074i r-2—071L r-3— 076b
Proposed Effective Date: September 1, 1995

Paulette V. Twine,

Chief, Documenter Services Division.

[FR Doc. 95–21546 Filed 8–29–95; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended August 11, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–95–385
Date filed: August 9, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 6, 1995
Description: Application of Societe Nouvelle Air Martinique, pursuant to 49 U.S.C. 41301, and Subpart Q of the Regulations, applies for an initial foreign air carrier permit to engage in the scheduled foreign air transportation of persons, property and mail between Fort de France, Martinique and San Juan, Puerto Rico and charter foreign air transportation between the French West Indies and U.S. points in the Caribbean.

Docket Number: OST–95–390
Date filed: August 9, 1995

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 6, 1995

Description: Application of Northwest Airlines, Inc., pursuant to 49 U.S.C. 4118, and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing Northwest to provide scheduled foreign air transportation of passengers, property and mail between Detroit, Michigan and Rome, Italy.

Docket Number: OST–95–380

Date filed: August 7, 1995

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 5, 1995

Description: Application of Grand Airways, Inc., pursuant to Section 401(d)(1) of the Act, requests permission to add an additional DC9 to its fleet.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–21545 Filed 8–29–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

[Summary Notice No. PE–95–31]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 19, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on August 24, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Docket No.: 22469

Petitioner: Parks College of Saint Louis University

Sections of the FAR Affected: 14 CFR appendices A, C, D, and F, part 141

Description of Relief Sought/ Disposition: To extend Exemption No. 3495, as amended, which permits Saint Louis University to train its students to a performance standard in lieu of the minimum flight experience requirements included in the above mentioned appendices. This exemption does not allow a reduction of the minimum flight experience requirements for solo cross-country flight as specified in part 141.

Grant, July 3, 1995, Exemption No. 3495G

Docket No.: 24427

Petitioner: United States Ultralight Association, Inc.

Sections of the FAR Affected: 14 CFR 103.1 (a) and (e)(1) through (e)(4)

Description of Relief Sought/ Disposition: To extend Exemption No. 4274, as amended, which permits individuals authorized by the United States Ultralight Association, Inc., to give instruction in powered ultralight vehicles that have a maximum empty weight of not more than 496 pounds, have a maximum fuel capacity of not more than 20 U.S. gallons, are not capable of more than 75 knots calibrated airspeed at full power in level flight, and have a power-off stall speed that does not exceed 35 knots calibrated airspeed.

Grant, July 21, 1995, Exemption No. 4274F

Docket No.: 26067

Petitioner: SimuFlite Training International

Sections of the FAR Affected: 14 CFR 135.293; 135.297; 135.297; 135.299; 135.337 (a)(2) and (3) and (b)(2); 135.339 (a)(2), (b), and (c); and appendix H, part 121

Description of Relief Sought/ Disposition: To extend Exemption No. 5187, as amended, which permits SimuFlite to use its qualified instructor pilots or pilot check airmen in approved simulators to train and check pilots of part 135 certificate holders that contract with SimuFlite for training.

Grant, July 28, 1995, Exemption No. 5187D

Docket No.: 26302

Petitioner: FlightSafety International

Sections of the FAR Affected: 14 CFR 135.293; 135.297; 135.299; 135.337 (a)(2), (a)(3), and (b)(2); 135.339 (a)(2), (b), and (c); and appendix H, part 121

Description of Relief Sought/ Disposition: To extend and amend Exemption No. 5241, as amended, which permits FlightSafety International (FSI) to use its qualified instructor pilots or pilot check airmen in approved simulators to train and check the pilots of part 135 certificate holders that contract with FSI for training. While the extension is granted, the requested amendment to several of the existing conditions and limitations is denied.

Partial Grant, July 28, 1995, Exemption No. 5241F

Docket No.: 26847

Petitioner: FlightSafety International

Sections of the FAR Affected: 14 CFR 141.65

Description of Relief Sought/ Disposition: To extend Exemption No. 5652, which permits FlightSafety International to recommend graduates of its flight instructor certification courses for flight instructor certificates (with associated ratings), without having to take the FAA written or practical tests.

Grant, May 31, 1995, Exemption No. 5652A

Docket No.: 27254

Petitioner: Andrews University

Sections of the FAR Affected: 14 CFR appendices A, C, D, and H, part 141

Description of Relief Sought/ Disposition: To extend Exemption No. 5729, which permits Andrews University to train its students to a performance standard without meeting the prescribed minimum flight time requirements.

Grant, July 21, 1995, Exemption No. 5729A

Docket No.: 27801
Petitioner: Steven G. Albert
Sections of the FAR Affected: 14 CFR 63.39 [requested] and 63.69 [pertinent]
Description of Relief Sought/ Disposition: To reconsider Denial of Exemption No. 5946, which would have allowed Mr. Albert to receive a turboprop class rating on an FAA-issued flight engineer certificate without being required to pass a practical test administered by the FAA or an FAA-designated examiner.

Denial of Petition for Reconsideration, July 17, 1995, Exemption No. 5946A

Docket No.: 28137
Petitioner: Kansas Highway Patrol
Sections of the FAR Affected: 14 CFR 91.159(a) and 91.209 (a) and (d)
Description of Relief Sought/ Disposition: To permit the Kansas Highway Patrol to operate its fixed wing aircraft between sunset and sunrise without lighted position lights or anticollision lights, and at altitudes other than those specified in §§ 91.119(c) and 91.159(a) in support of law enforcement operations.

Partial Grant, July 20, 1995, Exemption No. 6137

Docket No.: 28254
Petitioner: Spirit Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.358
Description of Relief Sought/ Disposition: To allow Spirit Airlines, Inc., to operate five newly acquired McDonnell Douglas DC–9–21 aircraft without windshear detection equipment, through October 15, 1995.

Denial, July 13, 1995, Exemption No. 6133

[FR Doc. 95–2159 Filed 8–29–95; 8:45 am]
BILLING CODE 4910–13–M

Notice of Intent To Rule on Request To Amend an Approved Application To Impose and Use the Revenue From a PFC at Allentown-Bethlehem-Easton International Airport Under § 158.23 of Part 158

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on request to amend an approved application.

SUMMARY: The FAA proposes to rule and invites public comment on the Request to Amend an approved application to impose and use the revenue from a PFC at Allentown-Bethlehem-Easton International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 29, 1995.

ADDRESSES: Comments on this request may be mailed or delivered in triplicate to the FAA at the following address: Mr. L.W. Walsh, Manager, Harrisburg Airports District Office, 3911 Hartzdale Drive, Suite 1, Camp Hill, Pennsylvania 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. George F. Doughty, Executive Director, Lehigh-Northampton Airport Authority at Allentown-Bethlehem-Easton International Airport, 3311 Airport Road, Allentown, PA 18103.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Lehigh-Northampton Authority under § 158.37(B) of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. L.W. Walsh, Manager, Harrisburg Airports District Office, 3911 Hartzdale Drive, Suite 1, Camp Hill, PA 17011, (717) 975–3423. The request may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the Request to Amend an approved application to impose and use the revenue from a PFC at Allentown-Bethlehem-Easton International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 3, 1995, the FAA received the Request to Amend the application to impose and use the revenue from a PFC at Allentown-Bethlehem-Easton International Airport within the requirements of Section 158.37(b) of Part 158. The FAA will approve or disapprove the amendment no later than December 5, 1995.

The following is a brief overview of the request.

Proposed increase in the total estimated PFC revenue: From $4,350,000 to $8,103,400.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

Issued in Jamaica, New York on August 21, 1995.

Anthony P. Spera,

Acting Manager, Airports Division, Eastern Region.

[FR Doc. 95–21530 Filed 8–29–95; 8:45 am]
BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Minneapolis-St. Paul International Airport, Minneapolis, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Minneapolis-St. Paul International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 29, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert Vorpahl, Minneapolis-St. Paul Metropolitan Airports Commission, at the following address: Minneapolis-St. Paul Metropolitan Airports Commission, 6040 28th Avenue South, Minneapolis, Minnesota 55450.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Minneapolis-St. Paul Metropolitan Airports Commission under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon Nelson, Program Manager, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450, (612) 725–4358. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Minneapolis-St. Paul International

Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 21, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Minneapolis-St. Paul Metropolitan Airports Commission was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 17, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Proposed charge effective date: June 1, 1998
Proposed charge expiration date: April 30, 1999
Total estimated PFC revenue: $32,700,000
Brief description of proposed project(s):
Construct a Federal Inspection Services (FIS) facility (second on airport) to be used by scheduled international air carriers and located on the Gold Concourse at the Lindbergh Terminal. Construction of this facility requires construction of a southwest addition to the Lindbergh Terminal in order to relocate concessions and the existing Northwest Airlines World Club facility which will be displaced by the FIS facility. The project also includes relocation/replacement of parts storage/cargo transfer facilities displaced by the project and replacement of or modifications to jet loaders. Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Minneapolis-St. Paul Metropolitan Airports Commission office.

Issued in Des Plaines, Illinois, on August 23, 1995.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 95–21531 Filed 8–29–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application to Impose a Passenger Facility Charge (PFC) at Port Columbus International Airport and Use the Revenue at Port Columbus International and Bolton Field Airports, Columbus, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at Port Columbus International and use the revenue at Port Columbus International and Bolton Field Airports under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 29, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Larry Hedrick, Executive Director of the Columbus Municipal Airport Authority at the following address: Port Columbus International Airport, 4600 International Gateway, Columbus, OH 43219.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Columbus Municipal Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Mary W. Jagiello, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (313) 487–7296. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Port Columbus International and use the revenue at Port Columbus International and Bolton Field Airports under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 18, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by Columbus Municipal Airport Authority was substantially complete within the requirments of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 8, 1995.

The following is a brief overview of the application.

Level of the PFC: $3.00
Actual charge effective date: October 1, 1992
Estimated charge expiration date: September 1, 1996
Total approved net PFC revenue: $23,611,963
Brief description of proposed project(s):
Projects to Use: Wonderland Acquisition and Relocation; Relocation of T/W ''B'' from T/W ''A'' to C–3; Southeast Cargo Apron T/W to 13/31 & Tug Road; R/W 5 easements; Maintenance Run-Up Pad; Stabilized Shoulders R/W 10R–28L & R/W 10R Blast Pad; Relocate Lights Taxiway ''G''; Replace R/W 5–23 Lighting Cable; Communications & Closed Circuit TV Systems; Electronic Monitoring/ Airfield Lighting (Construction); Sawyer Road Rehabilitation (Engineering/Construction East); Airfield Guidance Signs; Relocate T/W ''D'' R/W 28L Run-Up Apron (Engineering); Master Plan/Part 150 Amendments; Ramp Sweeper; Airfield Fencing Phase II; Emergency Preparedness Equipment/Communications; Relocate Control Room; Land Acquisition/Relocation—West Side Properties; Land Acquisition/ Relocation—Englewood Heights; Residential Soundproofing Phase I; North Concourse Expansion (Construction); Terminal Building Modifications; Terminal Curbfront Improvements Planning Study; Gate 17 Ramp Expansion
Projects to Impose and Use: Relocate T/W ''D'' R/W 28L Run-Up Apron (Construction); North Concourse Apron (Construction)
Bolton Field Use Project: T–Hangar Apron & T/W Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application at the Columbus Municipal Airport Authority.

Issued in Des Plaines, Illinois on August 22, 1995.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 95–21532 Filed 8–29–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Westmoreland County Airport, Latrobe, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Westmoreland County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 29, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. L. W. Walsh, Manager Harrisburg Airports District Office, 311 Hartzdale Drive, Suite 1, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Gene Larkin, Airport Manager for the Westmoreland County Airport Authority at the following address: Westmoreland County Airport Authority, 200 Pleasant Unity Road, Latrobe, PA 15650.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Westmoreland County Airport Authority under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. L. W. Walsh, Manager, Harrisburg Airports District Office, 3911 Hartzdale Drive, Suite 1, Camp Hill, PA 17011 (Tel. (717) 975–3423). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Westmoreland County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 16, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Westmoreland County Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 22, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: February 1, 1996

Proposed charge expiration date: December 31, 1999

Total estimated PFC revenue: $187,266

Brief description of proposed projects; The PFC revenue will be use to fund the Westmoreland County Airport Authority's share of the following AIP funded Project.

—Terminal Building Rehabilitation And Expansion

—Runway 3–21 Overlay

—Purchase ARFF Vehicle

—Apron Expansion

—Airfield Signage Upgrade

—Purchase Snow Removal Equipment

—Expand Equipment Storage Building

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, NY 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Westmoreland County Airport Authority.

Issued in Jamaica, New York on August 21, 1995.

Anthony P. Spera,

Acting Manager, Airports Division, Eastern Region.

[FR Doc. 95–21533 Filed 8–29–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

[FHWA Docket No. 95–5]

Comprehensive Truck Size and Weight Study: Update of Study Plan

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice; request for comments.

SUMMARY: This notice provides an update of activities, accomplishments and decisions on the DOT Comprehensive Truck Size and Weight (TS&W) Study since the February 2, 1995, **Federal Register** notice and requests comments on an outline of work for the next phase of the study. Phase I synthesis materials, consisting of 13 working papers, were made available to the public in FHWA Docket No. 95–5 on February 15, 1995. A summary report of Phase I was made available in the same docket on March 10, 1995. Public meetings were held in Denver, Colorado, on March 21, 1995, and in Washington, D.C., on April 5–6, 1995. Also, over 12,000 comments have been received as of August 15, 1995, in response to the prior request for public comments. This input has helped to broaden the study scope to include issues not reflected in the original plan and to restructure the remaining phases of the study.

DATES: This docket will remain open until the study is completed.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 95–5, FHWA, Room 4232, HCC–10, Office of the Chief Counsel, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia Elliot, Office of Policy Development, at (202) 366–8707; Mr. Thomas Klimek, Office of Motor Carrier Information Management and Analysis, at (202) 366–2212, Mr. Charles Medalen, Office of Chief Counsel, at (202) 366–1354, FHWA, or Mr. Carl Swerdloff, Office of Economics, at (202) 366–5427, Office of the Secretary, DOT, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: A review of the comments to the docket and presentations at the public meetings

held this spring has resulted in important modifications to the study scope and workplan. Although comments were wide ranging and at times conflicting, it was clear that an expanded analysis of the following issues is needed: safety, including enforcement of safety and TS&W regulations, rail and other modal impacts, automobile and truck driver perspectives, shipper logistics costs, infrastructure impacts, the interrelationships of TS&W and highway cost allocation, and the broader social costs of freight transportation. Indeed, it is clear that truck size and weight policy should be established in the context of an intermodal freight policy. As part of the National Transportation System initiative, the Department plans to articulate an intermodal freight policy statement which will provide a framework for decisions on truck size and weight policy. Most importantly, TS&W policy must be considered within the Department's overall responsibility to ensure transportation safety.

It was originally planned to conduct a separate Phase II, Preliminary Options Analysis of the study to be completed during the summer of 1995. Phase II was primarily focused on the implications of extending Federal TS&W controls to the National Highway System (NHS) as proposed in H.R. 4496 of the 103rd Congress. However, we are modifying the original work plan to combine the Phase II work already underway into a significantly broadened Phase III, which will be known as the Comprehensive Analysis Phase. The reasons for that modification are:

1. The comments to the docket received in response to the February 2, 1995 notice, which included a plan for the study, suggest a broader range of analysis than implied by the original plan, an analysis that could not be completed this summer as part of the Phase II, Preliminary Option Analysis.

2. Current analytical techniques and data are clearly insufficient to adequately address many of the broader issues of concern.

3. Major changes in TS&W limitations are not being advanced as part of NHS legislation this year.

Consequently, current study efforts have largely been shifted toward planning for the expanded analysis.

Another major change in the study was the Secretary's creation of a Departmental Policy Group to guide the study and articulate criteria that will assist in decisions on truck size and weight regulation and insure that the analysis and recommendations are formulated on an intermodal basis. The group is chaired by Assistant Secretary for Transportation Policy Frank E. Kruesi and includes policy level representatives from the FHWA, Federal Railroad Administration, National Highway Traffic Safety Administration, Maritime Administration, Federal Transit Administration, the Associate Deputy Secretary and Director of the Office of Intermodalism, Assistant Secretary for Budget and Programs, Assistant Secretary for Congressional Affairs, and Bureau of Transportation Statistics. Also, a technical level multimodal group from these agencies has been given an expanded role to provide review and recommendations on the multimodal implications of the study for action by the Policy Group.

Study Plan

The following proposed outline for the comprehensive analysis phase of the study was developed in response to the docket comments.

Six major activities: (1) Safety, (2) freight market analysis, (3) multimodal transportation industry analysis, (4) highway infrastructure impact and operations, (5) performance-based and other approaches to TS&W regulations, and (6) comprehensive analysis of benefits and costs of policy options have been identified for this comprehensive phase. These have been developed largely to address the areas of concern expressed in the docket comments.

Safety

This work will be conducted in consulation with a wide range of highway safety experts. It will include but not be limited to evaluation of the vehicle stability and control performance of various truck configurations (including those transporting hazardous materials), assessment of truck accident data from various sources, evaluation of research on truck driver fatigue, and enforcement. The impacts of trucks of various sizes on highway traffic operations, including interaction with smaller vehicles, will be evaluated. Focus groups of automobile and truck drivers will be convened to assess their views on the effects that TS&W policy options have on highway safety. These results will be compared with the results of previously conducted safety analyses.

Freight Market Analysis

Work under this activity is intended to describe the context of freight flows. It will identify changes in freight distribution patterns at the national and international levels, market trends for all freight modes, and the competitive and noncompetitive freight market segments. Focus groups will be convened to help identify the factors that shippers, brokers, and carriers consider and the process they use in making transportation decisions.

Multimodal Transportation Industry Analysis and Case Studies

Work under this activity will gather information on actual transportation choices for all modes through freight corridor and commodity case studies. This will be done at the national, regional, and corridor levels. It will also identify past and potential modal responses to government regulatory changes and industry changes such as just-in-time delivery. One use of the information will be refinement of analytical models of mode choice.

Highway Infrastructure Impact and Operations

This activity will research and evaluate impacts and costs of TS&W policies on bridges, pavements, roadway geometry, and traffic operations (e.g. congestion, passing, hill climbing). Cost recovery will be evaluated based on methodology developed by the Federal Highway Cost Allocation (HCA) Study described in the **Federal Register** notice of February 10, 1995. TS&W enforcement will be another key aspect of this activity area.

Performance-Based and Other Approaches to TS&W Regulation

This activity will document the North American, European, and other international experience with the performance-based approach to TS&W regulation, evaluate the practical and institutional feasibility of the performance-based approach, and identify enforcement issues and potential solutions. The goal of the performance-based approach to truck regulation is to improve safety and perserve infrastructure without overly prescribing truck features and design. This activity will also identify current and future enforcement issues and evaluate State versus Federal roles in various aspects of TS&W regulation.

Comprehensive Analysis of Benefits and Costs of Policy Options

This activity will formulate a range of TS&W policy options, and it will comprehensively analyze the costs and benefits of the policy options. The analysis will evaluate the safety impacts, employment impacts, highway infrastructure costs, the change in U.S. freight shipping costs, international trade and competitiveness, and impacts

on other modes. This activity will also specifically look at cross-modal impacts on the environment, energy use, and other social costs which have traditionally not been analyzed. This study is being closely coordinated with the Federal HCA Study which will be completed prior to the TS&W study and will provide analysis of cost recovery implications of any TS&W options considered.

Commenters are requested to provide specific data sources, studies, research, and policy input on any of these topics. The FHWA and all Department elements involved invite continuing input and are available for discussion of issues related to this study. The DOT will provide periodic updates on methodological development, issue analysis, options to be considered, and criteria through periodic publication of **Federal Register** notices and other forums.

Authority: 23 U.S.C. 315; 49 U.S.C. 301, 302, 305; 49 CFR 1.48; Pub. L. 102–548, 106 Stat. 3646.

Issued On: August 24, 1995.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 95–21544 Filed 8–29–95; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Financial Management Service

Privacy Act of 1974, System of Records

AGENCY: Financial Management Service, Treasury.

ACTION: Notice of alteration of Privacy Act system of records.

SUMMARY: The Department of the Treasury, Financial Management Service (FMS), gives notice of a proposed alteration to the system of records entitled ''Payment Issue Records for Regular Recurring Benefit Payments—Treasury/FMS .002,'' which is subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a). The system notice was last published in its entirety in the **Federal Register** Vol. 57, page 14024, April 17, 1992.

DATES: Comments must be received no later than September 29, 1995. The proposed alteration of the system of records will be effective October 10, 1995, unless FMS receives comments which would result in a contrary determination.

ADDRESSES: Comments must be submitted to the Debt Collection Operations Staff, Financial Management Service, 401 14th Street, SW, Room 415 B, Washington, DC 20227. Comments received will be available for inspection at the same address between the hours of 9 a.m. and 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Gerry Isenberg, Debt Management Services, (202) 874–6660.

SUPPLEMENTARY INFORMATION: FMS has been designated by the Office of Management and Budget as the lead agency in credit management and debt collection for the Federal Government. FMS is altering this system of records by adding two routine uses which are to facilitate the collection of delinquent Federal debts and to more effectively apply certain debt collection tools established under Federal law, specifically tax refund offset, administrative offset, and Federal employee salary offset. FMS has closed the Washington, DC, Financial Center and the system of records is being altered to reflect this change as well.

For the reasons set forth in the preamble, FMS proposes to alter system of records Treasury/FMS .002, ''Payment Issue Records for Regular Recurring Benefit Payments—Treasury/Financial Management Service'', as follows:

Treasury/FMS .002

SYSTEM NAME:

Payment Issue Records for Regular Recurring Benefit Payments—Treasury/Financial Management Service.

SYSTEM LOCATION:

Description of the change: Replace current text with the following language: The Financial Management Service, U.S. Department of the Treasury, Washington, DC 20227. Records maintained at Financial Centers in six regions: Austin, TX; Birmingham, AL; Chicago, IL; Kansas City, MO; Philadelphia, PA; and San Francisco, CA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Description of the changes: Remove ''and'' at end of routine use (9); remove the period (.) at the end of routine use (10); add a semicolon, and add routine uses (11) and (12) to read as follows:

* * *(11) disclose information concerning delinquent debtors to Federal creditor agencies, their employees, or their agents for the purpose of facilitating or conducting Federal administrative offset, Federal tax refund offset, Federal salary offset, or for any other authorized debt collection purpose; and (12) disclose to the Defense Manpower Data Center and the United States Postal Service and other Federal agencies through authorized computer matching programs for the purpose of identifying and locating individuals who are delinquent in their repayment of debts owed to the Department or other Federal agencies in order to collect those debts through salary offset and administrative offset, or by the use of other debt collection tools.

* * * * *

Dated: August 22, 1995.

Alex Rodriguez,

Deputy Assistant Secretary (Administration).

[FR Doc. 95–21524 Filed 8–29 –95; 8:45 am]

BILLING CODE 4810–35–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects in the exhibit ''Winslow Homer'' (See list) [1] imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the National Gallery of Art, from on or about October 15, 1995, through on or about January 28, 1996, at the Museum of Fine Arts, Boston, Massachusetts, from on or about February 21, 1996, through on or about May 26, 1996, and at the Metropolitan Museum of Art, New York, NY, from on or about June 20, 1996, through on or about September 22, 1996, is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: August 25, 1995.

Les Jin,

General Counsel.

[FR Doc. 95–21548 Filed 8–29–95; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Lorie J. Nierenberg, Assistant General Counsel, at 202/619–6084; the address is Room 700, U.S. Information Agency, 301–4th Street, S.W., Washington, D.C. 20547–0001.

Federal Register

Wednesday
August 30, 1995

Part II

Office of Personnel Management

Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions; Notice

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions

AGENCY: Office of Personnel Management.
ACTION: Notice.

SUMMARY: This gives a consolidated notice of all positions excepted under Schedules A, B, and C as of June 30, 1995, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

SUPPLEMENTARY INFORMATION: Civil Service Rule VI (5 CFR 6.1) requires the Office of Personnel Management (OPM) to publish notice of all exceptions granted under Schedules A, B, and C. Title 5, Code of Federal Regulations, § 213.103(c), further requires that a consolidated listing, current as of June 30 of each year, be published annually as a notice in the **Federal Register**. That notice follows. OPM maintains continuing information on the status of all Schedule A, B, and C excepted appointing authorities. Interested parties needing information about specific authorities during the year may obtain information by contacting the Staffing Reinvention Office, Room 6A12, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, or by calling (202) 606–0950.

The following exceptions were current on June 30, 1995.

Schedule A

Section 213.3102 Entire Executive Civil Service

(a) Positions of Chaplain and Chaplain's Assistant.

(b) (Reserved).

(c) Positions to which appointments are made by the President without confirmation by the Senate.

(d) Attorneys.

(e) Law clerk trainee positions. Appointments under this paragraph shall be confined to graduates of recognized law schools or persons having equivalent experience and shall be for periods not to exceed 14 months pending admission to the bar. No person shall be given more than one appointment under this paragraph. However, an appointment that was initially made for less than 14 months may be extended for not to exceed 14 months in total duration.

(f) Chinese, Japanese, and Hindu interpreters.

(g) Any nontemporary position the duties of which are part-time or intermittent in which the appointee will receive compensation during his or her service year that aggregates not more than 40 percent of the annual salary rate for the first step of grade GS–3. This limited compensation includes any premium pay such as for overtime, night, Sunday, or holiday work. It does not, however, include any mandatory within-grade salary increases to which the employee becomes entitled subsequent to appointment under this authority. Appointments under this authority may not be for temporary project employment.

(h) Positions in Federal mental institutions when filled by persons who have been patients of such institutions and have been discharged and are certified by an appropriate medical authority thereof as recovered sufficiently to be regularly employed but it is believed desirable and in the interest of the persons and the institution that they be employed at the institution.

(i) Temporary and less-than-full time positions for which examining is impracticable. These are:

(1) Positions in remote/isolated locations where examination is impracticable. A remote/isolated location is outside of the local commuting area of a population center from which an employee can reasonably be expected to travel on short notice under adverse weather and/or road conditions which are normal for the area. For this purpose, a population center is a town with housing, schools, health care, stores and other businesses in which the servicing examining office can schedule tests and/or reasonably expect to attract applicants. An individual appointed under this authority may not be employed in the same agency under a combination of this and any other appointment to positions involving related duties and requiring the same qualifications for more than 1,040 working hours in a service year. Temporary appointments under this authority may be extended in 1-year increments, with no limit on the number of such extensions, as an exception to the service limits in § 213.104.

(2) Positions for which a critical hiring need exists. This includes both short-term positions and continuing positions that an agency must fill on an interim basis pending completion of competitive examining, clearances, or other procedures required for a longer appointment. Appointments under this authority may not exceed 30 days and may be extended up to an additional 30 days if continued employment is essential to the agency's operations. The appointments may not be used to extend the service limit of any other appointing authority. An agency may not employ the same individual under this authority for more than 60 days in any 12-month period.

(3) Other positions for which OPM determines that examining is impracticable.

(j) Positions filled by: (1) appointment of persons previously employed as National Guard Technicians under 32 U.S.C. 709(a) in positions at the same or equivalent level, or below, who are applying for or receiving an annuity under the provisions of 5 U.S.C. 8337(h) or 5 U.S.C. 8456 by reason of a disability that disqualifies them from membership in the National Guard or from holding the military grade required as a condition of their National Guard employment; or (2) reassignment, promotion, or demotion within the same agency of former National Guard Technicians originally appointed under this authority.

(k) Positions without compensation provided appointments thereto meet the requirements of applicable laws relating to compensation.

(l) Positions requiring the temporary or intermittent employment of professional, scientific, and technical experts for consultation purposes.

(m) (Reserved).

(n) Any local physician, surgeon, or dentist employed under contract or on a part-time or fee basis.

(o) Positions of a scientific, professional or analytical nature when filled by bona fide members of the faculty of an accredited college or university who have special qualifications for the positions to which appointed. Employment under this provision shall not exceed 130 working days a year.

(p)-(s) (Reserved).

(t) Positions when filled by mentally retarded persons in accordance with the guidance in Federal Personnel Manual chapter 306. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by OPM.

(u) Positions when filled by severely physically handicapped persons who: (1) under a temporary appointment have demonstrated their ability to perform the duties satisfactorily; or (2) have been certified by counselors of State vocational rehabilitation agencies or the Veterans Administration as likely to succeed in the performance of the duties. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for

conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by OPM.

(v)-(w) (Reserved).

(x) Positions for which a local recruiting shortage exists when filled by inmates of Federal, District of Columbia, and State (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands) penal and correctional institutions under work-release programs authorized by the Prisoner Rehabilitation Act of 1965, the District of Columbia Work Release Act, or under work-release programs authorized by the States. Initial appointments under this authority may not exceed 1 year. An initial appointment may be extended for one or more periods not to exceed 1 additional year each upon a finding that the inmate is still in a work-release status and that a local recruiting shortage still exists. No person may serve under this authority longer than 1 year beyond the date of that person's release from custody.

(y) (Reserved).

(z) Not to exceed 30 positions of assistants to top-level Federal officials when filled by persons designated by the President as White House Fellows.

(aa) Scientific and professional research associate positions at GS–11 and above when filled on a temporary basis by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and their agencies. Appointments are limited to persons referred by the National Research Council under its post-doctoral research associate program, may not exceed 2 years, and are subject to satisfactory outcome of evaluation of the associate's research during the first year.

(bb) Positions when filled by aliens in the absence of qualified citizens. Appointments under this authority are subject to prior approval of OPM except when the authority is specifically included in a delegated examining agreement with OPM.

(cc) Positions at GS–15 and below when filled by persons identified as Interchange Executives by the President's Commission on Executive Exchange. Appointments made under this authority may not extend beyond 2 years.

(dd)–(ee) (Reserved).

(ff) Not to exceed 25 positions when filled in accordance with an agreement between OPM and the Department of Justice by persons in programs administered by the Attorney General of the United States under Public Law 91–452 and related statutes. A person appointed under this authority may continue to be employed under it after he/she ceases to be in a qualifying program only as long as he/she remains in the same agency without a break in service.

(gg)–(hh) (Reserved).

(ii) Positions of Presidential Intern, GS–9 and 11, in the Presidential Management Intern Program. Initial appointments must be made at the GS–9 level. No one may serve under this authority for more than 2 years, unless extended with OPM approval for up to 1 additional year. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive appointment under the provisions of Executive order 12364, in accordance with requirements published in the Federal Personnel Manual.

(jj)-(kk) (Reserved).

(ll) Positions as needed of readers for blind employees, interpreters for deaf employees and personal assistants for handicapped employees, filled on a full time, part-time, or intermittent basis.

Section 213.3103 Executive Office of the President

(a) *Office of Administration.* (1) Not to exceed 75 positions to provide administrative services and support to the White House office.

(b) *Office of Management and Budget.* (1) Not to exceed 10 positions at grades GS–9/15.

(c) *Council on Environmental Quality.* (1) Professional and technical positions in grades GS–9 through 15 on the staff of the Council.

(d)-(f) (Reserved).

(g) *National Security Council.* (1) All positions on the staff of the Council.

(h) *Office of Science and Technology Policy.* (1) Thirty positions of Senior Policy Analyst, GS–14, Policy Analyst, GS–11/14; and Policy Research Assistant, GS–9, for employment of anyone not to exceed 5 years on projects of a high priority nature.

(i) *Office of National Drug Control Policy.* (1) Not to exceed 15 positions, GS–15 and below, of senior policy analysts and other personnel with expertise in drug-related issues and/or technical knowledge to aid in anti-drug abuse efforts.

Section 213.3104 Department of State

(a) *Office of the Secretary.* (1) All positions, GS–15 and below, on the staff of the Family Liaison Office, Office of the Under Secretary for Management.

(2) One position of Museum Curator (Arts), in the Office of the Under Secretary for Management, whose incumbent will serve as Director, Diplomatic Reception Rooms.

(b) *American Embassy, Paris, France.* (1) Chief, Travel and Visitor Unit. No new appointments may be made under this authority after August 10, 1981.

(c) (Reserved).

(d) *International Boundary Commission, United States and Canada.* (1) Temporary and intermittent field employees such as instrumentmen, foremen, recorders, packers, cooks, and axemen, for not to exceed 180 working days within any 1 calendar year.

(e) *Bureau of Oceans and International Environmental and Scientific Affairs.* (1) Two Physical Science Administration Officer positions at GS–16.

(f) (Reserved).

(g) *Office of Refugee and Migration Affairs.* (1) Not to exceed 10 positions at grades GS–5 through 11 on the staff of the Office.

(h) *Bureau of Administration.* (1) One Presidential Travel Officer. No new appointments may be made under this authority after June 11, 1981.

(2) One position of the Director, Art in Embassies Program, GM–1001–15.

Section 213.3105 Department of the Treasury

(a) *Office of the Secretary.* (1) Not to exceed 20 positions at the equivalent of GS–13 through GS–17 to supplement permanent staff in the study of complex problems relating to international financial, economic, trade, and energy policies and programs of the Government, when filled by individuals with special qualifications for the particular study being undertaken. Employment under this authority may not exceed 4 years.

(2) Not to exceed 20 positions, which will supplement permanent staff involved in the study and analysis of complex problems in the area of domestic economic and financial policy. Employment under this authority may not exceed 4 years.

(b) *U.S. Customs Service.* (1) Positions in foreign countries designated as ''interpreter-translator'' and ''special employees,'' when filled by appointment of persons who are not citizens of the United States; and positions in foreign countries of messenger and janitor.

(2) Positions of part-time, intermittent, mixed tour, or seasonal Customs Inspectors, Port Directors, Inspectional Aides, Clerks and Cashiers at remote/isolated locations where examination is impracticable. A remote/isolated location is outside the local commuting area of a population center from which an employee can reasonably

be expected to travel on short notice under adverse weather and/or road conditions which are normal for the area. For this purpose, a population center is a town with housing, schools, health care, stores and other businesses in which the servicing OPM office can schedule tests and/or reasonably expect to attract applicants. An individual appointed under this authority may not be employed in the Customs Service under a combination of this and any other appointment for more than 1,040 working hours in a service year.

(3)–(5) (Reserved).

(6) Two hundred positions of Criminal Investigator for special assignments.

(7)–(8) (Reserved).

(9) Not to exceed 25 positions of Customs Patrol Officers in the Papago Indian Agency in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(c) *Office of the Comptroller of the Currency.* (1) Not to exceed six positions filled under the Professional Accounting Fellow Program. Appointments under this authority may not exceed 2 years, but may be extended for not to exceed an additional 90 days to complete critical projects.

(d) *Office of Thrift Supervision.* (1) All positions in the supervision policy and supervision operations functions of OTS. No new appointments may be made under this authority after December 31, 1993.

(e) *Internal Revenue Service.* (1) Twenty positions of investigator for special assignments.

(2) Two positions of Senior Visiting Pension Actuary, GS–1510–14/15. Appointments to these positions must be for periods not to exceed 24 months.

(f) (Reserved).

(g) *Bureau of Alcohol, Tobacco, and Firearms.* (1) One hundred positions of criminal investigator for special assignments.

(h) (Reserved).

(i) *Bureau of Government Financial Operations.* (1) Clerical positions at grades GS–5 and below established in Emergency Disbursing Offices to process emergency payments to victims of catastrophes or natural disasters requiring emergency disbursing services. Employment under this authority may not exceed 1 year.

Section 213.3106 Department of Defense

(a) *Office of the Secretary.* (1)–(5) (Reserved).

(6) One Executive Secretary, US–USSR Standing Consultative Commission and Staff Analyst (SALT), Office of the Assistant Secretary of Defense (International Security Affairs).

(b) *Entire Department (including the Office of the Secretary of Defense and the Departments of the Army, Navy, and Air Force).*

(1) Professional positions in Military Dependent School Systems overseas.

(2) Positions in Attache 1 Systems overseas, including all professional and scientific positions in the Naval Research Branch Office in London.

(3) Positions of clerk-translator, translator, and interpreter overseas.

(4) Positions of Educational Specialist the incumbents of which will serve as Director of Religious Education on the staffs of the Chaplains in the military services.

(5) Positions under the program for utilization of alien scientists, approved under pertinent directives administered by the Director of Defense Research and Engineering of the Department of Defense, when occupied by alien scientists initially employed under the program including those who have acquired United States citizenship during such employment.

(6) Positions in overseas installations of the Department of Defense when filled by dependents of military or civilian employees of the U.S. Government residing in the area. Employment under this authority may not extend longer than 2 months following the transfer from the area or separation of a dependent's sponsor: *Provided,* that (i) a school employee may be permitted to complete the school year; and (ii) an employee other than a school employee may be permitted to serve up to 1 additional year when the military department concerned finds that the additional employment is in the interest of management.

(7) Twenty secretarial and staff support positions at GS–12 or below on the White House Support Group.

(8) Positions in DOD research and development activities occupied by participants in the DOD Science and Engineering Apprenticeship Program for High School Students. Persons employed under this authority shall be bona fide high school students, at least 14 years old, pursuing courses related to the position occupied and limited to 1,040 working hours a year. Children of DOD employees may be appointed to these positions, notwithstanding the sons and daughters restriction, if the positions are in field activities at remote locations. Appointments under this authority may be made only to positions for which qualification standards established under 5 CFR Part 302 are consistent with the education and experience standards established for comparable positions in the competitive service. Appointments under this authority may not be used to extend the service limits contained in any other appointing authority.

(c) *Defense Contract Audit Agency.* (1) Not to exceed two positions of Accounting Fellow, Auditor, GM–511–14, filled under the Accounting Fellowship Program. Appointments under this authority may not exceed 2 years.

(d) *General.* (1) Positions concerned with advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information, including scientific and technical positions in the intelligence function; and positions involved in the planning, programming, and management of intelligence resources when, in the opinion of OPM, it is impracticable to examine. This authority does not apply to positions assigned to cryptologic and communications intelligence activities/functions.

(2) Positions involved in intelligence-related work of the cryptologic intelligence activities of the military departments. This includes all positions of intelligence research specialist, and similar positions in the intelligence classification series; all scientific and technical positions involving the applications of engineering, physical or technical sciences to intelligence work; and professional as well as intelligence technician positions in which a majority of the incumbent's time is spent in advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information or in the planning, programming, and management of intelligence resources.

(e) *Uniformed Services University of the Health Sciences.* (1) Positions of President, Vice Presidents, Assistant Vice Presidents, Deans, Deputy Deans, Associate Deans, Assistant Deans, Assistants to the President, Assistants to the Vice Presidents, Assistants to the Deans, Professors, Associate Professors, Assistant Professors, Instructors, Visiting Scientists, Research Associates, Senior Research Associates, and Postdoctoral Fellows.

(2) Positions established to perform work on projects funded from grants.

(f) *National Defense University.* (1) Not to exceed 16 positions of Senior Policy Analyst, GS–15, at the Strategic Concepts Development Center. Initial appointments to these positions may not

exceed 6 years, but may be extended thereafter in 1-, 2-, or 3-year increments, indefinitely.

(g) *Defense Communications Agency.* (1) Not to exceed 10 positions at grades GS–10/15 to staff and support the Crisis Management Center at the White House.

(h) *Defense Systems Management College, Fort Belvoir, Va.* (1) The Provost and professors in grades GS–13 through 15.

(i) *George C. Marshall European Center for Security Studies, Garmisch, Germany.* (1) The Director, Deputy Director, and positions of Professor, Instructor, and Lecturer at the George C. Marshall European Center for Security Studies, Garmisch, Germany, for initial employment not to exceed 3 years, which may be renewed in increments from 1 to 2 years thereafter.

Section 213.3107 Department of the Army

(a) *General.* (1) Not to exceed 30 positions on the faculty and staff which are classified in the GS–1700 occupational group and the GS–1410 Librarian series, located at the U.S. Army Russian Institute, Garmisch, Germany, and the U.S. Army Foreign Language Training Center Europe, Munich, Germany.

(2) (Reserved).

(3) Not to exceed 500 Medical and Dental Intern, Resident and Fellow positions, whose incumbents are training under graduate medical/dental education programs in Army Medical Department facilities worldwide, and whose compensation is fixed under 5 U.S.C. 5351–5356. Employment under this authority may not exceed 4 years, unless extended with prior approval of OPM.

(b) *Aviation Systems Command.* (1) One scientific and professional research position in the U.S. Army Research and Technology Laboratories, the duties of which require specific knowledge of aviation technology in non-allied nations.

(c) *Corps of Engineers.* (1) (Reserved).

(2) Nonsupervisory trades, crafts, and manual labor positions at grades WG–6 and below on survey, construction, short-term maintenance, or floating-plant operations, where because of turnover, lack of housing facilities, mobility of work site, or remoteness of personnel servicing facilities, an adequate labor force can be recruited only by immediate gate hiring on a local basis. This authority can be used only when OPM has determined that it is specifically applicable to a given situation; ordinarily, it will not be used for employment in OPM central office, regional, and branch office cities or in cities where there is a local OPM area office to service the employing establishment.

(d) *U.S. Military Academy, West Point, New York.* (1) Civilian professors, instructors, teachers (except teachers at the Children's School), Cadet Social Activities Coordinator, Chapel Organist and Choir-Master, Director of Intercollegiate Athletics, Associate Director of Intercollegiate Athletics, coaches, Facility Manager, Building Manager, three Physical Therapists (Athletic Trainers), Associate Director of Admissions for Plans and Programs, Deputy Director of Alumni Affairs; and librarian when filled by an officer of the Regular Army retired from active service, and the military secretary to the Superintendent when filled by a U.S. Military Academy graduate retired as a regular commissioned officer for disability.

(e) *U.S. Army School of the Americas, Fort Benning, Georgia.* (1) Positions of Translator (Typing), GS–1040–5/9, and Supervisory Translator, GS–1040–11. No new appointments may be made under this authority after December 31, 1985.

(f) *Central Identification Laboratory.* (1) One position of Scientific Director, GM–190–15, and four positions of Forensic Scientist, GM–190–14. Initial appointment to these positions is NTE 3–5 years, with provision for indefinite numbers of renewals in 1-, 2-, or 3-year increments.

(g) *Defense Language Institute.* (1) All positions on the faculty and staff which are classified in the GS–1700 occupational group, the GS–1040 Language Specialist series, and the GS–303 Bilingual Clerk series, that require either a proficiency in a foreign language or a knowledge of foreign language teaching methods.

(h) *Army War College, Carlisle Barracks, PA.* (1) Positions of Professor, Instructor, or Lecturer associated with courses of instruction of at least 10 months duration for employment not to exceed 5 years, which may be renewed in 1-, 2-, 3-, 4-, or 5-year increments indefinitely thereafter.

(2) Nine Senior Policy Analyst positions, GS–14/15, at the Strategic Studies Institute, Army War College, with appointments to be made initially for up to 3 years and thereafter extended annually if needed.

(i) (Reserved).

(j) *U.S. Military Academy Preparatory School, Fort Monmouth, New Jersey.* (1) Positions of Academic Director, Department Head, and Instructor.

(k) *U.S. Army Command and General Staff College, Fort Leavenworth, Kansas.* (1) Positions of Professor, Associate Professor, Assistant Professor, and Instructor associated with courses of instruction of at least 10 months duration, for employment not to exceed up to 5 years, which may be renewed in 1, 2, 3, 4, or 5-year increments indefinitely thereafter.

Section 213.3108 Department of the Navy

(a) *General.* (1) (Reserved).

(2) Positions of Student Pharmacist for temporary, part-time, or intermittent employment in U.S. naval regional medical centers, hospitals, clinics and departments when filled by students who are enrolled in an approved pharmacy program in a participating nonfederal institution, and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(3) (Reserved).

(4) Not to exceed 50 positions of resident-in-training at U.S. naval regional medical centers, hospitals, and dispensaries which have residency training programs, when filled by residents assigned as affiliates for part of their training from nonfederal hospitals. Assignments shall be on a temporary (full-time or part-time) or intermittent basis, shall not amount to more than 6 months for any person, and shall be applied only to persons whose compensation is fixed under 5 U.S.C. 5351–54.

(5) (Reserved).

(6) Positions of Student Operating Room Technician for temporary, part-time, or intermittent employment in U.S. naval regional medical centers and hospitals, when filled by students who are enrolled in an approved operating room technician program in a participating nonfederal institution, whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(7) Positions of Student Social Worker for temporary, part-time, or intermittent employment in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by bona fide students enrolled in academic institutions: *Provided,* that the work performed in the agency is to be used by the student as a basis for completing certain academic requirements by such educational institution to qualify for a graduate degree in social work. This authority shall be applied only to students whose compensation is fixed under 5 U.S.C. 5351–54.

(8) Positions of Student Practical Nurse for temporary, part-time, or intermittent employment in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by trainees

enrolled in a nonfederal institution in an approved program of educational and clinical training which meets the requirements for licensing as a practical nurse. This authority shall be applied only to trainees whose compensation is fixed under 5 U.S.C. 5351–54.

(9) (Reserved).

(10) Positions of Medical Technology Intern in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by students enrolled in approved programs of training in nonfederal institutions. Employment under this authority may be on a full-time, part-time, or intermittent basis but may not exceed 1 year. This authority shall be applied only to students whose compensation is fixed under 5 U.S.C. 5351–54.

(11) Positions of Medical Intern in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by persons who are serving medical internships at participating nonfederal hospitals and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(12) Positions of Student Speech Pathologist at U.S. naval regional medical centers, hospitals, and dispensaries, when filled by persons who are enrolled in participating nonfederal institutions and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(13) Positions of Student Dental Assistant in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by persons who are enrolled in participating nonfederal institutions and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(14) (Reserved).

(15) Marine positions assigned to a coastal or seagoing vessel operated by a naval activity for research or training purposes.

(16) All positions necessary for the administration and maintenance of the official residence of the Vice President.

(b) *Naval Academy, Naval Postgraduate School, and Naval War College.* (1) Professors, instructors, and teachers; the Director of Academic Planning, Naval Postgraduate School; and the Librarian, Organist-Choirmaster, Registrar, the Dean of Admissions, and social counselors at the Naval Academy.

(c) *Chief of Naval Operations.* (1) One position at grade GS–12 or above that will provide technical, managerial, or administrative support on highly classified functions to the Deputy Chief of Naval Operations (Plans, Policy, and Operations).

(d) *Military Sealift Command.* (1) All positions on vessels operated by the Military Sealift Command.

(e) *Pacific Missile Range Facility, Barking Sands, Hawaii.* (1) All positions. This authority applies only to positions that must be filled pending final decision on contracting of Facility operations. No new appointments may be made under this authority after July 29, 1988.

(f) (Reserved).

(g) *Office of Naval Research.* (1) Not to exceed five positions of Liaison Scientists, GS–13/15, in the Naval Research Branch Office in Japan, when filled by research scientists who have specialized experience in scientific disciplines of current interest to the Department and who have a demonstrated ability to deal with the Japanese scientific community in their disciplines. An appointment under this authority may be made initially for a period of not to exceed 2 years. With the prior approval of OPM, total employment under this authority may be for as long as 3 years.

Section 213.3109 Department of the Air Force

(a) *Office of the Secretary.* (1) One Special Assistant in the Office of the Secretary of the Air Force. This position has advisory rather than operating duties except as operating or administrative responsibilities may be exercised in connection with the pilot studies.

(b) *General.* (1) Professional, technical, managerial and administrative positions supporting space activities, when approved by the Secretary of the Air Force.

(2) Seventy positions engaged in interdepartmental defense projects involving scientific and technical evaluations.

(c) Not to exceed 20 professional positions, GS–11 through GS–15, in Detachments 6 and 51, SM–ALC, Norton and McClellan Air Force Bases, California, which will provide logistic support management to specialized research and development projects.

(d) *U.S. Air Force Academy, Colorado.* (1) Positions of Cadet Hostesses, instructors in Physical Education, instructors in Music (choirmasters), one Training Instructor (Parachuting), one Training Instructor (Code of Conduct and Evasion), and two Physical Therapists (Athletic Trainers).

(2) Positions of Professor, Associate Professor, Assistant Professor, and Instructor, in the Dean of Faculty, Commandant of Cadets, Director of Athletics, and Preparatory School of the United States Air Force Academy.

(e) (Reserved).

(f) *Air Force Office of Special Investigations.* (1) Not to exceed 250 positions of Criminal Investigators/ Intelligence Research Specialists, GS–5 through GS–15.

(g) Not to exceed eight positions, GS–12 through 15, in Headquarters Air Force Logistics Command, DCS Material Management, Office of Special Activities, Wright-Patterson Air Force Base, Ohio, which will provide logistic support management staff guidance to classified research and development projects.

(h) *Air University, Maxwell Air Force Base, Alabama.* (1) Positions of Professor, Instructor, or Lecturer.

(i) *Air Force Institute of Technology, Wright-Patterson Air Force Base, Ohio.* (1) Civilian deans and professors.

(j) *Air Force Logistics Command.* (1) One Supervisory Logistics Management Specialist, GM–346–14, in Detachment 2, 2762 Logistics Management Squadron (Special), Greenville, Texas.

(k) One position of Supervisory Logistics Management Specialist, GS–346–15, in the 2762nd Logistics Squadron (Special), at Wright-Patterson Air Force Base, Ohio.

(l) One position of Commander, Air National Guard Readiness Center, Andrews Air Force Base, Maryland.

Section 213.3110 Department of Justice

(a) *General.* (1) Deputy U.S. Marshals employed on an hourly basis for intermittent service.

(2) Positions established to implement the Crime Control and Law Enforcement Act of 1994 or the Violent Crime Control Appropriations Act, 1995. No new appointments may be made under this authority after September 30, 1995.

(3) U.S. Marshal in the Virgin Islands.

(4) Positions at GS–15 and below on the staff of an office of an independent counsel, that is established under 28 CFR Part 600. No office may use this authority for more than 4 years to make appointments and position changes unless prior approval of OPM is obtained.

(b) *Immigration and Naturalization Service.* (1) Not to exceed 350 positions, at grades GS–15 and below, engaged in planning for and implementing the processing of claims for resident status which may be submitted by aliens already in the United States as authorized by immigration control and reform legislation. New appointments under this authority may not be made after April 15, 1994.

(2) Not to exceed 500 positions of interpreters and language specialists, GS–1040–5/9.

(3) Not to exceed 25 positions, GS–15 and below, with proficiency in speaking, reading, and writing the Russian language and serving in the Soviet Refugee Processing Program with permanent duty location in Moscow, Russia.

(c) *Drug Enforcement Administration.* (1) (Reserved).

(2) One hundred and fifty positions of Intelligence Research Agent and/or Intelligence Operation Specialist in the GS–132 series, grades GS–9 through GS–15.

(3) Not to exceed 200 positions of Criminal Investigator (Special Agent). New appointments may be made under this authority only at grades GS–7/11.

Section 213.3112 Department of the Interior

(a) *General.* (1) Technical, maintenance, and clerical positions at or below grades GS–7, WG–10, or equivalent, in the field service of the Department of the Interior, when filled by the appointment of persons who are certified as maintaining a permanent and exclusive residence within, or contiguous to, a field activity or district, and as being dependent for livelihood primarily upon employment available within the field activity of the Department.

(2) All positions on Government-owned ships or vessels operated by the Department of the Interior.

(3) Temporary or seasonal caretakers at temporarily closed camps or improved areas to maintain grounds, buildings, or other structures and prevent damages or theft of Government property. Such appointments shall not extend beyond 130 working days a year without the prior approval of OPM.

(4) Temporary, intermittent, or seasonal field assistants at GS–7, or its equivalent, and below in such areas as forestry, 8 range management, soils, engineering, fishery and wildlife management, and with surveying parties. Employment under this authority may not exceed 180 working days a year.

(5) Temporary positions established in the field service of the Department for emergency forest and range fire prevention or suppression and blister rust control for not to exceed 180 working days a year: *Provided,* That an employee may work as many as 220 working days a year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property.

(6) Persons employed in field positions, the work of which is financed jointly by the Department of the Interior and cooperating persons or organizations outside the Federal service.

(7) All positions in the Bureau of Indian Affairs and other positions in the Department of the Interior directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of the Interior is responsible for defining the term ''Indian.''

(8) Temporary, intermittent, or seasonal positions at GS–7 or below in Alaska, as follows: Positions in nonprofessional mining activities, such as those of drillers, miners, caterpillar operators, and samplers. Employment under this authority shall not exceed 180 working days a year and shall be appropriate only when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(9) Temporary, part-time, or intermittent employment of mechanics, skilled laborers, equipment operators and tradesmen on construction, repair, or maintenance work not to exceed 180 working days a year in Alaska, when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(10) Seasonal airplane pilots and airplane mechanics in Alaska, not to exceed 180 working days a year.

(11) Temporary staff positions in the Youth Conservation Corps Centers operated by the Department of the Interior. Employment under this authority shall not exceed 11 weeks a year except with prior approval of OPM.

(12) Positions in the Youth Conservation Corps for which pay is fixed at the Federal minimum wage rate. Employment under this authority may not exceed 10 weeks.

(b) (Reserved).

(c) *Indian Arts and Crafts Board.* (1) The Executive Director.

(d) (Reserved).

(e) *Office of the Assistant Secretary, Territorial and International Affairs.* (1) (Reserved).

(2) Not to exceed four positions of Territorial Management Interns, grades GS–5, GS–7, or GS–9, when filled by territorial residents who are U.S. citizens from the Virgin Islands or Guam; U.S. nationals from American Samoa; or in the case of the Northern Marianas, will become U.S. citizens upon termination of the U.S. trusteeship. Employment under this authority may not exceed 6 months.

(3) (Reserved).

(4) Special Assistants to the Governor of American Samoa who perform specialized administrative, professional, technical, and scientific duties as members of his or her immediate staff.

(f) *National Park Service.* (1–2) (Reserved).

(3) Seven full-time permanent and 31 temporary, part-time, or intermittent positions in the Redwood National Park, California, which are needed for rehabilitation of the park, as provided by Public Law 95–250.

(4) One Special Representative of the Director.

(g) *Bureau of Reclamation.* (1) Appraisers and examiners employed on a temporary, intermittent, or part-time basis on special valuation or prospective-entrymen-review projects where knowledge of local values on conditions or other specialized qualifications not possessed by regular Bureau employees are required for successful results. Employment under this provision shall not exceed 130 working days a year in any individual case: *Provided,* that such employment, may with prior approval of OPM, be extended for not to exceed an additional 50 working days in any single year.

(h) *Office of the Deputy Assistant Secretary for Territorial Affairs.* (1) Positions of Territorial Management Interns, GS–5, when filled by persons selected by the Government of the Trust Territory of the Pacific Islands. No appointment may extend beyond 1 year.

Section 213.3113 Department of Agriculture

(a) *General.* (1) Agents employed in field positions the work of which is financed jointly by the Department and cooperating persons, organizations, or governmental agencies outside the Federal service. Except for positions for which selection is jointly made by the Department and the cooperating organization, this authority is not applicable to positions in the Agricultural Research Service or the National Agricultural Statistics Service. This authority is not applicable to the following positions in the Agricultural Marketing Service: Agricultural commodity grader (grain) and (meat), (poultry), and (dairy), agricultural commodity aid (grain), and tobacco inspection positions.

(2)–(4) (Reserved).

(5) Temporary, intermittent, or seasonal employment in the field service of the Department in positions at and below GS–7 and WG–10 in the following types of positions: Field assistants for subprofessional services; State performance assistants in the Consolidated Farm Service Agency; agricultural helpers, helper-leaders, and workers in the Agricultural Research Service and the Animal and Plant

Health Inspection Service; and subject to prior OPM approval granted in the calendar year in which the appointment is to be made, other clerical, trades, crafts, and manual labor positions. Total employment under this subparagraph may not exceed 180 working days in a service year: *Provided*, that an employee may work as many as 220 working days in a service year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property. This paragraph does not cover trades, crafts, and manual labor positions covered by paragraphs (i) and (m) of § 213.3102 or positions within the Forest Service.

(6) (Reserved).

(7) Not to exceed 34 Program Assistants, whose experience acquired in positions excepted from the competitive civil service in the administration of agricultural programs at the State level is needed by the Department for the more efficient administration of its programs. No new appointment may be made under this authority after December 31, 1985.

(b)-(c) (Reserved).

(d) *Consolidated Farm Service Agency.* (1) (Reserved).

(2) Members of State Committees: *Provided*, that employment under this authority shall be limited to temporary intermittent (WAE) positions whose principal duties involve administering farm programs within the State consistent with legislative and Departmental requirements and reviewing national procedures and policies for adaptation at State and local levels within established parameters. Individual appointments under this authority are for 1 year and may be extended only by the Secretary of Agriculture or his designee. Members of State Committees serve at the pleasure of the Secretary.

(e) *Farmers Home Administration.* (1) (Reserved).

(2) County committeemen to consider, recommend, and advise with respect to the Farmers Home Administration program.

(3) Temporary positions whose principal duties involve the making and servicing of natural disaster emergency loans pursuant to current statutes authorizing natural disaster emergency loans. Appointments under this provision shall not exceed 1 year unless extended for one additional period not to exceed 1 year, but may, with prior approval of OPM be further extended for additional periods not to exceed 1 year each.

(4)-(5) (Reserved).

(6) Professional and clerical positions in the Trust Territory of the Pacific Islands when occupied by indigenous residents of the Territory to provide financial assistance pursuant to current authorizing statutes.

(f) *Agricultural Marketing Service.* (1) Positions of: Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–9 and below in the tobacco, dairy, and poultry commodities; Meat Acceptance Specialists, GS–11 and below; Clerks, Office Automation Clerks, and Computer Clerks at GS–5 and below; Clerk-Typists at grades GS–4 and below; and Laborers under the Wage System. Employment under this authority is limited to either 1,280 hours or 180 days in a service year.

(2) Positions of: Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–11 and below in the cotton, raisin, and processed fruit and vegetable commodities and the following positions in support of these commodities: Clerks, Office Automation Clerks, and Computer Clerks and Operators at GS–5 and below; Clerk-Typists at grades GS–4 and below; and, under the Federal Wage System, High Volume Instrumentation (HVI) Operators and HVI Operator Leaders at WG/WL–2 and below, respectively, Instrument Mechanics/Workers/Helpers at WG–10 and below, and Laborers. Employment under this authority may not exceed 180 days in a service year. In unforeseen situations such as bad weather or crop conditions, unanticipated plant demands, or increased imports, employees may work up to 240 days in a service year. Cotton Agricultural Commodity Graders, GS–5, may be employed as trainees for the first appointment for an initial period of 6 months for training without regard to the service year limitation.

(3) Milk Market Administrators.

(4) All positions on the staffs of the Milk Market Administrators.

(g)–(k) (Reserved).

(l) *Food Safety and Inspection Service.* (1)–(2) (Reserved).

(3) Positions of meat and poultry inspectors (veterinarians at GS–11 and below and nonveterinarians at appropriate grades below GS–11) for employment on a temporary, intermittent, or seasonal basis, not to exceed 1,280 hours a year.

(m) *Grain Inspection, Packers and Stockyards Administration.* (1) One hundred and fifty positions of Agricultural Commodity Aid (Grain), GS–2/4; 100 positions of Agricultural Commodity Technician (Grain), GS–4/7; and 60 positions of Agricultural Commodity Grader (Grain), GS–5/9, for temporary employment on a part-time, intermittent, or seasonal basis not to exceed 1,280 hours in a service year.

Section 213.3114 Department of Commerce

(a) *General.* (1)–(2) (Reserved).

(3) Not to exceed 50 scientific and technical positions whose duties are performed primarily in the Antarctic. Incumbents of these positions may be stationed in the continental United States for periods of orientation, training, analysis of data, and report writing.

(b) *Office of the Secretary.* (1) One position of Administrative Assistant, GS–301–8, in the Office of Economic Affairs. New appointments may not be made after March 30, 1979.

(c) (Reserved).

(d) *Bureau of the Census.* (1) Managers, supervisors, technicians, clerks, interviewers, and enumerators in the field service, for (1) temporary, part-time, or intermittent employment in connection with major economic and demographic censuses or with surveys of a nonrecurring or noncyclical nature; and (2) indefinite employment for the duration of each decennial census for key employees located at the Master District Offices (MDO) and Processing Offices (PO): *Provided*, that temporary, part-time employment of the nature described in (1) above will be for periods not to exceed 1 year; and that such appointments may be extended for additional periods of not to exceed 1 year each; but that prior Office approval is required for extension of total service beyond 2 years.

(2) Current Program Interviewers employed on an intermittent or part-time basis in the field service.

(3) Not to exceed 20 professional and scientific positions at grades GS–9 through GS–12 filled by participants in the ASA research trainee program. Employment of any individual under this authority may not exceed 2 years.

(e)-(h) (Reserved).

(i) *Office of the Under Secretary for International Trade.* (1) Thirty positions at GS–12 and above in specialized fields relating to international trade or commerce in units under the jurisdiction of the Under Secretary for International Trade. Incumbents will be assigned to advisory rather than to operating duties, except as operating and administrative responsibility may be required for the conduct of pilot studies or special projects. Employment under this authority will not exceed 2 years for an individual appointee.

(2) (Reserved).

(3) Not to exceed 30 positions in grades GS–12 through GS–15, to be filled by persons qualified as industrial or marketing specialists; who possess specialized knowledge and experience in industrial production, industrial operations and related problems, market structure and trends, retail and wholesale trade practices, distribution channels and costs, or business financing and credit procedures applicable to one or more of the current segments of U.S. industry served by the Under Secretary for International Trade, and the subordinate components of his organization which are involved in Domestic Business matters. Appointments under this authority may be made for a period of not to exceed 2 years and may, with prior approval of OPM, be extended for an additional period of 2 years.

(j) *National Oceanic and Atmospheric Administration.* (1) Subject to prior approval of OPM, which shall be contingent upon a showing of inadequate housing facilities, meteorological aid positions at the following stations in Alaska: Barrow, Bethal, Kotzebue, McGrath, Northway, and St. Paul Island.

(2) (Reserved).

(3) All civilian positions on vessels operated by the National Ocean Service.

(4) Temporary positions required in connection with the surveying operations of the field service of the National Ocean Service. Appointment to such positions shall not exceed 8 months in any 1 calendar year.

(k) (Reserved).

(l) *National Telecommunication and Information Administration.* (1) Seventeen professional positions in grades GS–13 through GS–15.

Section 213.3115 Department of Labor

(a) *Office of the Secretary.* (1) Chairman and five members, Employees' Compensation Appeals Board.

(2) Chairman and eight members, Benefits Review Board.

(b) *Bureau of Labor Statistics.* (1) Not to exceed 500 positions involving part-time and intermittent employment for field survey and enumeration work in the Bureau of Labor Statistics. This authority is applicable to positions where the salary is equivalent to GS–6 and below. Employment under this authority may not exceed 1,600 work hours in a service year. No new appointment may be made under this authority after December 31, 1984.

(c) (Reserved).

(d) *Employment and Training Administration.* (1) Not to exceed 10 positions of Supervisory Manpower Development Specialist and Manpower Development Specialist, GS–7/15, in the Division of Indian and Native American Programs, when filled by the appointment of persons of one-fourth or more Indian blood. These positions require direct contact with Indian tribes and communities for the development and administration of comprehensive employment and training programs.

Section 213.3116 Department of Health and Human Services

(a) (Reserved).

(b) *Public Health Service.* (1) Not to exceed five positions a year of Medical Technologist Resident, GS–644–7, in the Blood Bank Department, Clinical Center, of the National Institutes of Health. Appointments under this authority will not exceed 1 year.

(2) Positions at Government sanatoria when filled by patients during treatment or convalescence.

(3) (Reserved).

(4) Positions concerned with problems in preventive medicine financed or participated in by the Department of Health and Human Services and a cooperating State, county, municipality, incorporated organization, or an individual in which at least one-half of the expense is contributed by the participating agency either in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

(5) Medical and dental interns, externs, and residents; and student nurses.

(6) Positions of scientific, professional, or technical nature when filled by bona fide students enrolled in academic institutions: *Provided,* that the work performed in the agency is to be used by the student as a basis for completing certain academic requirements required by an educational institution to qualify for a scientific, professional, or technical field. This authority shall be applied only to positions with compensation fixed under 5 U.S.C. 5351–5356.

(7) Not to exceed 50 positions associated with health screening programs for refugees.

(8) All positions in the Public Health Service and other positions in the Department of Health and Human Services directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of Health and Human Services is responsible for defining the term ''Indian.''

(9) Twelve positions of Therapeutic Radiologic Technician Trainee in the Radiation Oncology Branch, National Cancer Institute. Employment under this authority shall not exceed 1 year for any individual. This authority shall be applied only to positions with compensation fixed under 5 U.S.C. 5351–5356.

(10) Health care positions of the National Health Service Corps for employment of any one individual not to exceed 4 years of service in health manpower shortage areas.

(11) Pharmacy Resident positions at GS–7 in the National Institutes of Health's Clinical Center, Pharmacy Department. Employment in these positions is confined to graduates of approved schools of pharmacy and is limited to a period not to exceed 12 months pending licensure.

(12) Hospital Administration Resident positions at GS–9 in the National Institutes of Health's Clinical Center, Bethesda, Maryland. Employment in these positions is confined to graduates of approved hospital or health care administration programs and is limited to a period not to exceed 1 year.

(13) Not to exceed 30 positions of Cancer Control Science Associate in the Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, for assignments at a level of difficulty and responsibility at or equivalent to GS–11/13. No one may be employed under this authority for more than 3 years, and no more than 10 appointments will be made under the authority in any 1 year.

(14) Not to exceed 30 positions at grades GS–11/13 associated with the postdoctoral training program for interdisciplinary toxicologists in the National Institute of Environmental Health Sciences, National Institutes of Health, Research Triangle Park, North Carolina.

(15) Not to exceed 200 staff positions, GS–15 and below, in the Office of Refugee Health, for an emergency staff to provide health related services to Haitian entrants.

(c)-(e) (Reserved).

(f) *The President's Council on Physical Fitness.* (1) Four staff assistants.

(g)-(i) (Reserved).

(j) *Health Care Financing Administration.* (1) Reserved.

(2) Not to exceed 10 professional positions, GS–9 through GS–15, to be filled under the Health Care Financing Administration Professional Exchange Program. Appointments under this authority will not exceed 1 year.

(k) *Office of the Secretary.* (1) (Reserved).

(2) Not to exceed 10 positions at grades GS–9/14 in the Office of the Assistant Secretary for Planning and

Evaluation filled under the Policy Research Associate Program. New appointments to these positions may be made only at grades GS–9/12. Employment of any individual under this authority may not exceed 2 years.

Section 213.3117 Department of Education

(a) Positions concerned with problems in education financed and participated in by the Department of Education and a cooperating State educational agency, or university or college, in which there is joint responsibility for selection and supervision of employees, and at least one-half of the expense is contributed by the cooperating agency in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

Section 213.3121 Corporation for National and Community Service

(a) All positions on the staff of the Corporation for National Community Service. No new appointments may be made under this authority after September 30, 1995.

Section 213.3124 Board of Governors, Federal Reserve System

(a) All positions.

Section 213.3127 Department of Veterans Affairs

(a) *Construction Division.* (1) Temporary construction workers paid from ''purchase and hire'' funds and appointed for not to exceed the duration of a construction project.

(b) Not to exceed 400 positions of rehabilitation counselors, GS–3 through GS–11, in Alcoholism Treatment Units and Drug Dependence Treatment Centers, when filled by former patients.

(c) *Board of Veterans' Appeals.* (1) Positions, GS–15, when filled by a member of the Board. Except as provided by section 201(d) of Public Law 100–687, appointments under this authority shall be for a term of 9 years, and may be renewed.

(2) Positions, GS–15, when filled by a non-member of the Board who is awaiting Presidential approval for appointment as a Board member.

(d) Not to exceed 600 positions at grades GS–3 through GS–11, involved in the Department's Vietnam Era Veterans Readjustment Counseling Service.

Section 213.3128 U.S. Information Agency

(a) *Office of Congressional and Public Liaison.* (1) Two positions of Liaison Officer (Congressional), GS–14.

(b) Five Positions of Supervisory International Exchange Officer (Reception Center Director), GS–13 and GS–14, located in USIA's field offices of New Orleans, New York, Miami, San Francisco, and Honolulu. Initial appointments will not exceed December 31 of the calendar year in which appointment is made with extensions permitted up to a maximum period of 4 years.

Section 213.3129 Thrift Depositor Protection Oversight Board

(a) All positions. No new appointments may be made under this authority after December 31, 1994.

Section 213.3130 Securities and Exchange Commission

(a)-(b) (Reserved).

(c) Positions of Accountant and Auditor, GS–13 through 15, when filled by persons selected under the SEC Accounting Fellow Program, as follows: (1) Seven positions, for employment of any one individual not to exceed 2 years; and

(2) Two additional identical positions, for employment of any one individual not to exceed 90 days, which may be used to provide a period of transition and orientation between Fellowship appointments. These additional identical positions must be filled by persons who either have completed a 2-year Fellowship or have been selected as replacement Fellows for a 2-year term. Appointments of outgoing Fellows under this authority must be made without a break in service of 1 workday following completion of their 2-year term; incoming Fellows appointed under this provision must be appointed to 2-year Fellowships without a break in service of 1 workday following their 90-day appointments.

(d) Positions of Economist, GS–13 through 15, when filled by persons selected under the SEC Economic Fellow Program. No more than four positions may be filled under this authority at any one time. An employee may not serve under this authority longer than 2 years unless selected under provisions set forth in the Intergovernmental Personnel Act (IPA), 5 U.S.C. 3372(b)(2).

(e) Not to exceed 10 positions of Accountant, GS–12/13, when filled by persons selected as SEC Accounting Fellows for the Full Disclosure Program. Employment under this authority may not exceed 2 years.

(f) Not to exceed four positions of Accountant, GS–14/15, when filled by persons selected as SEC Accounting Fellows for the Capital Markets Risk Assessment Program. Employment under this authority may not exceed 2 years.

Section 213.3131 Department of Energy

(a) (Reserved).

(b) *Bonneville Power Administration.* (1) Five Area Managers.

Section 213.3132 Small Business Administration

(a) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by temporary appointment of employees to make and administer disaster loans in the area under the Small Business Act, as amended. Service under this authority may not exceed 4 years, and no more than 2 years may be spent on a single disaster. Exception to this time limit may only be made with prior Office approval. Appointments under this authority may not be used to extend the 2-year service limit contained in paragraph (b) below. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(b) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by temporary appointment of employees to make and administer disaster loans in that area under the Small Business Act, as amended. No one may serve under this authority for more than an aggregate of 2 years without a break in service of at least 6 months. Persons who have had more than 2 years of service under paragraph (a) of this section must have a break in service of at least 8 months following such service before appointment under this authority. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(c) Positions of Community Economic-Industrial Planner, GS–7 through 12, when filled by local residents who represent the interest of the groups to be served by the Minority Entrepreneurship Teams of which they are members. No new appointments may be made under this authority after May 1, 1977.

Section 213.3133 Federal Deposit Insurance Corporation

(a) Until June 1, 1996, all Liquidation Graded, temporary field positions concerned with the work of liquidating the assets of closed banks or savings and loan institutions, of liquidating loans to banks or savings and loan institutions,

or of paying the depositors of closed insured banks or savings and loan institutions. No new appointments may be made under this authority after December 31, 1993.

(b) Not to exceed 300 positions in field offices of the Resolution Trust Corporation. No new appointments may be made under this authority after September 30, 1992.

(c) Temporary positions located at closed banks or savings and loan institutions that are concerned with liquidating the assets of the institutions, liquidating loans to the institutions, or paying the depositors of closed insured institutions. New appointments may be made under this authority only during the 60 days immediately following the institution's closing date. Such appointments may not exceed 1 year, but may be extended for not to exceed 1 additional year.

Section 213.3136 U.S. Soldiers' and Airmen's Home

(a) (Reserved).

(b) Positions when filled by member-residents of the Home.

Section 213.3137 General Services Administration

(a) (Reserved).

(b) Not to exceed 25 positions at grades GS–14/15, in order to bring into the agency current industry expertise in various program areas. Appointments under this authority may not exceed 2 years.

(c) All Law Clerk positions in the Board of Contract Appeals' Law Clerk Fellows Program. Appointments under this authority at GS–11 and GS–12 will be limited to 2 years with provision for a 1-year extension at the GS–13 level only in cases of exceptional circumstances, as determined by the Chief Judge and Chairman.

Section 213.3138 Federal Communications Commission

(a) Fifteen positions of Telecommunications Policy Analyst, GS–301–13/14/15. Initial appointment to these positions will be for a period of not to exceed 2 years with provision for two 1-year extensions.

Section 213.3141 National Labor Relations Board

(a) Election Examiners for temporary, part-time, or intermittent employment in connection with elections under the Labor-Management Relations Act.

Section 213.3142 Export-Import Bank of the United States

(a) One Special Assistant to the Board of Directors, grade GS–14 and above.

Section 213.3146 Selective Service System

(a) State Directors.

(b)–(c) (Reserved).

(d) Executive Secretary, National Selective Service Appeal Board.

Section 213.3148 National Aeronautics and Space Administration

(a) One hundred and fifty alien scientists having special qualifications in the fields of aeronautical and space research where such employment is deemed by the Administrator of the National Aeronautics and Space Administration to be necessary in the public interest.

(b) Not to exceed 40 positions of fully qualified pilot and mission specialists astronauts.

(c)–(e) (Reserved).

(f) Positions of Program Coordinator/Counselor at grades GS–7/9/11 for part-time and summer employment in connection with the High School Students Summer Research Apprenticeship Program.

Section 213.3152 U.S. Government Printing Office

(a) Not to exceed three positions of Research Associate at grades GS–15 and below, involved in the study and analysis of complex problems relating to the reduction of the Government's printing costs and to provision of more efficient service to customer agencies and the public. Appointments under this authority may not exceed 1 year, but may be extended for not to exceed 1 additional year.

(b) Positions in the printing trades when filled by students majoring in printing technology employed under a cooperative education agreement with the University of the District of Columbia.

Section 213.3155 Social Security Administration

(a) Six positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(b) Seven positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of New Mexico when filled by the appointment of persons of one-fourth or more Indian blood.

(c) Two positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of Alaska when filled by the appointments of persons of one-fourth or more Alaskan Native blood (Eskimos, Indians, or Aleuts).

Section 213.3156 Commission on Civil Rights

(a) Twenty-five positions at grade GS–11 and above of employees who collect, study, and appraise civil rights information to carry out the national clearinghouse responsibilities of the Commission under Public Law 88–352, as amended. No new appointments may be made under this authority after March 31, 1976.

Section 213.3162 Ounce of Prevention Council

(a) Up to 25 positions established to create the President's Prevention Council Office supporting the Crime Control and Law Enforcement Act of 1994. No new appointments may be made under this authority after February 29, 1996.

Section 213.3174 Smithsonian Institution

(a) Not to exceed 25 positions at grades GS–11 and below which support planning and production of the Annual American Folklife Festival. Employment under this authority may not exceed 6 months in connection with any one Festival.

(b) All positions located in Panama which are part of or which support the Smithsonian Tropical Research Institute.

(c) Positions at GS–15 and below in the National Museum of the American Indian requiring knowledge of, and experience in, tribal customs and culture. Such positions comprise approximately 10 percent of the Museum's positions and, generally, do not include secretarial, clerical, administrative, or program support positions.

Section 213.3175 Woodrow Wilson International Center for Scholars

(a) One East Asian Studies Program Administrator, one International Security Studies Program Administrator, one Latin American Program Administrator, one Russian Studies Program Administrator, one West European Program Administrator, and one Social Science Program Administrator.

Section 213.3178 Community Development Financial Institutions Fund

(a) All positions in the Fund and positions created for the purpose of establishing the Fund's operations in accordance with the Community Development Banking and Financial

Institutions Act of 1994, except for any positions required by the Act to be filled by competitive appointment. No new appointments may be made under this authority after September 22, 1996.

Section 213.3180 Utah Reclamation and Conservation Commission

(a) Executive Director.

Section 213.3182 National Foundation on the Arts and the Humanities

(a) National Endowment for the Arts. (1) One position of Assistant Director, Artists-in-Education Programs, Office of Partnerships.
(2) One position of Assistant Director for State Programs.
(3) One position of Director of Literature Programs.
(4) One position of Assistant Director of Theater Programs.
(5) One position of Director of Folk Arts Programs.
(6) One position of Director, Opera/Musical Theater Programs.
(7) One position of Assistant Director of Opera/Musical Theater Programs.
(8) One position of Assistant Director of Literature Programs.
(9) One position of Director of Locals Test Programs, Office of the Deputy to the Chairman for Public Partnership.
(10) One position of Deputy Chairman for Public Partnership.
(11) Four Project Evaluators.
(12) One position of Director of Museum Programs.
(13) One position of Assistant Director of Folk Arts, Office of the Deputy Chairman for Programs.
(14) One position of Assistant Director of Music Programs.
(15) One position of Director of Expansion Arts Programs.
(16) One position of Director of Media Arts Programs.
(17) One position of Director, Challenge and Advancement Grant Program.
(18) One position of Assistant Director, Challenge and Advancement Grant Program.
(19) One position of Art Specialist, International Programs.
(20) One position of Director of Inter Arts Program.
(21) One position of Assistant Director of Expansion of Arts Programs.
(22) One position of Assistant Director of Media Arts Programs.
(23) One position of Assistant Director of Design Arts Program.
(24) One position of Assistant Director of Dance Programs.
(25) One position of Assistant Director of Visual Arts Programs.
(26) One position of Assistant Director of Museum Programs.
(27)–(29) (Reserved).
(30) One position of Director of Education Programs.
(31) One position of Director of Music Programs.
(32) One position of Director of Theater Programs.
(33) One position of Director of Dance Programs.
(34) One position of Director of Visual Arts Programs.
(35) One position of Director of Design Arts Program.
(36) (Reserved).
(37) One Director for State Programs.
(38) One Director for Artists-in-Education Programs.
(39) One position of Assistant Director of Inter-Arts Program.
(40) One position of Assistant Director of the International Program.

Section 213.3184 Department of Housing and Urban Development

(a) One position of Special Advisor to the Regional Administrator, GS–301–14, in San Francisco. Employment under this authority may not exceed 2 years.
(b) *Office of Federal Housing Enterprise Oversight.* (1) All positions on the staff. No new appointments may be made under this authority after July 6, 1995.

Section 213.3187 Federal Housing Finance Board

(a) All positions. No new appointments may be made under this authority after December 31, 1993.

Section 213.3190 African Development Foundation

(a) Two Financial Analyst positions, GS–501–12, and one Research Specialist position, GS–301–13, requiring indepth professional and cultural knowledge of African grassroots development.

Section 213.3191 Office of Personnel Management

(a) Not to exceed 500 positions in Federal Job Information Centers, to be filled under the Community Outreach Information Network program. Appointments under this authority may not exceed 90 days, and no one may receive more than one appointment under the authority.
(b)–(c) (Reserved).
(d) Part-time and intermittent positions of test examiners at grades GS–8 and below.

Section 213.3194 Department of Transportation

(a) *U.S. Coast Guard.* (1) Not to exceed 25 positions of Marine Traffic Controller (Pilot), at grade GS–11 and below for temporary, intermittent, or seasonal employment in the State of Louisiana. Temporary appointments may not exceed 1 year, and temporary appointees may be reappointed under this authority only after a break in service of at least 6 months. Intermittent or seasonal employment may not exceed 180 working days in a service year, except that this limitation for an individual employee may be extended to 220 days when necessitated by emergencies caused by unusual flooding conditions or high river stages.

(2) Lamplighters.

(3) Professors, Associate Professors, Assistant Professors, Instructors, one Principal Librarian, one Cadet Hostess, and one Psychologist (Counseling) at the Coast Guard Academy, New London, Conn.

(b) (Reserved).

(c) *Federal Highway Administration.* (1) Temporary, intermittent, or seasonal employment in the field service of the Federal Highway Administration at grades not higher than GS–5 for subprofessional engineering aide work on the highway surveys and construction projects, for not to exceed 180 working days a year, when in the opinion of OPM, appointment through competitive examination is impracticable.

(d) (Reserved).

(e) *Maritime Administration.* (1)–(2) (Reserved).

(3) All positions on Government-owned vessels or those bareboats chartered to the Government and operated by or for the Maritime Administration.

(4)–(5) (Reserved).

(6) U.S. Merchant Marine Academy, positions of: Professors, Instructors, and Teachers: including heads of Departments of Physical Education and Athletics, Humanities, Mathematics and Science, Maritime Law and Economics, Nautical Science, and Engineering; Coordinator of Shipboard Training; the Commandant of Midshipmen, the Assistant Commandant of Midshipmen; Director of Music; three Battalion Officers; three Regimental Affairs Officers; and one Training Administrator.

(7) U.S. Merchant Marine Academy positions of: Associate Dean; Registrar; Director of Admissions; Assistant Director of Admissions; Director, Office of External Affairs; Placement Officer; Administrative Librarian; Shipboard Training Assistant; three Academy Training Representatives; and one Education Program Assistant.

Section 213.3195 Federal Emergency Management Agency

(a) Field positions at grades GS–15 and below, or equivalent, which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency. Persons may not be employed under this authority for long-term duties or for work not directly necessitated by the emergency response effort.

(b) Not to exceed 30 positions at grades GS–15 and below in the Offices of Executive Administration, General Counsel, Inspector General, Comptroller, Public Affairs, Personnel, Acquisition Management, and the State and Local Program and Support Directorate which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency, or for long-term duties or work not directly necessitated by the emergency response effort. No one may be reappointed under this authority for service in connection with a different emergency unless at least 6 months have elapsed since the individual's latest appointment under this authority.

(c) Not to exceed 350 professional and technical positions at grades GS–5 through GS–15, or equivalent, in Mobile Emergency Response Support Detachments (MERS).

Section 213.3199 Temporary Organizations

(a) Positions at GS–15 and below on the staffs of temporary boards and commissions which are established by law or Executive order for specified periods not to exceed 4 years to perform specific projects. A temporary board or commission originally established for less than 4 years and subsequently extended may continue to fill its staff positions under this authority as long as its total life, including extension(s), does not exceed 4 years. No board or commission may use this authority for more than 4 years to make appointments and position changes unless prior approval of the Office is obtained.

(b) Positions at GS–15 and below on the staffs of temporary organizations established within continuing agencies when all of the following conditions are met: (1) The temporary organization is established by an authority outside the agency, usually by law or Executive order; (2) the temporary organization is established for an initial period of 4 years or less and, if subsequently extended, its total life including extension(s) will not exceed 4 years; (3) the work to be performed by the temporary organization is outside the agency's continuing responsibilities; and (4) the positions filled under this authority are those for which other staffing resources or authorities are not available within the agency. An agency may use this authority to fill positions in organizations which do not meet all of the above conditions or to make appointments and position changes in a single organization during a period longer than 4 years only with prior approval of the Office.

Schedule B

Section 213.3202 Entire Executive Civil Service

(a) *Student Educational Employment Program*.

(1) The Student Educational Employment Program consists of two components and two appointing authorities:

(i) The Student Temporary Employment Program (Schedule B 213.3202(a)).

(ii) The Student Career Experience Program (Schedule B 213.3202(b)).

(2) The appointment authority for each program is the same regardless of the educational program being pursued. Students may be appointed to these programs if they are pursuing any of the following educational programs:

(i) High School Diploma or General Equivalency Diploma (GED)

(ii) Vocational/Technical Certificate

(iii) Associate Degree

(iv) Baccalaureate Degree

(v) Graduate Degree

(vi) Professional Degree

(3) Student participants in the Harry S. Truman Foundation Scholarship Program under the provision of Public Law 93–842 are eligible for appointments under the student career experience program, Schedule B, 213.3202(b).

(b) *Requirements for both components of the Student Educational Employment Program:*

(1) *Definition of student:* The definition of student is an individual who is enrolled or accepted for enrollment as a degree (diploma, certificate, etc.) seeking student and is taking at least a half-time academic/ vocational/ or technical course load in an accredited high school, technical or vocational school, 2 year or 4 year college or university, graduate or professional school. The definition of *half-time* is the definition provided by the school in which the student is enrolled. An individual who needs to complete less than the equivalent of half an academic/vocational or technical courseload in the class enrollment period immediately prior to graduating is still considered a student for purposes of this program.

(2) *Schedules:* Both components of the Student Educational Employment Program are year-round programs and appointments may be made at any time during the year, including summer. Students may work full-time or part-time schedules. There are no limitations on the number of hours a student can work per week, but the student's work schedule should not interfere with the student's academic schedule.

(3) *Breaks in program:* It is expected that students accepted into the Student Educational Employment Program will at all times either be working at the agency, enrolled in classes or both. However, agencies may use their discretion in either approving or denying a *break in program*. A *break in program* is defined as a period of time when a program participant is neither attending classes nor working at the agency. The best interests of the student and the agency must be balanced in making these decisions.

(4) *Employment of minors:* Participation in this program must be in conformance with Federal, State, or local laws and standards governing the employment of minors.

(5) *Citizenship requirements:* Agencies may appoint non-citizens to the Student Temporary Employment Program or to the Student Career Experience Program provided that:

(i) The student is lawfully admitted to the United States as a permanent resident or otherwise authorized to be employed;

(ii) The agency is authorized to pay aliens under the annual appropriations act ban and any agency specific enabling and appropriation statutes.

(iii) All students in the Student Career Experience Program must be U.S. citizens at the time they are non-competitively converted to a career conditional appointment.

(6) *Employment of relatives:* In accordance with 5 CFR part 310, a student may work in the same agency with a relative when there is no direct reporting relationship and the relative is not in a position to influence or control the student's appointment, employment, promotion or advancement within the agency.

(7) *Financial need:* There is no requirement for students to meet any

specific economic/income criteria to be eligible for either component of the Student Educational Employment Program. However, agencies have the option to establish and use financial need as a criteria to select students for either or both components of the Program, if they wish. OPM will no longer develop or distribute annual economic guidelines for use in determining financial need. An agency wishing to continue use of the Department of Health and Human Services poverty guidelines may call the Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation on (202) 690–6141.

(8) *Training expenses:* Agencies may use their training authority in 5 U.S.C. Chapter 41 and 5 CFR part 410 to pay all or part of the students training expenses.

(9) *Student volunteers:* Student volunteers are covered by title 5, CFR, part 308, Volunteer Service, and may not be treated as employees under this section.

(c) *Student Temporary Employment Program:*

(1) The Student Temporary Employment Program provides maximum flexibility to both the student and the agency.

(2) Students are appointed in the excepted service under Schedule B 213.3202(a). This is the appointment authority regardless of the academic program being pursued.

(3) Students are appointed to a position not to exceed 1 year. Appointments under this authority may be extended in 1-year increments as long as the individual meets the definition of a student. Agencies may establish minimum academic requirements and on the job performance requirements for continuation in the program. Students under this appointment authority are excepted from the limitations under 5 CFR 213.104.

(4) The nature of the duties does not have to be related to the student's academic/career goals.

(5) Students are not eligible for non-competitive conversion to a career or career-conditional appointment under this authority.

(6) There is no mandatory requirement for students to document financial need in order to be eligible for this program. Agencies may set their own criteria if they wish.

(7) *Classification:* Classification of students appointed under this program is based on the occupational series for which they are hired. Grade level is to be set according to the criteria in the appropriate GS or WG classification standard.

(8) *Qualifications:* Students under the Student Temporary Employment Program may be evaluated either by agency developed standards or by the OPM qualification requirements for the position to which appointed. Students are eligible for promotions. Promotions should be documented as a conversion to another excepted appointment, citing the same authority as was used for the original appointment and maintaining the original NTE date.

(9) *Benefits:* Students under this program:

(i) Are eligible for annual and sick leave.

(ii) Are generally ineligible for retirement coverage. Refer to 5 CFR 831.201 and 842.105.

(iii) For rules on health and life insurance coverage refer to 5 CFR 870.202, 890.102 and 890.502.

(10) *Reductions-in-Force (RIF):* Students in the Student Temporary Employment Program are covered by the regulations in 5 CFR §§ 351.502 for purposes of RIF. Students, provided they have completed 1 year of current continuous service are in excepted service Tenure Group III.

(11) *Conversion to Student Career Experience Program:* Students may be noncompetitively converted to the Student Career Experience Program whenever they meet the requirements of that program and the agency has an appropriate position available.

(i) Work experience related to the student's academic program and career goals, gained while under the Student Temporary Employment Program, may be credited towards the 640 hour work experience necessary for non-competitive conversion to a career conditional or career appointment.

(ii) Conversions would not be subject to requirements of subparts C and D of 5 CFR part 302.

(d) *Student Career Experience Program:*

(1) This program provides experience that is directly related to the student's educational program and career goals. Programs developed under this component provide for a schedule of periods of attendance at an accredited school combined with periods of career-related work in a Federal agency. The work experience with the agency MUST be related to his/her academic/career goals.

(2) *Appointment Authority:* Students shall be appointed under Schedule B 213.3202(b). This is the appointment authority regardless of the academic program being pursued.

(i) Appointments to the Student Career Experience Program are subject to all the requirements and conditions governing career or career conditional employment, including investigation to establish an appointee's qualifications and suitability.

(ii) Appointments of participants who have met all the requirements of the program may be non-competitively converted to career or career conditional appointments at any time within 120 days after satisfactory completion of the requirements for his/her diploma/ certificate/ or degree.

(3) *Program requirements for non-competitive conversion:*

(i) Students appointed under § 213.3202(b) may be non-competitively converted to a career or career-conditional appointment under Executive Order 12015 when students have:

(A) Completed within the preceding 120 days, at an accredited school, course requirements conferring a diploma, certificate, or degree;

(B) Completed at least 640 hours of career-related work (agencies have the option of increasing this requirement for some or all of its occupational fields), before completion of or concurrently with, the course requirements;

(C) Been recommended by the employing agency in which the career-related work was performed; and

(D) Met the qualification standards for the targeted position to which the student is appointed.

(ii) Conversions must be to an occupation related to the student's academic training and career related work experience.

(iii) The non-competitive conversion may be to a position within the same agency or any other agency within the Federal Government.

(4) *Agreement by all parties.* The Student Career Experience Program is a formally structured program and requires a written agreement by all parties (agency, school, student) as to the:

(i) Nature of work assignments

(ii) Schedule of work assignments and class attendance

(iii) Evaluation procedures

(iv) Requirements for continuation and successful completion of the program.

(5) *Schedule:* Agencies, participating educational institutions, and students should agree on a formally-arranged schedule of school and work to ensure that:

(i) Work responsibilities do not interfere with academic performance;

(ii) Completion of the educational program (awarding of diploma/

certificate/degree) and completion of the Student Career Experience Program are accomplished in a reasonable and appropriate timeframe;

(iii) The agency is informed and prepared for the students' periods of employment; and

(iv) Requirements for non-competitive conversion to career conditional employment are understood by all parties.

(6) *Financial need:* There is no requirement for students to meet any economic or income criteria to be eligible for this program. However, agencies may establish their own criteria if they wish.

(7) *Classification:* Students appointed under this component will be classified as student trainees, to the –99 series of the appropriate occupational group.

(8) *Qualifications:* Students may be evaluated by either agency developed standards or by the OPM qualifications requirements for the target position. Any OPM test requirements are waived. Students are eligible for promotion.

(9) *Benefits:* Students appointed under this program:

(i) Earn annual and sick leave.

(ii) With no prior service or with less than 5 years of prior civilian service, are generally covered by the Federal Employees Retirement System (FERS). Refer to 5 CFR Part 842.

(iii) For life insurance and health benefits coverage refer to 5 CFR 870.202 and 890.102.

(10) *Tuition assistance:* Agencies may use their training authority in 5 U.S.C. Chapter 41 and 5 CFR part 410 to pay all or part of the students training expenses.

(11) *Travel and transportation:* Agencies may pay for other expenses directly related to training, such as travel and transportation between duty station and school, for participants in the Student Career Experience component only.

(12) *Reduction-in-force:* Students in the Student Career Experience Program are in excepted service Tenure Group II for purposes of 5 CFR 351.502.

(i) They are accorded the same retention rights as excepted service employees.

(ii) They may qualify for severance pay if involuntarily separated under 5 CFR part 550, subpart G.

(e)-(i) (Reserved).

(j) Special executive development positions established in connection with Senior Executive Service candidate development programs which have been approved by OPM. A Federal agency may make new appointments under this authority for any period of employment not exceeding 3 years for one individual.

(k) Positions at grades GS–15 and below when filled by individuals who (1) are placed at a severe disadvantage in obtaining employment because of a psychiatric disability evidenced by hospitalization or outpatient treatment and have had a significant period of substantially disrupted employment because of the disability; and (2) are certified to a specific position by a State vocational rehabilitation counselor or a Veterans Administration counseling psychologist (or psychiatrist) who indicates that they meet the severe disadvantage criteria stated above, that they are capable of functioning in the positions to which they will be appointed, and that any residual disability is not job related. Employment of any individual under this authority may not exceed 2 years following each significant period of mental illness.

(l) (Reserved).

(m) Positions when filled under any of the following conditions: (1) Appointment at grades GS–15 and above, or equivalent, in the same or a different agency without a break in service from a career appointment in the Senior Executive Service (SES) of an individual who:

(i) Has completed the SES probationary period;

(ii) Has been removed from the SES because of less than fully successful executive performance or a reduction in force; and

(iii) Is entitled to be placed in another civil service position under 5 U.S.C. 3594(b).

(2) Appointment in a different agency without a break in service of an individual originally appointed under paragraph (m)(1).

(3) Reassignment, promotion, or demotion within the same agency of an individual appointed under this authority.

Section 213.3203 Executive Office of the President

(a) (Reserved).

(b) *Office of the Special Representative for Trade Negotiations.* (1) Seventeen positions of economist at grades GS–12 through GS–15.

Section 213.3204 Department of State

(a)-(c) (Reserved).

(d) Fourteen positions on the household staff of the President's Guest House (Blair and Blair-Lee Houses).

(e) Four Physical Science Administration Officer positions at GS–11 through and GS–13 under the Bureau of Oceans and International Environmental and Scientific Affairs' Science, Engineering and Diplomacy Fellowship Program. Employment under this authority is not to exceed 2½ years.

(f) Scientific, professional, and technical positions at grades GS–12 to GS–15 when filled by persons having special qualifications in foreign policy matters. Total employment under this authority may not exceed 4 years.

Section 213.3205 Department of the Treasury

(a) Positions of Deputy Comptroller of the Currency, Chief National Bank Examiner, Assistant Chief National Bank Examiner, Regional Administrator of National Banks, Deputy Regional Administrator of National Banks, Assistant to the Comptroller of the Currency, National Bank Examiner, Associate National Bank Examiner, and Assistant National Bank Examiner, whose salaries are paid from assessments against national banks and other financial institutions.

(b) Not to exceed 10 positions engaged in functions mandated by Public Law 99–190, the duties of which require expertise and knowledge gained as a present or former employee of the Synthetic Fuels Corporation, as an employee of an organization carrying out projects or contacts for the Corporation, or as an employee of a Government agency involved in the Synthetic Fuels Program. Appointments under this authority may not exceed 4 years.

(c) Not to exceed two positions of Accountant (Tax Specialist) at grades GS–13 and above to serve as specialists on the accounting analysis and treatment of corporation taxes. Employments under this paragraph shall not exceed a period of 18 months in any individual case.

(d) Positions concerned with the protection of the life and safety of the President and members of his immediate family, or other persons for whom similar protective services are prescribed by law, when filled in accordance with special appointment procedures approved by OPM. Service under this authority may not exceed (1) a total of 4 years; or (2) 120 days following completion of the service required for conversion under Executive Order 11203, whichever comes first.

Section 213.3206 Department of Defense

(a) *Office of the Secretary.* (1) (Reserved).

(2) Professional positions at GS–11 through GS–15 involving systems, costs, and economic analysis functions in the Office of the Assistant Secretary (Program Analysis and Evaluation); and

in the Office of the Deputy Assistant Secretary (Systems Policy and Information) in the Office of the Assistant Secretary (Comptroller).

(3)–(4) (Reserved).

(5) Four Net Assessment Analysts.

(b) *Interdepartmental activities.* (1) Five positions to provide general administration, general art and information, photography, and/or visual information support to the White House Photographic Service.

(2) Eight positions, GS–15 or below, in the White House Military Office, providing support for airlift operations, special events, security, and/or administrative services to the Office of the President.

(c) *National Defense University.* (1) Sixty-one positions of professor, GS–13/15, for employment of any one individual on an initial appointment not to exceed 3 years, which may be renewed in any increment from 1 to 6 years indefinitely thereafter.

(d) *General.* (1) One position of Law Enforcement Liaison Officer (Drugs), GS–301–15, U.S. European Command.

(2) Acquisition positions at grades GS–5 through GS–11, whose incumbents have successfully completed the required course of education as participants in the Department of Defense scholarship program authorized under 10 U.S.C. 1744.

(e) *Office of the Inspector General.* (1) Positions of Criminal Investigator, GS–18111–5/15.

(f) *Department of Defense Polygraph Institute, Fort McClellan, Alabama.* (1) One Director, GM–15.

Section 213.3207 Department of the Army

(a) *U.S. Army Command and General Staff College.* (1) Seven positions of professors, instructors, and education specialists. Total employment of any individual under this authority may not exceed 4 years.

(b) *Brooke Army Medical Center, Fort Sam Houston, Texas.* (1) Two Medical Officer (Surgery) positions, GS–12, in the Clinical Division, U.S. Army Institute of Surgical Research, whose incumbents are enrolled in medical school surgical residency programs. Employment under this authority shall not exceed 12 months.

Section 213.3208 Department of the Navy

(a) *Naval Underwater Systems Center, New London, Connecticut.* (1) One position of Oceanographer, grade GS–14, to function as project director and manager for research in the weapons systems applications of ocean eddies.

(b) All civilian faculty positions of professors, instructors, and teachers on the staff of the Armed Forces Staff College, Norfolk, Virginia.

(c) One Director and four Research Psychologists at the professor or GS–15 level in the Defense Personnel Security Research and Education Center.

(d) All civilian professor positions at the Marine Corps Command and Staff College.

(e) One position of Staff Assistant, GS–301–13, whose incumbent will manage the Navy's Executive Dining facilities at the Pentagon.

(f) One position of Housing Management Specialist, GM–1173–14, involved with the Bachelor Quarters Management Study. No new appointments may be made under this authority after February 29, 1992.

Section 213.3209 Department of the Air Force

(a) Not to exceed four interdisciplinary positions for the Air Research Institute at the Air University, Maxwell Air Force Base, Alabama, for employment to complete studies proposed by candidates and acceptable to the Air Force. Initial appointments are made not to exceed 3 years, with an option to renew or extend the appointments in increments of 1, 2, or 3 years indefinitely thereafter.

(b) (Reserved).

(c) One Director of Instruction and 14 civilian instructors at the Defense Institute of Security Assistance Management, Wright-Patterson Air Force Base, Dayton, Ohio. Individual appointments under this authority will be for an initial 3-year period, which may be followed by an appointment of indefinite duration.

(d) Positions of Instructor or professional academic staff at the Air University, associated with courses of instruction of varying durations for employment not to exceed 3 years, which may be renewed for an indefinite period thereafter.

(e) One position of Director of Development and Alumni Programs, GS–301–13, with the U.S. Air Force Academy, Colorado.

Section 213.3210 Department of Justice

(a) Criminal Investigator (Special Agent) positions in the Drug Enforcement Administration. New appointments may be made under this authority only at grades GS–5 through 11. Service under the authority may not exceed 4 years. Appointments made under this authority may be converted to career or career-conditional appointments under the provisions of Executive Order 12230, subject to conditions agreed upon between the Department and OPM.

(b) Positions of Port Receptionist and Supervisory Port Receptionist, Immigration and naturalization Service.

(c) Not to exceed 400 positions at grades GS–5 through 15 assigned to regional task force established to conduct special investigations to combat drug trafficking and organized crime.

(d) (Reserved).

(e) Positions, other than secretarial, GS–6 through GS–15, requiring knowledge of the bankruptcy process, on the staff of the offices of United States Trustees or the Executive Office for U.S. Trustees.

Section 213.3213 Department of Agriculture

(a) *Foreign Agricultural Service.* (1) Positions of a project nature involved in international technical assistance activities. Service under this authority may not exceed 5 years on a single project for any individual unless delayed completion of a project justifies an extension up to but not exceeding 2 years.

(b) *General.* (1) Temporary positions of professional Research Scientists, GS–15 or below, in the Agricultural Research Service and the Forest Service, when such positions are established to support the Research Associateship Program and are filled by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and the agency. Appointments are limited to proposals approved by the appropriate Administrator. Appointments may be made for initial periods not to exceed 2 years and may be extended for up to 2 additional years. Extensions beyond 4 years, up to a maximum of 2 additional years, may be granted, but only in very rare and unusual circumstances, as determined by the Personnel Officer, Agricultural Research Service, or the Personnel Officer, Forest Service.

(2) Not to exceed 55 Executive Director positions, GM–301–14/15, with the State Rural Development Councils in support of the Presidential Rural Development Initiative.

Section 213.3214 Department of Commerce

(a) *Bureau of the Census.* (Reserved).

(2) Not to exceed 50 Community Services Specialist positions at the equivalent of GS–5 through GS–12.

(3) Not to exceed 300 Community Awareness Specialist positions at the equivalent of GS–7 through GS–12.

Employment under this authority may not exceed December 31, 1992.

(b)–(c) (Reserved).

(d) *National Telecommunications and Information Administration.* (1) Not to exceed 10 positions of Telecommunications Policy Analysts, grades GS–11 through 15. Employment under this authority may not exceed 2 years.

Section 213.3215 Department of Labor

(a) Positions of Chairman and Member, Wage Appeals Board.

(b) *Office of the Inspector General.* (1) Not to exceed 110 positions of Criminal Investigator (Special Agent), GS–1811–5/15, in the Office of Labor Racketeering.

Section 213.3216 Department of Health and Human Services

(a) *Public Health Service.* (1) Not to exceed 68 positions at GS–11 and below on the Health and Nutrition Examination Survey teams of the National Center for Health Statistics.

(2) One Public Health Education Specialist, GS–1725–15, in the Centers for Disease Control, Atlanta, Georgia.

(b)–(c) (Reserved).

(d) *National Library of Medicine.* Ten positions of Librarian, GS–9, the incumbents of which will be trainees in the Library Associate Training Program in Medical Librarianship and Biomedical Communications. Employment under this authority is not to exceed 1 year.

Section 213.3217 Department of Education

(a) Seventy-five positions, not in excess of GS–13, of a professional or analytical nature when filled by persons, other than college faculty members or candidates working toward college degrees, who are participating in midcareer development programs authorized by Federal statute or regulations, or sponsored by private nonprofit organizations, when a period of work experience is a requirement for completion of an organized study program. Employment under this authority shall not exceed 1 year.

(b) Fifty positions, GS–7 through GS–11, concerned with advising on education policies, practices, and procedures under unusual and abnormal conditions. Persons employed under this provision must be bona fide elementary school and high school teachers. Appointments under this authority may be made for a period of not to exceed 1 year, and may, with the prior approval of the Office of Personnel Management, be extended for an additional period of 1 year.

Section 213.3221 Corporation for National and Community Service

(a) Not to exceed 25 positions of Program Specialist at grades GS–9 through GS–15 in the Department of the Executive Director.

(b) Three positions of Program Specialist at grades GS–7 through GS–15 in the Department of the Executive Director.

Section 213.3227 Department of Veterans Affairs

(a) Not to exceed 800 principal investigatory, scientific, professional, and technical positions at grades GS–11 and above in the medical research program.

Section 213.3228 U.S. Information Agency

(a) *Voice of America.* Not to exceed 200 positions at grades GS–15 and below in the Cuba Service. Appointments may not be made under this authority to administrative, clerical, and technical support positions.

(b) Positions of English Language Radio Broadcast Intern, GS–1001–5/7/9. Employment is not to exceed 2 years for any intern.

Section 213.3231 Department of Energy

(a) Twenty Exceptions and Appeals Analyst positions at grades GS–7 through 11, when filled by persons selected under DOE's fellowship program in its Office of Hearings and Appeals, Washington, DC. Appointments under this authority shall not exceed 3 years.

Section 213.3233 Federal Deposit Insurance Corporation

(a) Temporary Positions in the Washington, DC, headquarters offices of the Resolution Trust Corporation when filled by individuals whose specialized experience in field and regional offices performing the work of the Resolution Trust Corporation under Schedule A authorities in 5 CFR section 213.3133 (a) or (b) immediately prior to their appointment under this authority is needed by the Resolution Trust Corporation for more efficient administration of its programs.

Section 213.3234 Federal Trade Commission

(a) Positions filled under the Economic Fellows Program. No more than five new appointments may be made under this authority in any fiscal year. Service of an individual Fellow may not exceed 4 years.

Section 213.3236 U.S. Soldiers' and Airmen's Home

(a) Three GS–11 Medical Officer positions under a fellowship program on geriatrics.

(b) Director, Health Care Services; Director, Member Services; Director, Logistics; and Director, Plans and Programs.

Section 213.3237 General Services Administration

(a) One position of Deputy Director of Network Services.

Section 213.3240 National Archives and Records Administration

(a) Executive Director, National Historical Publications and Records Commission.

Section 213.3242 Export-Import Bank of the U.S.

(a) One position of Food Service Worker, WG–7804–3/4/5, in the Office of the President and Chairman.

Section 213.3248 National Aeronautics and Space Administration

(a) Not to exceed 40 positions of Command Pilot, Pilot, and Mission Specialist candidates at grades GS–7 through 15 in the Space Shuttle Astronaut program. Employment under this authority may not exceed 3 years.

Section 213.3257 National Credit Union Administration

(a) *Central Liquidity Facility.* (1) All managerial and supervisory positions at pay levels greater than the equivalent of GS–13.

Section 213.3264 U.S. Arms Control and Disarmament Agency

(a) Twenty-five scientific, professional, and technical positions at grades GS–12 through GS–15 when filled by persons having special qualifications in the fields of foreign policy, foreign affairs, arms control, and related fields. Total employment under this authority may not exceed 4 years.

Section 213.3274 Smithsonian Institution

(a) *National Zoological Park.* (1) Four positions of Veterinary Intern, GS–8/9/11. Employment under this authority is not to exceed 36 months.

(b) *Freer Gallery of Art.* (1) Not to exceed four positions of Oriental Art Restoration Specialist at grades GS–9 through GS–15.

Section 213.3276 Appalachian Regional Commission

(a) Two Program Coordinators.

Section 213.3278 Armed Forces Retirement Home

(a) *Naval Home, Gulfport, Mississippi.* (1) One Resource Management Officer position and one Public Works Officer position, GS/GM–15 and below.

Section 213.3282 National Foundation on the Arts and the Humanities

(a) (Reserved).

(b) *National Endowment for the Humanities.* (1) Professional positions at grades GS–11 through GS–15 engaged in the review, evaluation, and administration of grants supporting scholarship, education, and public programs in the humanities, the duties of which require indepth knowledge of a discipline of the humanities.

Section 213.3285 Pennsylvania Avenue Development Corporation

(a) One position of Civil Engineer (Construction Manager).

Section 213.3291 Office of Personnel Management

(a) Not to exceed eight positions of Associate Director at the Executive Seminar Centers at grades GS–13 and GS–14. Appointments may be made for any period up to 3 years and may be extended without prior approval for any individual. Not more than half of the authorized faculty positions at any one Executive Seminar Center may be filled under this authority.

(b) Twelve positions of faculty members at grades GS–13 through 15, at the Federal Executive Institute. Initial appointments under this authority may be made for any period up to 3 years and may be extended in 1-, 2-, or 3-year increments indefinitely thereafter.

Schedule C

Section 213.3303 Executive Office of the President

Council of Economic Advisers
- CEA 1 Secretary to the Chairman
- CEA 4 Secretary to the Chairman
- CEA 5 Secretary to a Council Member
- CEA 6 Secretary to a Council Member

Council on Environmental Quality
- CEQ 4 Confidential Assistant to the Chairman

Office of Management and Budget
- OMB 80 Confidential Assistant to the Executive Assistant to the Director
- OMB 81 Confidential Assistant to the Deputy Director for Management
- OMB 82 Executive Assistant to the Director, Office of Management and Budget
- OMB 92 Confidential Assistant to the Associate Director for Legislative Reference and Administration
- OMB 96 Confidential Assistant to the Associate Director for Human Resources
- OMB 97 Confidential Assistant to the Administrator, Office of Information and Regulatory Affairs
- OMB 101 Confidential Assistant to the Associate Director, Health and Personnel to the Associate Director, Health and Personnel
- OMB 102 Special Assistant to the Director, Office of Management and Budget
- OMB 103 Confidential Assistant to the Associate Director, Natural Resources, Energy and Science
- OMB 104 Legislative Assistant to the Associate Director for Legislative Affairs
- OMB 105 Confidential Assistant to the Associate Director for Legislative Affairs
- OMB 107 Writer-Editor to the Associate Director for Communications
- OMB 109 Confidential Assistant to the Associate Director, Health Personnel

Office of National Drug Control Policy
- ONDCP 78 Staff Assistant for Scheduling to the Director
- ONDCP 79 Public Affairs Specialist to the Director of Public and Legislative Affairs
- ONDCP 80 Public Affairs Specialist (Speechwriter) to the Director of Public and Legislative Affairs
- ONDCP 82 Legislative Analyst to the Director, Office of Public Affairs and Legislative Affairs
- ONDCP 83 Director, Public Affairs to the Director, Public and Legislative Affairs

Office of Science and Technology Policy
- OSTP 17 General Counsel to the Director, Office of Science and Technology Policy
- OSTP 18 Special Assistant to the Director, Office of Science and Technology Policy
- OSTP 19 Assistant to the Director, Office of Science and Technology Policy, for Intergovernmental Affairs and Policy
- OSTP 21 Confidential Assistant to the Associate Director, Technology Division
- OSTP 22 Confidential Assistant to the Director, Office of Science and Technology Policy
- OSTP 23 Confidential Assistant to the Associate Director for National Security and International Affairs
- OSTP 25 Research Assistant to the Director, Office of Science Technology and Policy

Office of the United States Trade Representative
- USTR 36 Confidential Assistant to the U.S. Trade Representative
- USTR 37 Confidential Assistant to the General Counsel
- USTR 39 Supervisory Public Affairs Specialist to the Assistant U.S. Trade Representative for Public Affairs
- USTR 40 Confidential Assistant to the Deputy U.S. Trade Representative
- USTR 44 Confidential Assistant to the U.S. Trade Representative
- USTR 45 Congressional Affairs Specialist to the Assistant U.S. Trade Representative for Congressional Affairs
- USTR 46 Public Affairs Specialist to the Assistant U.S. Trade Representative for Public Affairs
- USTR 47 Public Affairs Specialist to the Assistant U.S. Trade Representative for Public Affairs
- USTR 48 Congressional Affairs Specialist to the Assistant U.S. Trade Representative for Congressional Affairs
- USTR 50 Confidential Assistant to the Deputy U.S. Trade Representative, Geneva, Switzerland
- USTR 51 Confidential Assistant to the Special Counsel for Financial and Investment Policy
- USTR 52 Confidential Assistant to the Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison
- USTR 53 Private Sector Liaison to the Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison
- USTR 54 Congressional Affairs Specialist to the Assistant United States Trade Representative for Congressional Affairs
- USTR 55 Deputy Assistant U.S. Trade Representative for Congressional Affairs to the Assistant U.S. Trade Representative for Congressional Affairs

Official Residence of the Vice President
- ORVP 1 Special Assistant to the Special Assistant to the Vice President and Chief of Staff to Mrs. Gore

President's Commission on White House Fellowships
- PCWHF 6 Associate Director to the Director, President's Commission on White House Fellowships
- PCWHF 7 Education Director to the Director, President's

Commission on White House Fellowships
PCWHF 8 Special Assistant to the Director, President's Commission on White House Fellowships

213.3304 Department of State

ST 81 Secretary (Steno) to the Assistant Secretary, Bureau of Near Eastern and South Asian Affairs
ST 329 Staff Assistant to the Deputy Secretary of State
ST 358 Special Assistant to the Secretary of State
ST 359 Legislative Officer to the Under Secretary for Management
ST 364 Special Assistant to the Assistant Secretary for African Affairs, Bureau of African Affairs
ST 369 Special Assistant to the Assistant Secretary, Bureau of East Asian and Pacific Affairs
ST 374 Special Assistant to the United States Permanent Representative to the Organization of American States, Bureau of Inter-American Affairs
ST 376 Secretary to the Assistant Secretary, Bureau of Oceans and International Environmental and Scientific Affairs
ST 382 Management Analyst to the Under Secretary for Management
ST 389 Legislative Management Officer to the Assistant Secretary, Bureau of Legislative Affairs
ST 391 Special Assistant to the Counselor to the Department of State
ST 392 Special Assistant to the Under Secretary for Economic and Agricultural Affairs
ST 393 Legislative Analyst to the Assistant Secretary
ST 397 Special Assistant to the Assistant Secretary, Bureau of European and Canadian Affairs
ST 398 Special Adviser to the Ambassador, United States Permanent Representative to the Organization of American States, Bureau of Inter-American Affairs
ST 399 Confidential Assistant to the Secretary of State
ST 400 Special Assistant to the Under Secretary for International Security Affairs
ST 402 Special Assistant to the Assistant Secretary, Bureau of Inter-American Affairs
ST 403 Foreign Affairs Officer (Ceremonial) to the Chief of Protocol
ST 405 Supervisory Protocol Officer (Visits) to the Foreign Affairs Officer (Visits)
ST 406 Secretary (Typing) to the Assistant Secretary, Bureau of Economic and Business Affairs
ST 408 Staff Assistant to the Assistant Secretary, Bureau of Public Affairs
ST 409 Legislative Analyst to the Director, Legislative Affairs, Office of the Under Secretary for Management
ST 411 Protocol Assistant to the Supervisory Protocol Officer for Visits
ST 412 Senior Advisor to the Assistant Secretary, Bureau of Inter-American Affairs
ST 413 Special Assistant to the Assistant Secretary, Bureau of International Organization Affairs
ST 417 Foreign Affairs Officer to the Chief of Protocol
ST 418 Special Assistant to the Chief of Protocol
ST 421 Member, Policy Planning Staff to the Director of the Policy Planning Staff
ST 424 Secretary (OA) to the Assistant Secretary, Bureau of Intelligence and Research
ST 425 Public Affairs Specialist to the Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs
ST 426 Secretary (Steno) to the Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs
ST 429 Special Assistant to the Assistant Secretary, Bureau of Consular Affairs
ST 431 Special Assistant to the Assistant Secretary, Bureau of Intelligence and Research
ST 432 Special Assistant to the Assistant Secretary, Bureau of International Organization Affairs
ST 433 Correspondence Officer to the Assistant Secretary, Bureau of Legislative Affairs
ST 434 Staff Assistant to the Director of White House Liaison
ST 437 Staff Assistant to the Assistant Secretary, Bureau of Public Affairs
ST 438 Staff Assistant to the Deputy Secretary of State
ST 441 Special Assistant to the Assistant Secretary, Bureau of Economic and Business Affairs
ST 442 Senior Advisor to the Secretary of State
ST 444 Special Assistant to the Director, (Senior Officer) Office of Population Coordinator
ST 445 Foreign Affairs Officer to the Deputy Assistant Secretary
ST 446 Foreign Affairs Officer to the Deputy Secretary
ST 447 Special Assistant to the Deputy Assistant Secretary
ST 448 Legislative Management Officer to the Assistant Secretary, Legislative Affairs
ST 449 Special Assistant to the Assistant Secretary, Bureau of International Narcotics Matters
ST 450 Special Advisor to the Under Secretary for Global Affairs
ST 451 Special Assistant to the Senior Coordinator, Office of Ambassador at Large
ST 452 Foreign Affairs Officer to the Deputy Assistant Secretary for Public Affairs
ST 453 Supervisory Foreign Affairs Officer to the Deputy Assistant Secretary, Democracy, Human Rights and Labor
ST 454 Member, Policy Planning Staff to the Director, Policy Planning Staff
ST 455 Member, Policy Planning Staff to the Director, Policy Planning Staff
ST 456 Secretary (Typing) to the Assistant Secretary, Legislative Affairs
ST 458 Special Assistant to the Assistant Secretary, Bureau for Population, Refugees and Migration
ST 460 Secretary (Steno) to the United States Ambassador and U.S. Representative to the United Nations
ST 461 Special Advisor to the Assistant Secretary, Bureau of European and Canadian Affairs
ST 462 Secretary to the Assistant Secretary, Bureau of European and Canadian Affairs
ST 463 Secretary to the Assistant Secretary, Consular Affairs
ST 464 Policy Analyst to the Deputy Assistant Secretary for Environment and Development
ST 465 Special Assistant to the U.S. Permanent Representative to the United Nations
ST 467 Protocol Officer to the Chief of Protocol
ST 468 Protocol Assistant to the Deputy Chief of Protocol
ST 469 Legislative Management Service to the Deputy Assistant Secretary for the House
ST 470 Counselor to the Assistant Secretary, Bureau of Democracy, Human Rights and Labor
ST 471 Special Assistant to the Legal Advisor, Office of the Legal Advisor

International Boundary and Water Commission of the U.S. and Mexico
IBWC 1 Special Assistant (OA) to the Commissioner, United States Section, International Boundary and Water Commission, United States and Mexico

213.3305 Department of the Treasury

TREA 39 Deputy to the Assistant

Secretary (Legislative Affairs and Public Liaison)
TREA 44 Deputy to the Assistant Secretary (Legislative Affairs)
TREA 170 Assistant Director, Travel and Special Events Services to the Director, Administrative Operations Division
TREA 202 Director, Office of Legislative Affairs to the Senior Deputy Assistant Secretary for Legislative Affairs
TREA 213 Special Assistant to the Assistant Secretary for Legislative Affairs
TREA 215 Confidential Assistant to the Deputy Secretary of the Treasury
TREA 220 Confidential Assistant to the Commissioner, Internal Revenue Service
TREA 230 Public Affairs Specialist to the Director, Office of Public Affairs
TREA 236 Staff Assistant to the Deputy Executive Secretary (Public Liaison)
TREA 244 Administrative Assistant to the Director, Office of Thrift Supervision
TREA 250 Director, Office of Public Affairs to the Deputy Assistant Secretary (Public Affairs)
TREA 254 Review Officer to the Executive Secretary and Senior Advisor
TREA 264 Special Assistant and Senior Advisor to the Assistant Secretary, Financial Institutions
TREA 265 Special Assistant to the General Counsel
TREA 277 Public Affairs Specialist to the Assistant Secretary for Public Affairs and Public Liaison
TREA 284 Director, Office of Business Liaison to the Deputy Assistant Secretary (Public Liaison)
TREA 290 Special Assistant to the Deputy Assistant Secretary for Administration
TREA 291 Confidential Assistant to the Assistant Secretary (Management)
TREA 293 Deputy to the Assistant Secretary (Legislative Affairs) to the Assistant Secretary (Legislative Affairs)
TREA 307 Confidential Assistant to the Treasurer of the United States
TREA 315 Special Assistant to the Chief of Staff
TREA 316 Public Affairs Specialist to the Director, Office of Public Affairs
TREA 321 Confidential Staff Assistant to the Under Secretary for International Affairs
TREA 322 Special Assistant to the Executive Secretary and Senior Advisor to the Secretary
TREA 325 Executive Assistant to the Director of the Mint
TREA 327 Senior Advisor to the Deputy Assistant Secretary for Government Financial Policy
TREA 331 Senior Advisor to the Assistant Secretary (Enforcement)
TREA 334 Staff Assistant to the Assistant Secretary (Enforcement)
TREA 336 Director, Administrative Operations Division to the Deputy Assistant Secretary (Administration)
TREA 337 Senior Policy Analyst to the Assistant Secretary (Enforcement)
TREA 338 Staff Assistant to the Director, Scheduling and Advance, Office of the Secretary
TREA 339 Policy Analyst to the Under Secretary for Domestic Finance
TREA 340 Special Assistant to the Assistant Secretary (Public Affairs)
TREA 341 Staff Assistant to the Assistant Secretary (Economic Policy)
TREA 342 Senior Advisor to the Treasurer of the United States
TREA 343 Deputy Executive Director for Special Programs to the Executive Director, United States Bond Division, Bureau of Public Debt
TREA 344 Policy Advisor to the Assistant Secretary (Enforcement)
TREA 345 Policy Advisor to the Assistant Secretary (Enforcement)
TREA 346 Policy Advisor to the Assistant Secretary (Enforcement)
TREA 347 Policy Advisor to the Assistant Secretary (Enforcement)
TREA 348 Financial Risk Analyst to the Senior Deputy Comptroller for Capital Markets, Office of the Comptroller of the Currency
TREA 349 Senior Advisor to the Assistant Secretary (Management)
TREA 350 Policy Advisor to the Under Secretary (Enforcement)
TREA 351 Public Affairs Specialist to the Director, Office of Public Affairs
TREA 352 Senior Policy Analyst to the Deputy Assistant Secretary, Governmental Financial Policy
TREA 353 Confidential Assistant to the Secretary of the Treasury
TREA 354 Deputy Director of Scheduling to the Director of Scheduling and Advance
TREA 355 Special Assistant to the Chief of Staff
TREA 356 Policy Advisor to the Deputy Under Secretary, Government Financial Policy
TREA 357 Director, Office of Public Correspondence to the Executive Secretary
TREA 358 Staff Assistant to the Assistant Secretary (Economic Policy)
TREA 359 Senior Advisor to the Under Secretary, International Affairs
TREA 360 Senior Advisor to the Deputy Assistant Secretary (Federal Finance)

213.3306 Department of Defense

DOD 5 Private Secretary to Deputy Secretary of Defense
DOD 19 Personal and Confidential Assistant to the Director, Program Analysis and Evaluation
DOD 22 Personal and Confidential Assistant to the Assistant to the Secretary of Defense for Atomic Energy
DOD 23 Confidential Assistant to the Military Assistant to the Secretary of Defense
DOD 24 Chauffeur to the Secretary of Defense
DOD 33 Personal Secretary to the Deputy Secretary of Defense
DOD 66 Private Secretary to the Physician to the President
DOD 101 Special Assistant to the Director of Net Assessment
DOD 236 Director for Programs to the Assistant to the Secretary of Defense for Public Affairs
DOD 271 Private Secretary to the Principal Deputy Assistant Secretary of Defense (Reserve Affairs)
DOD 279 Personal and Confidential Assistant to the Director Operational Test and Evaluation
DOD 283 Personal and Confidential Assistant to the Assistant to the Deputy Secretary of Defense
DOD 295 Personal and Confidential Assistant to the Under Secretary of Defense for Personnel and Readiness
DOD 298 Confidential Assistant to the Under Secretary for Acquisition and Technology
DOD 310 Civilian Executive Assistant to the Chairman of the Joint Chiefs of Staff
DOD 317 Confidential Assistant to the Director, Defense Research and Engineering
DOD 320 Executive Assistant to the Secretary of Defense
DOD 321 Executive Assistant to the Assistant to the Vice President for National Security Affairs
DOD 332 Personal and Confidential Assistant to the Assistant Secretary of Defense (Regional Security)

DOD 335 Public Affairs Specialist to the Special Assistant to the Secretary for Public Affairs
DOD 339 Speechwriter to the Special Assistant to the Secretary of Defense for Public Affairs
DOD 355 Special Assistant for Strategic Modernization to the Assistant Secretary of Defense (Legislative Affairs)
DOD 361 Special Assistant for Production and Logistics and Energy to the Assistant Secretary of Defense, Legislative Affairs
DOD 368 Personal and Confidential Assistant to the Assistant Secretary of Defense for Legislative Affairs
DOD 386 Personal and Confidential Assistant to the Assistant Secretary of Defense for Reserve Affairs
DOD 411 Private Secretary to the Principal Deputy General Counsel
DOD 432 Personal and Confidential Assistant to the Assistant Secretary of Defense (Democracy and Peacekeeping)
DOD 434 Speechwriter to the Assistant to Secretary of Defense for Public Affairs
DOD 435 Public Affairs Specialist to the Assistant to the Secretary of Defense for Public Affairs
DOD 437 Program Analyst to the Deputy Under Secretary (Environmental Security)
DOD 439 Staff Specialist to the Under Secretary of Defense (Acquisition and Technology)
DOD 440 Personal and Confidential Assistant to the Deputy Under Secretary of Defense for Acquisition Reform
DOD 442 Director, Strategy Development, to the Deputy Assistant Secretary (Strategy)
DOD 443 Special Assistant to the Deputy Secretary of Defense
DOD 444 Country Director to the Deputy Assistant Secretary of Defense, Inter-American Affairs Region
DOD 445 Confidential Assistant to the Assistant to the Secretary of Defense for Public Affairs
DOD 448 Personal and Confidential Assistant to the Principal Deputy Assistant Secretary of Defense for Dual Use Technology and International Programs
DOD 449 Staff Specialist to the Assistant to the Secretary of Defense for Public Affairs
DOD 451 Assistant for Strategy Development to the Deputy Assistant Secretary of Defense (Strategy)
DOD 452 Special Assistant to the Assistant Secretary of Defense (Nuclear Security and Counterproliferation)
DOD 453 Staff Assistant to the Deputy Assistant Secretary of Defense (Humanitarian and Refugee Affairs)
DOD 455 Assistant for Strategy Development to the Deputy Assistant Secretary Defense (Strategy)
DOD 456 Special Assistant for Family Advocacy and External Affairs to the Deputy Assistant Secretary of Defense (Prisoner of War/Missing in Action Affairs)
DOD 457 Staff Assistant to the Deputy Assistant Secretary of Defense (Democracy and Human Rights)
DOD 458 Defense Fellow to the Director of Protocol, Office of the Secretary of Defense
DOD 459 Public Affairs Specialist to the Assistant to the Secretary of Defense for Public Affairs
DOD 460 International Counterdrug Specialist to the Deputy Assistant Secretary of Defense (Drug Enforcement Policy and Support)
DOD 461 Defense Fellow to the Deputy Assistant Secretary of Defense (Drug Enforcement Policy and Support)
DOD 464 Defense Fellow to the Deputy Under Secretary for Logistics
DOD 465 Defense Fellow to the Assistant Secretary of Defense (Personnel and Readiness)
DOD 466 Defense Fellow to the Deputy Under Secretary for Environmental Security
DOD 468 Staff Assistant to the Director, Defense Information Systems Agency
DOD 469 Defense Fellow to the Under Secretary of Defense for Personnel and Readiness
DOD 473 Personal and Confidential Assistant to the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict
DOD 474 Program Analyst to the Deputy Under Secretary (Environmental Security)
DOD 475 Personal and Confidential Assistant to the Assistant Secretary of Defense (Nuclear Security and Counterproliferation)
DOD 479 Special Assistant to the Assistant to the Secretary of Defense (Legislative Affairs)
DOD 480 Executive Assistant to the Assistant Secretary of Defense (Strategy Requirements and Resources)
DOD 485 Defense Fellow to the Deputy Assistant Secretary of Defense (Peacekeeping and Peace Enforcement Policy)
DOD 488 Personal and Confidential Assistant to the Comptroller
DOD 489 Special Assistant for Media Analysis to the Assistant to the Secretary of Defense for Public Affairs
DOD 490 Principal Director, Threat Reduction Policy to the Deputy Assistant Secretary of Defense (Threat Reduction Policy)
DOD 493 Special Assistant to the Assistant Secretary of Defense (Policy and Plans)
DOD 494 Special Assistant to the Assistant to the Secretary of Defense (Legislative Affairs)
DOD 495 Special Assistant for Demining and Landmine Control to the Deputy Assistant Secretary of Defense (Humanitarian and Refugee Affairs)
DOD 500 Staff Specialist to the Project Director for National Performance Review
DOD 501 Special Assistant to the Special Assistant to the Secretary of Defense for White House Liaison
DOD 502 Special Assistant to the Deputy Under Secretary of Defense for Policy Planning
DOD 503 Counselor and Senior Assistant for Counterproliferation Policy to the Deputy Assistant Secretary of Defense (Counterproliferation Policy)
DOD 504 Special Assistant to the Assistant Secretary of Defense (Special Operations and Low Intensity Conflict)
DOD 506 Staff Specialist to the Assistant Secretary of Defense (Legislative Affairs)
DOD 506 Staff Specialist to the Assistant Secretary of Defense (Legislative Affairs)
DOD 508 Defense Fellow to the Assistant Secretary of Defense (Legislative Affairs)
DOD 510 Staff Specialist to the Assistant Secretary of Defense (Legislative Affairs)
DOD 512 Staff Specialist to the Deputy Assistant Secretary for Economic Reinvestment and Base Realignment and Closure
DOD 516 Staff Specialist to the Deputy Under Secretary for Environmental Security
DOD 517 Special Assistant to the Deputy to the Under Secretary of Defense (Policy) for Policy Planning
DOD 519 Private Secretary to the

Assistant Secretary of Defense (Regional Security Affairs)
DOD 520 Personal and Confidential Assistant to the Secretary of Defense
DOD 523 Special Assistant to the Assistant Secretary of Defense for Health Affairs
DOD 524 Confidential Assistant to the Deputy Secretary of Defense
DOD 527 Special Assistant for Demand Reduction to the Deputy Assistant Secretary of Defense (Drug Enforcement Policy and Support)
DOD 528 Staff Specialist to the Principal Deputy Assistant Secretary for Dual Use Technology and International Programs
DOD 529 Staff Specialist to the Assistant to the Secretary of Defense, Legislative Affairs
DOD 534 Confidential Assistant to the Special Assistant to the Secretary and Deputy Secretary of Defense
DOD 535 Special Assistant to the Deputy to the Under Secretary of Defense for Policy Support
DOD 536 Personal and Confidential Assistant to the Assistant Secretary of Defense for Economic Security
DOD 538 Staff Specialist to the Project Director
DOD 539 Defense Fellow to the Deputy Under Secretary (Readiness)
DOD 540 Senior Advisor for Defense Conversion Policy to the Deputy Under Secretary of Defense (Threat Reduction Policy)
DOD 545 Public Affairs Specialist to the Assistant Secretary of Defense (Public Affairs)
DOD 546 Private Secretary to the Assistant Secretary of Defense (International Security Policy)
DOD 547 Personal and Confidential Assistant to the Assistant Secretary of Defense (International and Security Policy)
DOD 548 Special Assistant to the Executive Director, President's Foreign Intelligence Advisory Board
DOD 549 Secretary (OA) to the Deputy Assistant Secretary of Defense for Public Affairs (Information)
DOD 550 Staff Specialist to the Principal Deputy Assistant Secretary of Defense for Dual Use Technology Policy and International Programs
DOD 551 Secretary to the Assistant Secretary of Defense, Strategy and Requirements
DOD 552 Special Assistant to the Deputy Assistant Secretary of Defense for Drug Enforcement Policy and Support
DOD 553 Program Assistant to the Deputy Under Secretary of Defense for Environmental Security
DOD 555 Confidential Assistant to the General Counsel, Department of Defense
DOD 556 Special Assistant to the Deputy Assistant Secretary, Policy Planning Coordinator
DOD 557 Defense Fellow to the Deputy Assistant Secretary of Defense, Humanitarian and Refugee Affairs
DOD 558 Special Assistant to the Director, Program Analysis and Evaluation
DOD 559 Confidential Assistant to the Assistant Secretary of Defense, Force Management Policy
DOD 560 Staff Assistant to the Deputy Assistant Secretary of Defense (Inter-American Affairs)
DOD 561 Intergovernmental Affairs Specialist to the Under Secretary of Defense (Personal and Readiness)
DOD 562 Defense Fellow to the Assistant Secretary of Defense (International Security Affairs)
DOD 564 Program Analyst to the Deputy Under Secretary (Environmental Secretary)
DOD 565 Personal and Confidential Assistant to the Principal Deputy Assistant Secretary of Defense (Special Operation and Low Intensity Conflict)
DOD 566 Personal and Confidential Assistant to the Principal Deputy Under Secretary of Defense (Policy)
DOD 567 Personal and Confidential Assistant to the Under Secretary of Defense (Policy)
DOD 568 Special Assistant to the Special Assistant to the Secretary and Deputy Secretary of Defense
DOD 569 Staff Assistant to the Counselor and Special Assistant to the Secretary and Deputy Secretary of Defense
DOD 570 Personal and Confidential Assistant to the Principal Deputy Under Secretary of Defense (Acquisition and Technology)
DOD 571 Secretary (OA) to the Inspector General, Department of Defense
DOD 572 Special Assistant to the Inspector General
DOD 573 Special Assistant for Policy Planning and Analysis to the Head, Plans and Policy Group
DOD 574 Special Assistant to the Assistant Secretary of Defense, International Security Policy

213.3307 Department of the Army (DOD)

ARMY 1 Executive Assistant to the Secretary of the Army
ARMY 2 Personal and Confidential Assistant to the Under Secretary of the Army
ARMY 3 Confidential Assistant to the Assistant Secretary of the Army (Manpower and Reserve Affairs)
ARMY 5 Secretary (Stenography/Office Automation) to the Assistant Secretary of the Army (Installations, Logistics and Environment)
ARMY 6 Secretary (Office Automation) to the Assistant Secretary of the Army (Research, Development and Acquisition)
ARMY 21 Secretary (Steno/OA) to the General Counsel
ARMY 55 Secretary (Office Automation) to the Assistant Secretary of the Army (Financial Management)
ARMY 59 Staff Assistant to the Secretary of the Army
ARMY 68 Special Assistant to the Executive Director (Special Assistant to the Secretary of the Army), World War II Commemorative Committee
ARMY 69 Defense Fellow (Public Affairs) to the Chief of Public Affairs
ARMY 70 Defense Fellow to the Assistant Secretary of the Army (Manpower and Reserve Affairs)
ARMY 71 Special Assistant for Policy to the Secretary of the Army

213.3308 Department of the Navy (DOD)

NAV 49 Staff Assistant to the Under Secretary of the Navy
NAV 50 Staff Assistant to the Assistant Secretary of the Navy (Manpower and Reserve Affairs)
NAV 51 Defense Fellow to the Under Secretary of the Navy
NAV 54 Staff Assistant to the General Counsel
NAV 56 Staff Assistant to the Assistant Secretary of the Navy (Financial Management)
NAV 57 Staff Assistant to the Secretary of the Navy
NAV 58 Special Assistant to the Principal Deputy Assistant Secretary of the Navy for Installations and Environment
NAV 59 Staff Assistant to the Assistant Secretary of Navy (Manpower and Reserve Affairs)

213.3309 Department of the Air Force (DOD)

AF 1 Secretary (S/OA) to the Secretary of the Air Force

AF 2 Confidential Assistant to the Under Secretary of the Air Force
AF 5 Assistant Secretary (Steno) to the Assistant Secretary Acquisition
AF 6 Secretary (Steno) to the Assistant Secretary (Manpower and Reserve Affairs, Installation and Environment)
AF 8 Secretary (Steno/OA) to the General Counsel of the Air Force
AF 22 Secretary (Stenography/OA) to the Assistant to the Vice President for National Security Affairs
AF 29 Confidential Assistant to the Secretary of the Air Force
AF 31 Staff Assistant (Typing) to the Assistant to the Vice President for National Security Affairs
AF 39 Secretary (OA) to the Assistant Secretary of the Air Force (Financial Management and Comptroller)
AF 41 Confidential Assistant for Environmental Legislation to the Deputy Assistant Secretary for Environmental Safety and Occupational Health
AF 42 Staff Assistant to the Principal Deputy Assistant Secretary of the Air Force (Manpower, Reserve Affairs, Installations and Environment).

213.3310 Department of Justice

JUS 13 Special Assistant to the Deputy Attorney General
JUS 21 Confidential Assistant to the Assistant Attorney General
JUS 27 Counsel to the Assistant Attorney General, Environmental and Natural Resources Division
JUS 37 Secretary (OA) to the U.S. Attorney, District of Columbia
JUS 38 Secretary (OA) to the United States Attorney, Northern District of Illinois
JUS 40 Secretary (OA) to the United States Attorney, Eastern District of Michigan
JUS 44 Secretary (OA) to the United States Attorney, District of Massachusetts
JUS 47 Secretary (OA) to the United States Attorney, Western District of New York
JUS 70 Special Assistant to the Assistant Attorney General, Civil Rights Division
JUS 75 Secretary (OA) to the United States Attorney, Northern District of Texas
JUS 97 Staff Assistant to the Attorney General
JUS 115 Staff Assistant to the Assistant Attorney General, Office of Legislative Affairs
JUS 122 Public Affairs Specialist to the Director, Public Affairs
JUS 128 Secretary (OA) to the United States Attorney, District of Arizona
JUS 132 Special Assistant to the Commissioner, Immigration and Naturalization Service
JUS 133 Staff Assistant (Office Automation) to the Attorney General
JUS 140 Attorney Advisor to the Assistant Attorney General
JUS 141 Special Assistant to the Assistant Attorney General (Legislative Affairs)
JUS 142 Special Assistant to the Assistant Attorney General, Office of Legislative Affairs
JUS 144 Special Assistant to the Solicitor General
JUS 149 Special Assistant to the Assistant Attorney General, Environmental and Natural Resources Division
JUS 165 Special Assistant to the Associate Attorney General
JUS 167 Assistant to the Attorney General
JUS 169 Secretary (OA) to the United States Attorney, Middle District of Florida
JUS 170 Assistant to the Attorney General
JUS 173 Secretary (OA) to the United States Attorney, Western District of Louisiana
JUS 184 Counselor to the Assistant Attorney General, Antitrust Division
JUS 186 Special Assistant to the Assistant Attorney General, Criminal Division
JUS 188 Counselor to the Assistant Attorney General
JUS 190 Senior Counsel to the Assistant Attorney General, Office of Policy Development
JUS 198 Special Assistant to the Assistant Attorney General, Criminal Division
JUS 205 Legislative Liaison Officer to the Director of Congressional Relations
JUS 207 Staff Assistant to the Director, Office of Public Affairs
JUS 208 Public Affairs Specialist to the Director, Office of Public Affairs
JUS 211 Confidential Assistant to the Deputy Attorney General
JUS 216 Special Assistant to the Administrator, Office for Juvenile Justice and Frequency Prevention
JUS 217 Special Assistant to the Director, Bureau of Justice Assistance
JUS 224 Special Assistant to the Deputy Attorney General
JUS 231 Special Assistant to the Assistant Attorney General, Civil Division
JUS 233 Special Assistant to the Assistant Attorney General, Civil Rights Division
JUS 242 Special Assistant to the Assistant Attorney General, Civil Division
JUS 243 Staff Assistant to the Assistant Attorney General, Civil Rights Division
JUS 245 Special Assistant to the Assistant Attorney General, Environmental and Natural Resources Division
JUS 264 Confidential Assistant to the Assistant Attorney General, Antitrust Division
JUS 266 Director, Special Projects to the Director, Office of Public Affairs
JUS 268 Litigation Counsel to the Assistant Attorney General, Antitrust Division
JUS 270 Special Assistant to the Assistant Attorney General, Civil Rights Division
JUS 271 Confidential Assistant to the Assistant Attorney General, Office of Policy Development
JUS 273 Special Assistant to the Associate Attorney General
JUS 274 Special Assistant to the Assistant Attorney General, Office of Legal Counsel
JUS 275 Special Assistant to the Assistant Attorney General, Office of Policy and Development
JUS 276 Assistant to the Associate Attorney General
JUS 280 Special Assistant to the Assistant Attorney General, Office of Policy Development
JUS 282 Director, Liaison Services to the Assistant Attorney General, Office of Policy Development
JUS 285 Staff Assistant to the Assistant Attorney General, Office of Legislative Affairs
JUS 288 Special Assistant to the Deputy Attorney General
JUS 293 Special Assistant to the Deputy Attorney General
JUS 299 Staff Assistant to the Director, Office of Public Affairs
JUS 309 Senior Liaison Officer to the Assistant Attorney General, Office of Policy Development
JUS 312 Special Assistant to the Assistant Attorney General
JUS 316 Special Assistant to the Director, Office for Victims of Crime
JUS 319 Special Assistant to the Assistant Attorney General, Criminal Division
JUS 322 Special Assistant to the Assistant Attorney General, Office of Policy Development
JUS 330 Staff Assistant to the Assistant Attorney General, Office of Policy Development
JUS 331 Special Assistant to the

Director, National Institute of Justice
JUS 346 Deputy Director to the Director, Office of Public Affairs
JUS 353 Confidential Assistant to the Solicitor General
JUS 361 Special Assistant to the Director, Bureau of Justice Statistics
JUS 377 Staff Assistant to the Director, Office of Public Affairs
JUS 387 Public Affairs Specialist to the Director, Office of Public Affairs
JUS 388 Special Assistant to the Director, United States Marshals Service
JUS 389 Special Assistant to the Assistant Attorney General, Office of Legal Counsel
JUS 401 Counsel to the Deputy Attorney General
JUS 404 Assistant to the Attorney General
JUS 407 Assistant to the Attorney General
JUS 409 Special Assistant to the Director, Violence Against Women Program
JUS 412 Public Affairs Specialist to the Director, Office of Public Affairs
JUS 418 Secretary (OA) to the U.S. Attorney, District of Nebraska
JUS 419 Secretary (OA/ Stenography) to the United States Attorney, Northern District of Florida
JUS 420 Confidential Assistant to the United States Attorney, Eastern District of Pennsylvania
JUS 421 Secretary (OA) to the United States Attorney, Eastern District of Tennessee
JUS 422 Secretary (OA) to the United States Attorney, Eastern District of Wisconsin
JUS 423 Secretary to the United States Attorney, District of New Mexico
JUS 424 Secretary to the United States Attorney, Northern District of Iowa
JUS 425 Secretary (OA) to the United States Attorney, Middle District of Pennsylvania
JUS 426 Secretary (OA) to the United States Attorney, Sioux Falls, South Dakota
JUS 427 Secretary (OA) to the United States Attorney, District of New Hampshire
JUS 428 Secretary (OA) to the United States Attorney, District of Minnesota
JUS 431 Secretary (OA) to the United States Attorney, District of Oregon, Portland, OR
JUS 433 Secretary (OA) to the United States Attorney, Middle District of Louisiana
JUS 434 Confidential Assistant to the United States Attorney, Sacramento, CA
JUS 435 Secretary (OA) to the United States Attorney, Western District of Arkansas
JUS 436 Secretary (OA) to the United States Attorney, Middle District of Alabama
JUS 437 Secretary (OA) to the United States Attorney, District of Delaware
JUS 438 Deputy Assistant Attorney General to the Assistant Attorney General, Office of Policy Development
JUS 442 Special Assistant to the Assistant Attorney General, Office of Legislative Affairs
JUS 443 Attorney Advisor (Special Counsel) to the Director, Executive Office for United States Attorney's Office
JUS 444 Deputy Director, Office of Public Liaison and Intergovernmental Affairs to the Assistant Attorney General for the Office of Legislative Affairs

213.3312 Department of the Interior

INT 171 Special Assistant to the Commissioner of Reclamation, Bureau of Reclamation
INT 238 Director of Policy and External Affairs to the Commissioner of Reclamation, Bureau of Reclamation
INT 271 Special Assistant to the Director, Minerals Management Service
INT 369 Staff Assistant to the Director, Office of Surface Mining Reclamation and Enforcement
INT 375 Special Assistant to the Director, Minerals Management Service
INT 378 Special Assistant to the Director, Office of the Surface Mining
INT 419 Special Assistant to the Director of the Mineral Management Service
INT 426 Press Secretary to the Director of Communications
INT 427 Special Assistant to the Director, U.S. Fish and Wildlife Service
INT 430 Special Assistant to the Assistant Secretary, Policy, Management and Budget
INT 431 Special Assistant to the Assistant Secretary for Policy, Management and Budget
INT 435 Special Assistant to the Secretary of the Interior
INT 436 Special Assistant to the Assistant to the Secretary, Office of Congressional and Legislative Affairs
INT 437 Special Assistant to the Assistant to the Secretary of the Interior
INT 439 Special Assistant for Lands and Rivers Conservation to the Chief of Staff Land and Minerals Management
INT 442 Special Assistant to the Director, National Parks Service
INT 443 Special Assistant to the Solicitor
INT 444 Deputy Director for Legislative and Intergovernmental Affairs to the Assistant to the Secretary, Office of Congressional and Legislative Affairs
INT 447 Special Assistant to the Assistant to the Secretary of the Interior
INT 449 Special Assistant to the Director, Fish & Wildlife Service
INT 450 Special Assistant to the Director, United States Fish & Wildlife Service
INT 451 Special Assistant to the Assistant Secretary, Territorial and International Affairs
INT 454 Special Assistant to the Deputy Chief of Staff
INT 455 Special Assistant to the Counselor to the Secretary
INT 460 Scheduler to the Deputy Chief of Staff
INT 461 Special Assistant to the Director, National Park Service
INT 463 Special Assistant to the Director of the National Park Service
INT 465 Special Assistant to the Director, Mineral Management Service
INT 466 Special Assistant to the Chief of Staff
INT 467 Special Assistant to the Chief of Staff
INT 468 Special Assistant to the Chief of Staff
INT 474 Special Liaison for Congressional and Legislative Affairs to the Director of Policy and External Affairs, Bureau of Reclamation
INT 475 Special Liaison for Public Affairs to the Director, of Policy and External Affairs, Bureau of Reclamation
INT 476 Special Assistant to the Director, Bureau of Land Management
INT 479 Special Assistant to the Deputy Director, Minerals Management Service
INT 480 Special Assistant to the Commissioner of Reclamation
INT 483 Special Assistant to the Assistant Secretary, Water and Science
INT 484 Special Assistant to the Director to the Director, Bureau of Land Management

INT 485 Special Assistant to the Deputy Director, External Affairs, U.S. Fish and Wildlife Service
INT 486 Special Assistant (Speech Writer) to the Director, Office of Communications
INT 487 Special Assistant to the Deputy Chief of Staff
INT 490 Special Assistant (Advance) to the Deputy Chief of Staff
INT 491 Deputy Scheduler to the Deputy Chief of Staff
INT 492 Staff Assistant to the Special Assistant to the Director, National Park Service
INT 493 Director, Office of Regulatory Affairs to the Associate Deputy Chief of Staff
INT 494 Special Assistant to the Director, National Biological Service
INT 495 Special Assistant (White House Liaison) to the Deputy Chief of Staff
INT 496 Special Assistant to the Deputy Assistant Secretary, Indian Affairs

213.3313 Department of Agriculture

AGR 3 Confidential Assistant to the Executive Assistant to the Secretary
AGR 24 Confidential Assistant to the Administrator, Farmers Home Administration
AGR 26 Confidential Assistant to the Administrator, Farmers Home Administration
AGR 30 Private Secretary to the Manager, Federal Crop Insurance Corporation
AGR 31 Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service
AGR 32 Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service
AGR 48 Confidential Assistant to the Administrator, Food and Nutrition Service
AGR 56 Private Secretary to the Assistant Secretary for Congressional Relations
AGR 76 Confidential Assistant to the Assistant Secretary for Marketing and Inspection Services
AGR 77 Confidential Assistant to the Assistant Secretary for Congressional Relations
AGR 79 Confidential Assistant to the Administrator, Farmers Home Administration
AGR 96 Confidential Assistant to the Assistant Secretary for Congressional Relations
AGR 100 Special Assistant to the Administrator, Food and Nutrition Service
AGR 103 Confidential Assistant to the Administrator of the Foreign Agricultural Service
AGR 106 Confidential Assistant to the Assistant Secretary for Congressional Relations to the Assistant Secretary for Congressional Relations
AGR 111 Confidential Assistant to the Secretary of Agriculture
AGR 114 Confidential Assistant to the Assistant Secretary for Congressional Relations
AGR 131 Private Secretary to the Assistant Secretary for Natural Resources and Environment
AGR 143 Confidential Assistant to the Administrator, Agricultural Marketing Service
AGR 151 Confidential Assistant to the Administrator, Agricultural Marketing Service
AGR 157 Confidential Assistant to the Administrator, Foreign Agricultural Service
AGR 160 Confidential Assistant to the Associate Administrator, Foreign Agricultural Service
AGR 161 Special Assistant to the Director, Office of Public Affairs
AGR 164 Confidential Assistant to the Assistant Secretary for Science and Education
AGR 182 Confidential Assistant to the Administrator, Rural Electrification Administration
AGR 186 Special Assistant to the Secretary of Agriculture
AGR 188 Northeast Area Director to the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service
AGR 203 Special Assistant to the Secretary of Agriculture
AGR 205 Confidential Assistant to the Administrator, Food and Nutrition Service
AGR 218 Confidential Assistant to the Assistant Secretary for Administration
AGR 222 Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service
AGR 225 Confidential Assistant to the Manager, Federal Crop Insurance Corporation
AGR 225 Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service
AGR 232 Confidential Assistant to the Administrator, Farmers Home Administration
AGR 236 Confidential Assistant to the Administrator, Animal and Plant Health Inspection Service
AGR 238 Confidential Assistant to the Assistant Secretary for Congressional Relations
AGR 244 Confidential Assistant to the Chief, Soil Conservation Service
AGR 257 Executive Assistant to the Assistant Secretary for Food and Consumer Services
AGR 258 Confidential Assistant to the Administrator, Foreign Agricultural Service
AGR 263 Confidential Assistant to the Assistant Secretary for Natural Resources and Environment
AGR 268 Special Assistant to the Administrator, Rural Electrification Administration
AGR 273 Staff Assistant to the Administrator, Foreign Agricultural Service
AGR 284 Confidential Assistant to the Administrator, Food Safety and Inspection Service
AGR 285 Confidential Assistant to the Executive Assistant to the Secretary
AGR 287 Confidential Assistant to the Administrator, Foreign Agricultural Service
AGR 290 Confidential Assistant to the Administrator, Animal and Plant Health Inspection Service
AGR 293 Confidential Assistant to the Administrator, Foreign Agricultural Service
AGR 294 Confidential Assistant to the Administrator, Animal and Plant Inspection Service
AGR 295 Confidential Assistant to the Assistant Secretary for Congressional Relations
AGR 302 Staff Assistant to the Administrator, Agricultural Stabilization and Conservation Service
AGR 306 Staff Assistant to the Director, Office of Public Affairs
AGR 308 Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service
AGR 312 Executive Assistant to the Administrator, Farmers Home Administration
AGR 314 Confidential Assistant to the Director/Press Secretary, Office of Public Affairs
AGR 316 Staff Assistant to the Chief, Soil Conservation Service
AGR 327 Staff Assistant to the Director, Office of Public Affairs
AGR 328 Special Assistant to the Director of Intergovernmental Affairs, Office of Public Affairs
AGR 330 Confidential Assistant to the Director, Office of Public Affairs
AGR 332 Confidential Assistant to the Administrator, Farmers Home

Administration
AGR 333 Confidential Assistant to the Manager, Federal Crop Insurance Corporation
AGR 337 Confidential Assistant to the Administrator, Farmers Home Administration
AGR 339 Confidential Assistant to the Administrator, Food and Nutrition Service
AGR 341 Confidential Assistant to the Manager, Federal Crop Insurance Corporation
AGR 343 Executive Assistant to the Director, Office of Public Affairs
AGR 345 Confidential Assistant to the Director of Intergovernmental Affairs
AGR 346 Confidential Assistant to the Administrator, Farmers Home Administration
AGR 347 Confidential Assistant to the Deputy Director, Office of Public Affairs
AGR 349 Confidential Assistant to the Deputy Administrator, Food and Nutrition Service
AGR 352 Confidential Assistant to the Administrator, Food and Nutrition Service
AGR 359 Executive Speech Writer to the Director, Office of Public Affairs
AGR 366 Confidential Assistant to the Administrator, Food and Nutrition Service
AGR 368 Confidential Assistant to the Manager, Federal Crop Insurance Corporation
AGR 369 Confidential Assistant to the Administrator, Rural Development Administration
AGR 370 Confidential Assistant to the Acting Administrator, Rural Development Administration
AGR 371 Confidential Assistant to the Administrator, Rural Development Administration
AGR 373 Confidential Assistant to the Assistant Secretary for Congressional Relations
AGR 374 Confidential Assistant to the Administrator, Rural Development Administration
AGR 377 Confidential Assistant to the Administrator, Rural Development Administration
AGR 381 Staff Assistant to the Under Secretary for Small Community and Rural Development
AGR 384 Staff Assistant to the Secretary of Agriculture
AGR 385 Confidential Assistant to the Deputy Director, Office of the Executive Secretariat
AGR 388 Staff Assistant to the Chief, Soil Conservation Service
AGR 393 Confidential Assistant to the Administrator, Rural Development Administration
AGR 395 Confidential Assistant to the Director, Office of Advocacy and Enterprise
AGR 396 Staff Assistant to the Assistant Secretary for Congressional Relations
AGR 397 Confidential Assistant to the Chief, Soil Conservation Service
AGR 399 Secretary (Typing) to the Assistant Secretary for Administration
AGR 400 Special Assistant to the Assistant Secretary for Administration
AGR 401 Staff Assistant to the Assistant Secretary for Economics
AGR 402 Confidential Assistant to the Administrator, Farmers Home Administration
AGR 404 Confidential Assistant to the Director of Personnel
AGR 406 Confidential Assistant to the Executive Assistant to the Secretary
AGR 408 Private Secretary to the Chief Financial Officer, Office of the Assistant Secretary for Administration
AGR 411 Confidential Assistant to the Assistant Secretary for Administration
AGR 412 Confidential Assistant to the Administrator, Food Safety and Inspection Service
AGR 413 Special Assistant to the Chief of the Soil Conservation Service
AGR 414 Special Assistant to the Secretary of Agriculture
AGR 415 Confidential Assistant to the Administrator, Rural Electrification Administration
AGR 417 Confidential Assistant to the Administrator, Agricultural Marketing Service
AGR 418 Staff Assistant to the Chief, Soil Conservation Service
AGR 420 Confidential Assistant to the Administrator, Animal and Plant Inspection Service
AGR 421 Director, Public Liaison to the Director, Office of Public Liaison
AGR 422 Special Assistant (Jackson, MS) to the Administrator, Farmers Home Administration
AGR 425 Confidential Assistant to the Administrator, Farmers Home Administration
AGR 426 Deputy Director, Special Projects to the Director, Office of Communications
AGR 427 Special Assistant to the Deputy Assistant Secretary
AGR 428 Confidential Assistant to the Administrator, Rural Business and Cooperative Development Service
AGR 430 Deputy Press Secretary to the Director, Office of Public Affairs
AGR 431 Confidential Assistant to the Administrator, Rural Electrification Administration
AGR 432 Confidential Assistant to the Secretary of Agriculture

213.3314 Department of Commerce

COM 4 Confidential Assistant to the Secretary
COM 19 Private Chauffeur to the Secretary
COM 20 Confidential Assistant to the Deputy Assistant Secretary for Administration
COM 48 Confidential Assistant to the Under Secretary for Travel and Tourism
COM 70 Director of Congressional Affairs to the Assistant Secretary for Economic Development, Economic Development Administration
COM 74 Director, Office of Public Affairs to the Assistant Secretary for Economic Development
COM 152 Special Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs
COM 162 Special Assistant to the Assistant Secretary for International Economic Policy, International Trade Administration
COM 181 Special Assistant to the Assistant Secretary for Communications and Information
COM 189 Special Assistant to the Assistant Secretary for National Communications and Information Administration
COM 190 Director, Office of Congressional Affairs, to the Assistant Secretary, National Telecommunications and Information Administration
COM 191 Confidential Assistant to the General Counsel
COM 194 Special Assistant to the Under Secretary, National Oceanic and Atmospheric Administration
COM 204 Special Assistant to the Chief Scientist, National Oceanic and Atmospheric Administration
COM 217 Special Assistant to the Director, Office of Public Affairs
COM 248 Confidential Assistant to the Deputy Secretary
COM 258 Special Assistant to the Deputy Assistant Secretary for Import Administration, International Trade Administration
COM 259 Director of Congressional Affairs to the Under Secretary for International Trade, International Trade Administration
COM 262 Special Assistant to the Assistant Secretary for Trade Development, International Trade Administration

COM 268 Executive Assistant to the Counsellor and Chief of Staff
COM 274 Confidential Assistant to the Director, Office of Business Liaison
COM 275 Special Assistant to the Director, Office of Business Liaison
COM 278 Special Assistant to the Assistant Secretary for Export Administration
COM 284 Special Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs, Office of Legislative and Intergovernmental Affairs
COM 288 Confidential Assistant to the Director, Office of Business Liaison
COM 289 Confidential Assistant to the Deputy Assistant Secretary for Legislative and Intergovernmental Affairs
COM 293 Special Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs
COM 298 Special Assistant to the Assistant Secretary for Communications and Information, National Telecommunications and Information Administration
COM 299 Confidential Assistant to the Chief Economist, Economics and Statistics Administration
COM 303 Special Assistant to the Chief Financial Officer and Assistant Secretary for Administration
COM 304 Special Assistant to the Under Secretary for Travel and Tourism, U.S. Travel and Tourism Administration
COM 306 Confidential Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs
COM 308 Special Assistant to the Assistant Secretary for Trade Development
COM 312 Special Assistant to the Director General of the U.S. and Foreign Commercial Service
COM 314 Special Assistant to the Director, Office of the White House Liaison
COM 320 Confidential Assistant to the Director, Office of External Affairs
COM 326 Confidential Assistant to the Assistant Secretary and Director General, U.S. and Foreign Commercial Service
COM 342 Confidential Assistant to the Director of White House Liaison
COM 344 Congressional Liaison Specialist to the Director, Office of Legislative and Intergovernmental Affairs
COM 348 Special Assistant to the Director, Office of Public Affairs
COM 350 Deputy Director, Office of Business Liaison to the Director, Office of Business Liaison
COM 358 Special Assistant to the Assistant Secretary for Import Administration, International Trade Administration
COM 365 Special Assistant to the Director, Minority Business Development Agency
COM 370 Chief, Legislative and Intergovernmental Affairs to the Assistant Director for External Affairs
COM 371 Confidential Assistant to the Director, Office of External Affairs
COM 374 Congressional Liaison Specialist to the Congressional Affairs Officer
COM 385 Special Assistant to the Director, Bureau of Census
COM 390 Confidential Assistant to the Under Secretary for Economic Affairs/Administrator, Economics and Statistics Administration
COM 397 Congressional Affairs Officer to the Assistant Director for Commerce
COM 409 Confidential Assistant to the Deputy Chief of Staff
COM 415 Congressional Affairs Specialist to the Chief Congressional Affairs Division
COM 416 Director, Office of Consumer Affairs to the Secretary of Commerce
COM 418 Confidential Assistant to the Under Secretary for Economic Affairs
COM 420 Special Assistant to the Director General of the United States and Foreign Commercial Service, International Trade Administration
COM 423 Director of Congressional Affairs to the Assistant Secretary and Commissioner, Patent and Trademark Office
COM 424 Congressional Liaison Specialist to the Under Secretary for International Trade, International Trade Administration
COM 427 Special Assistant to the Deputy Under Secretary for Export Administration
COM 432 Confidential Assistant to the Assistant to the Deputy Assistant Secretary
COM 439 Special Assistant to the General Counsel
COM 440 Special Assistant to the Director, Office of White House Liaison
COM 443 Director, Office of External Affairs to the Deputy Assistant Secretary
COM 448 Confidential Assistant to the Assistant Secretary for International Economic Policy, International Trade Administration
COM 452 Confidential Assistant to the Chief of Staff
COM 468 Confidential Assistant to the Under Secretary for Export Administration, Bureau of Export Administration
COM 469 Confidential Assistant to the Deputy Assistant Secretary for White House Liaison
COM 477 Director of Legislative and Intergovernmental Affairs to the Deputy Under Secretary for Travel and Tourism
COM 480 Director of Congressional Affairs to the Under Secretary for Technology
COM 485 Special Assistant to the Chief of Staff
COM 486 Speechwriter to the Director of Public Affairs
COM 488 Confidential Assistant to the Deputy Director, Office of Public Affairs
COM 490 Director of Scheduling to the Director, Office of External Affairs
COM 500 Special Assistant to the Under Secretary for Travel and Tourism, U.S. Travel and Tourism
COM 508 Special Assistant to the Director, Office of Space Commerce
COM 511 Confidential Assistant to the Assistant Secretary for Oceans and Atmosphere, National Oceanic and Atmospheric Administration
COM 519 Special Assistant to the General Counsel, National Oceanic and Atmospheric Administration
COM 527 Executive Assistant to the Secretary
COM 528 Deputy Director of Scheduling to the Director of Scheduling, Office of the Secretary
COM 530 Special Assistant to the Under Secretary for Technology, Technology Administration
COM 531 Confidential Assistant to the Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods, International Trade Administration
COM 536 Special Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs
COM 538 Special Assistant and Chief of Protocol to the Chief of Staff
COM 539 Special Assistant to the Chief of Staff
COM 545 Director, Secretariat Staff to the Deputy Executive Secretary
COM 547 Confidential Assistant to the Director of Public Affairs, U.S. Travel and Tourism Administration
COM 551 Confidential Assistant to the Assistant Secretary for Legislative and Intergovernmental

Affairs
COM 554 Special Assistant to the Deputy Assistant Secretary for Program Operation
COM 556 Confidential Assistant to the Assistant to the Deputy Secretary
COM 557 Confidential Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs
COM 560 Special Assistant to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
COM 561 Confidential Assistant to the Assistant Secretary and Commissioner, Patent and Trademark Office
COM 562 Special Assistant to the Deputy Executive Secretary
COM 564 Confidential Assistant to the Director, Office of External Affairs
COM 566 Congressional Liaison Specialist to the Chief, Legislative and Intergovernmental Affairs Division, Minority Business Development Agency
COM 570 Special Assistant to the Counsellor to the Secretary
COM 571 Special Assistant to the Deputy Assistant Secretary for Service Industries and Finance
COM 573 Special Assistant to the Assistant Secretary and Director General, U.S. and Foreign Commercial Service
COM 574 Confidential Assistant to the Director, Office of Business Liaison
COM 579 Director of Legislative, Intergovernmental and Public Affairs to the Under Secretary, Bureau of Export Administration
COM 580 Confidential Assistant to the Deputy Assistant Secretary for Economic Development, Economic Development Administration
COM 585 Chief, Intergovernmental Affairs to the Director, Office of Sustainable Development and Intergovernmental Affairs
COM 586 Confidential Assistant to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
COM 588 Congressional Affairs Specialist to the Director, Office of Legislative Affairs, National Oceanic and Atmospheric Administration
COM 589 Special Assistant to the Director, Office of Public and Constituent Affairs, National Oceanic and Atmospheric Administration
COM 592 Special Assistant to the Deputy Assistant Secretary for Technology and Aerospace Industries, International Trade Administration
COM 593 Special Assistant to the Director, Executive Secretariat
COM 594 Deputy Director of Advance to the Deputy Director of External Affairs
COM 595 Confidential Assistant to the Director, Office of Space Commerce
COM 598 Special Assistant to the Deputy General Counsel
COM 599 Confidential Assistant to the Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration
COM 601 Director, Office of Public Affairs to the Under Secretary for Oceans and Atmosphere, National Oceanic and Atmospheric Administration
COM 605 Special Assistant to the Director International Technology, Policy and Programs, Technology Administration
COM 606 Speechwriter to the Director, Office of Public Affairs
COM 607 Intergovernmental Affairs Specialist to the Chief Intergovernmental Affairs, Office of Sustainable Development and Intergovernmental Affairs (NOAA)
COM 608 Confidential Assistant to the Director, Office of Public Affairs, International Trade Administration
COM 609 Confidential Assistant to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
COM 610 Special Assistant to the Deputy Under Secretary for Policy Development, International Trade Administration
COM 611 Special Assistant to the Deputy Under Secretary for Policy Development, International Trade Administration
COM 612 Special Assistant to the Deputy Assistant Secretary for Service Industries and Finance, International Trade Administration
COM 616 Confidential Assistant to the Assistant Secretary for Export Administration, Bureau of Export Administration
COM 617 Director, Office of Energy, Infrastructure and Machinery to the Deputy Assistant Secretary for Basic Industries
COM 618 Confidential Assistant to the Director, Secretariat Staff, Office of the Executive Secretariat
COM 620 Confidential Assistant to the Director, Office of Public Affairs
COM 621 Special Assistant to the Assistant Secretary for Economic Development
COM 622 Confidential Assistant to the Deputy Assistant Secretary for Program Support, Economic Development Administration
COM 623 Confidential Assistant to the Deputy Under Secretary for Policy Development
COM 624 Special Assistant to the Assistant Secretary for Economic Development
COM 625 Special Assistant to the Deputy Assistant Secretary for Technology Policy
COM 627 Special Assistant for Public Affairs to the Under Secretary for Travel and Tourism
COM 629 Deputy Director to the Office of Public, Congressional and Intergovernmental Affairs
COM 630 Assistant Director for Operations to the Director for Strategic Planning
COM 631 Special Advisor to the Director, Oceanic and Atmospheric Administrator
COM 632 Deputy Assistant Secretary for Intergovernmental Affairs to the Assistant Secretary for Legislative and Intergovernmental Affairs
COM 633 Confidential Assistant to the Deputy Assistant Secretary for International Economic Development
COM 634 Confidential Assistant to the Deputy Assistant Secretary for Administration
COM 635 Special Assistant to the Assistant Secretary and Director General of the U.S. and Foreign Commercial Service
COM 636 Director, Office of Export Promotion Coordination to the Deputy Assistant Secretary for Trade Development
COM 637 Special Assistant to the Deputy Assistant Secretary for Domestic Operations
COM 638 Confidential Assistant to the Director, Office of Policy Coordination and Management
COM 640 Confidential Assistant to the Director, Office of Public, Congressional and Intergovernmental Affairs, International Trade Administration
COM 641 Special Assistant to the Director, Office of External Affairs
COM 642 Confidential Assistant to the Director, Office of External Affairs
COM 643 Confidential Assistant to the Assistant Secretary and Commissioner of Patents and Trademarks
COM 644 Special Assistant to the Director, Office of Sustainable Development and

Intergovernmental Affairs
COM 645 Special Assistant to the Director, Legislative, Intergovernmental and Public Affairs
COM 646 Confidential Assistant to the Press Secretary
COM 647 Deputy Press Secretary to the Press Secretary
COM 648 Press Secretary to the Secretary of Commerce
COM 649 Confidential Assistant to the Press Secretary
COM 650 Confidential Assistant to the Press Secretary
COM 652 Confidential Assistant to the Deputy Director, Office of Public Affairs
COM 653 Deputy Director to the Director, Office of Public Affairs
COM 654 Confidential Assistant to the Counselor to the Department of Commerce

213.3315 Department of Labor

LAB 3 Special Assistant to the Deputy Secretary of Labor
LAB 17 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 25 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 35 Special Assistant to the Director of the Women's Bureau
LAB 41 Special Assistant to the Assistant Secretary for the Office of Congressional and Intergovernmental Affairs
LAB 43 Special Assistant to the Assistant Secretary for Occupational Safety and Health
LAB 44 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 55 Legislative Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 66 Executive Assistant to the Deputy Assistant Secretary, Office of Federal Contracts Compliance Programs, Employment Standards Administration
LAB 76 Special Assistant to the Director of the Women's Bureau
LAB 87 Staff Assistant to the Assistant Secretary for Employment Standards, Employment Standards Administration
LAB 89 Special Assistant to the Assistant Secretary for the American Workplace
LAB 92 Special Assistant to the Counselor to the Secretary
LAB 93 Special Assistant to the Secretary
LAB 96 Chief of Staff to the Assistant Secretary for Labor
LAB 101 Special Assistant to the Administrator Wage and Hour Division, Employment Standards Administration
LAB 103 Secretary's Representative, Boston, MA, to the Director, Office of Intergovernmental Affairs
LAB 104 Secretary's Representative to the Associate Director, Intergovernmental Affairs
LAB 105 Secretary's Representative, Philadelphia, PA, to the Associate Director, Office of Congressional and Intergovernmental Affairs
LAB 106 Secretary's Representative, Atlanta, GA, to the Director, Office of Intergovernmental Affairs
LAB 107 Secretary's Representative to the Associate Director, Congressional and Intergovernmental Affairs
LAB 108 Secretary's Representative to the Associate Director, Office of Intergovernmental Affairs
LAB 109 Secretary's Representative to the Associate Director
LAB 111 Secretary's Representative (San Francisco, CA) to the Director, Office of Intergovernmental Affairs
LAB 112 Secretary's Representative, Seattle, WA, to the Director, Office of Intergovernmental Affairs
LAB 123 Special Assistant to the Assistant Secretary, Pension and Welfare Benefits Administration
LAB 130 Special Assistant to the Executive Secretary
LAB 132 Associate Director for Congressional Affairs to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 133 Special Assistant to the Director, Women's Bureau
LAB 138 Chief Technical Advisor to the Assistant Secretary for Mine Safety and Health
LAB 145 Intergovernmental Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 147 Attorney-Advisor (Labor) to the Solicitor of Labor
LAB 151 Chief of Staff to the Director, Women's Bureau
LAB 152 Special Assistant to the Director, Women's Bureau
LAB 154 Associate Director for Congressional Affairs to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 159 Special Assistant to the Deputy Under Secretary for International Affairs, Bureau of International Labor Affairs
LAB 160 Director of Scheduling and Advance to the Chief of Staff
LAB 163 Special Assistant to the Assistant Secretary for Occupational Safety and Health Administration
LAB 164 Director of Communications and Public Information to the Assistant Secretary for Employment and Training
LAB 171 Confidential Assistant to the Secretary of Labor
LAB 171 Special Assistant to the Secretary of Labor
LAB 172 Special Assistant to the Deputy Secretary of Labor
LAB 175 Special Assistant to the Deputy Secretary
LAB 177 Staff Assistant to the Chief of Staff
LAB 179 Special Assistant to the Assistant Secretary, Employment Standards Administration
LAB 180 Associate Director to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 182 Special Assistant to the Assistant Secretary for the American Workplace
LAB 186 Public Affairs Specialist to the Director, Women's Bureau
LAB 189 Special Assistant to the Assistant Secretary for Occupational Safety and Health Administration
LAB 190 Special Assistant to the Assistant Secretary to the Assistant Secretary for Policy
LAB 196 Executive Assistant to the Assistant Secretary for Veterans' Employment and Training
LAB 204 Special Assistant to the Assistant Secretary for Veterans' Employment and Training
LAB 205 Special Assistant to the Assistant Secretary to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 208 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 210 Special Assistant to the Deputy Assistant Secretary for Program Economics and Research and Technical Support
LAB 211 Special Assistant to the Executive Secretary
LAB 215 Special Assistant to the Director of the Women's Bureau

LAB 217 Associate Director to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 219 Special Assistant to the Deputy Assistant Secretary, Office of Congressional and Intergovernmental Affairs
LAB 225 Special Assistant to the Assistant Secretary, Pension and Welfare Benefits Administration
LAB 228 Deputy Assistant Secretary to the Assistant Secretary for Occupational Safety and Health, Occupational Safety and Health Administration
LAB 229 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 230 Special Assistant to the Assistant Secretary for Public Affairs
LAB 231 Staff Assistant to the Chief of Staff
LAB 234 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 235 Associate Director for Congressional Affairs to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 237 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 239 Special Assistant to the Chief of Staff
LAB 240 Deputy Secretary's Representative to the Secretary's Representative, Boston, MA
LAB 241 Special Assistant to the Assistant Secretary for Public Affairs
LAB 243 Intergovernmental Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 248 Special Assistant to the Assistant Secretary for Public Affairs
LAB 252 Project Director to the Assistant Secretary for Public Affairs
LAB 253 Staff Assistant to the Chief of Staff
LAB 254 Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 255 Special Assistant to the Assistant Secretary for Public Affairs
LAB 259 Special Assistant to the Assistant Secretary for Policy
LAB 260 Special Assistant to the Chief of Staff
LAB 263 Special Assistant to the Administrator, Wage and Hour Division
LAB 266 Staff Assistant to the Deputy Under Secretary for International Labor Affairs
LAB 269 Intergovernmental Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 272 Special Assistant to the Assistant Secretary for Mine Safety and Health
LAB 273 Special Assistant to the Assistant Secretary for Administration and Management
LAB 274 Special Assistant to the Assistant Secretary for Policy
LAB 275 Special Assistant for Reinvention to the Assistant Secretary for Occupational Safety and Health Administration

213.3316 Department of Health and Human Services

HHS 14 Special Assistant to the Executive Secretary
HHS 17 Director, Office of Scheduling to the Chief of Staff, Office of the Secretary
HHS 31 Special Assistant to the Secretary of Health and Human Services
HHS 127 Special Assistant to the Director, Office for Civil Rights
HHS 273 Special Assistant to the Deputy Assistant Secretary for Legislation (Human Services)
HHS 276 Special Assistant for Liaison to the Associate Commissioner for Legislative Affairs
HHS 293 Special Assistant to the Commissioner, Administration for Children, Youth and Families
HHS 315 Special Assistant to the Director of Intergovernmental Affairs
HHS 320 Special Assistant to the Assistant Secretary for Planning and Evaluation
HHS 340 Executive Assistant to the Assistant Secretary for Legislation
HHS 344 Congressional Liaison Specialist to the Deputy Assistant for Legislation (Congressional Liaison)
HHS 359 Congressional Liaison Specialist to the Deputy Assistant Secretary for Congressional Liaison
HHS 361 Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison)
HHS 373 Confidential Assistant to the Executive Secretary
HHS 374 Confidential Assistant to the Executive Secretary
HHS 392 Confidential Assistant to the Assistant Secretary for Planning and Evaluation
HHS 395 Special Assistant to the Director, Office of Community Services, Administration for Children and Families.
HHS 399 Special Assistant to the Assistant Secretary for Children and Families to the Assistant Secretary for Children and Families
HHS 427 Executive Director, President's Committee on Mental Retardation to the Assistant Secretary for the Administration for Children and Families
HHS 451 Confidential Staff Assistant to the Director, Office of Community Services, Administration for Children and Families
HHS 457 Special Assistant to the Deputy Secretary
HHS 475 Special Assistant to the Deputy Assistant Secretary for Policy and External Affairs, Administration for Children and Families
HHS 489 Special Assistant to the Assistant Secretary for Children and Families
HHS 510 Deputy Director, Office of Public Liaison to the Director, Office of Public Liaison, Health Care Financing Administration
HHS 513 Confidential Assistant to the Administrator to the Administrator, Health Care Financing Administration
HHS 522 Special Assistant to the Director, Office of Public Affairs, Administration for Children and Families
HHS 526 Confidential Staff Assistant to the Administrator, Health Care Financing Administration
HHS 529 Confidential Assistant (Scheduling) to the Director of Scheduling
HHS 539 Special Assistant to the General Counsel
HHS 545 Special Assistant to the Associate Commissioner for Public Affairs.
HHS 549 Speechwriter to the Director of Speechwriting
HHS 553 Director of Communications to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy)
HHS 556 Director of Speechwriting to the Deputy Assistant Secretary for Public Affairs (Media)
HHS 585 Speechwriter to the Director of Speechwriting
HHS 588 Director, Division of Intergovernmental Affairs to the Director, Office of Public Affairs

HHS 589 Speechwriter to the Director of Speechwriting
HHS 590 Confidential Assistant (Advance) to the Director of Scheduling and Advance
HHS 594 Confidential Assistant (Advance) to the Director, Office of Scheduling
HHS 606 Special Assistant for Policy to the Deputy Commissioner for Policy
HHS 609 Special Initiatives Coordinator to the Assistant Secretary for Public Affairs
HHS 610 Executive Assistant to the Deputy Assistant Secretary for Aging (Operations)
HHS 611 Confidential Assistant to the Assistant Secretary to the Assistant Secretary for Planning and Evaluation
HHS 613 Executive Assistant to the Assistant Secretary for Planning and Evaluation
HHS 614 Confidential Assistant to the Assistant Secretary for Aging
HHS 615 Special Assistant to the Director of Communications
HHS 617 Confidential Assistant to the Special Assistant to the Secretary of Health and Human Services
HHS 618 Special Assistant to the Principal Deputy Assistant Secretary for Planning and Evaluation
HHS 620 Special Assistant to the Deputy Assistant Secretary for Planning and Evaluation, Office of Family, Community and Long-Term Care Policy
HHS 622 Special Assistant to the Director, Office of Public Liaison, Health Care Financing Administration
HHS 623 Executive Assistant to the Deputy Assistant Secretary for Health, Public Health Service
HHS 625 Special Assistant to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy)
HHS 628 Special Assistant to the Administrator, Substance Abuse and Mental Health Services Administration
HHS 630 Special Assistant to the Deputy Assistant Secretary for Health (Communications)
HHS 631 Special Assistant to the Assistant Secretary, Administration for Children and Families
HHS 632 Special Outreach Coordinator to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy)
HHS 633 Special Assistant to the Director, Office of Community Services, Administration for Children and Families
HHS 634 Special Assistant to the Deputy Director, Office of Child Support Enforcement
HHS 636 Senior Advisor to the Director, Indian Health Service
HHS 637 Special Assistant for Legislative Affairs to the Director, U.S. Office of Consumer Affairs
HHS 638 Special Assistant to the Counselor to the Secretary
HHS 639 Special Assistant to the Deputy Assistant Secretary for Policy and External Affairs
HHS 641 Executive Assistant for Legislative Affairs to the Assistant Secretary for Health

213.3317 Department of Education

EDU 3 Confidential Assistant to the Assistant Secretary, Office of Human Resources and Administration
EDU 4 Deputy Secretary's Regional Representative, Region IV (Atlanta, GA) to the Secretary's Regional Representative, Region IV, Office of Intergovernmental and Interagency Affairs
EDU 7 Special Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 8 Special Assistant to the Director, Office of Public Affairs
EDU 11 Confidential Assistant to the Director, Scheduling and Briefing Staff
EDU 12 Confidential Assistant to the Chief of Staff
EDU 13 Special Assistant to the Assistant Secretary, Office of Human Resources and Administration
EDU 16 Special Assistant to the Director, Community Reform Initiatives Services
EDU 17 Confidential Assistant to the Deputy Secretary
EDU 19 Special Assistant to the Secretary of Education
EDU 20 Steward to the Chief of Staff
EDU 24 Confidential Assistant to the Director, Office of Intergovernmental and Constituent Affairs
EDU 25 Confidential Assistant to the Director, Scheduling and Briefing Staff
EDU 26 Confidential Assistant to the Director, Intergovernmental and Constituent Services
EDU 27 Confidential Assistant to the Assistant Secretary, Office of Civil Rights
EDU 29 Special Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 30 Director, Scheduling and Briefing Staff to the Chief of Staff, Office of the Secretary
EDU 31 Special Assistant to the Secretary of Education
EDU 33 Special Assistant to the Chief of Staff
EDU 34 Special Assistant to the Commissioner, Rehabilitation Service Administration
EDU 35 Special Assistant to the Director, Policy Development Staff
EDU 36 Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education
EDU 42 Special Assistant to the Assistant Secretary for Elementary and Secondary Education
EDU 43 Confidential Assistant to the Director, Office of Bilingual Education and Minority Languages Affairs
EDU 44 Special Assistant to the Assistant Secretary, Office of Educational Research and Improvement
EDU 47 Confidential Assistant to the Chief of Staff
EDU 49 Confidential Assistant to the Director, Scheduling and Briefing Staff
EDU 50 Special Assistant to the Director, Office of Public Affairs
EDU 53 Special Assistant to the Assistant Secretary, Office of Policy and Planning
EDU 55 Special Assistant (Special Advisor, HBCU) to the Director, Historically Black Colleges and Universities Staff
EDU 56 Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education
EDU 57 Special Assistant to the Director, Office of Bilingual Education and Minority Languages Affairs
EDU 62 Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education
EDU 66 Special Assistant to the Assistant Secretary, Office of Special Education and Rehabilitative Services
EDU 67 Special Assistant to the Secretary of Education
EDU 69 Confidential Assistant to the Director, Office of Public Affairs
EDU 71 Executive Assistant to the Deputy Secretary of Education
EDU 73 Confidential Assistant to the Senior Advisor on Education Reform
EDU 74 Chief of Staff to the Deputy Secretary
EDU 76 Special Assistant to the Chief of Staff
EDU 78 Special Assistant to the

Assistant Secretary, Office of Elementary and Secondary Education
EDU 79 Confidential Assistant to the Director, Office of Public Affairs
EDU 81 Special Assistant to the Secretary of Education
EDU 82 Special Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 84 Confidential Assistant to the Director, Corporate Liaison Staff, Office of the Deputy Secretary
EDU 84 Special Assistant to the Chief of Staff
EDU 85 Special Assistant to the Deputy Assistant Secretary, Office of Student Financial Assistance Programs
EDU 91 Special Assistant to the Director, Office of Public Affairs
EDU 94 Special Assistant to the Assistant Secretary, Office of Vocational and Adult Education
EDU 95 Special Assistant to the Assistant Secretary, Office for Civil Rights
EDU 97 Special Assistant to the Under Secretary of Education
EDU 98 Special Assistant to the Assistant Secretary for Special Education and Rehabilitation Services
EDU 99 Executive Assistant for Policy and Operations to the Assistant Secretary, Office of Civil Rights
EDU 101 Deputy Secretary's Regional Representative to the Secretary's Regional Representative, Region I, Boston, MA
EDU 103 Secretary's Regional Representative, Region VIII-Denver, CO, to the Assistant Secretary for Intergovernmental and Interagency Affairs
EDU 105 Special Assistant to the Assistant Secretary, Office of Human Resources and Administration
EDU 106 Special Assistant to the Assistant Secretary, Office of Human Resources Division
EDU 107 Secretary's Regional Representative, Region V, Chicago, IL, to the Director, State, Local and Regional Services Staff, Office of Intergovernmental and Interagency Affairs
EDU 108 Special Assistant to the Director, Office of Public Affairs
EDU 109 Secretary's Regional Representative, Region VII, Kansas City, MO, to the Director, of the State, Local and Regional Services Staff, Office of Intergovernmental and Interagency Affairs
EDU 110 Secretary's Regional Representative-Region II-New York, NY, to the Director of State, Local and Regional Services Staff
EDU 111 Director, White House Initiatives on Hispanic Education to the Assistant Secretary for Intergovernmental and Interagency Affairs
EDU 112 Special Assistant to the Chief of Staff
EDU 113 Special Assistant to the Assistant Secretary, Office of Educational Research and Improvement
EDU 114 Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education
EDU 115 Special Assistant to the Senior Advisor on Education
EDU 117 Director, Historically Black Colleges to the Assistant Secretary, Office of Postsecondary Education
EDU 118 Special Assistant to the Assistant Secretary, Office of Educational Research and Improvement
EDU 119 Secretary's Regional Representative to the Assistant Secretary for Intergovernmental and Interagency Affairs
EDU 120 Director, Congressional Affairs Staff to the Assistant Secretary for Legislation and Congressional Affairs
EDU 121 Special Assistant to the Assistant Secretary, Office of Civil Rights
EDU 122 Deputy Secretary's Regional Representative, Region VI, Dallas, Texas, to the Secretary's Regional Representative
EDU 123 Secretary's Regional Representatives Regional VI-Dallas, TX, to the Assistant Secretary for Intergovernmental and Interagency Affairs
EDU 124 Liaison for Community and Junior Colleges to the Assistant Secretary, Office of Vocational and Adult Education
EDU 125 Deputy Director, Office of Bilingual Education and Minority Languages Affairs to the Director
EDU 127 Secretary's Regional Representative Region 1-Boston, MA, to the Assistant Secretary for Intergovernmental and Interagency Affairs
EDU 129 Special Assistant to the Assistant Secretary for Vocational and Adult Education
EDU 130 Confidential Assistant to the Director, Executive Secretariat
EDU 131 Secretary's Regional Representative, Region IX, San Francisco, CA, to the Director, State, Local and Regional Services Staff, Office of Intergovernmental and Interagency Affairs
EDU 132 Confidential Assistant to the Special Advisor on Education Technology
EDU 134 Confidential Assistant to the Assistant Secretary, Office of Legislative and Congressional Affairs
EDU 137 Special Assistant to the Under Secretary
EDU 138 Special Assistant to the Under Secretary
EDU 139 Confidential Assistant to the General Counsel
EDU 141 Special Assistant to the Assistant Secretary, Office of Civil Rights
EDU 144 Director, Intradepartmental Services to the Director, Federal Interagency and Internal Services
EDU 145 Special Assistant to the Under Secretary
EDU 156 Special Assistant to the Director, Historically Black Colleges and Universities
EDU 157 Confidential Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 159 Confidential Assistant to the Deputy Assistant Secretary, Student Financial Assistance Programs, Office of Postsecondary Education
EDU 161 Confidential Assistant to the Counselor to the Secretary
EDU 164 Special Assistant to the Chief of Staff
EDU 169 Special Assistant to the Director, Community Development Field Services Staff, Community Reform Initiatives Services
EDU 174 Confidential Assistant to the Chief of Staff, Office of the Deputy Secretary
EDU 175 Confidential Assistant to the Special Assistant, Office of the Secretary
EDU 177 Special Assistant to the Assistant Secretary for Intergovernmental and Interagency Affairs
EDU 178 Confidential Assistant to the Chief of Staff
EDU 184 Confidential Assistant to the Assistant Secretary, Office of Legislation and Congressional Affairs
EDU 202 Confidential Assistant to the Director, Community Reform Initiatives Services
EDU 224 Confidential Assistant to the Director, Community Reform Initiatives Services
EDU 226 Confidential Assistant to the Special Advisor to the Secretary
EDU 227 Confidential Assistant to the Chief of Staff, Office of the Secretary

EDU 273 Special Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 340 Deputy Secretary's Regional Representative, Region II, New York, NY, to the Secretary's Regional Representative
EDU 347 Secretary's Regional Representative, Region X, Seattle, WA, to the Director of the State, Local and Regional Services Staff, Office of Intergovernmental and Interagency Affairs
EDU 356 Deputy Director, Office of Public Affairs to the Director, Office of Public Affairs
EDU 404 Secretary's Regional Representative, Region IV, Atlanta, GA, to the Director, State, Local and Regional Services Staff, Office of Intergovernmental and Interagency Affairs
EDU 427 Confidential Assistant to the Assistant Secretary for Legislation and Congressional Affairs
EDU 428 Confidential Assistant to the Chief of Staff
EDU 432 Special Assistant to the Director, Community Development Field Services Staff, Community Reform Initiatives Services
EDU 433 Confidential Assistant to the Director, Constituent Relations Staff
EDU 434 Confidential Assistant to the Director, Community Development Field Services Staff
EDU 436 Special Assistant to the Director, Policy Development Staff
EDU 437 Special Assistant to the Deputy Secretary
EDU 438 Confidential Assistant to the Assistant Secretary, Office for Civil Rights
EDU 439 Special Assistant to the Deputy Chief of Staff

213.3318 Environmental Protection Agency

EPA 155 Congressional Liaison Specialist to the Associate Administrator
EPA 160 Director, Congressional Liaison Division to the Associate Administrator for Congressional and Legislative Affairs
EPA 163 Communications Specialist to the Associate Administrator for Communications, Education and Public Affairs
EPA 167 Director, Public Liaison Division to the Associate Administrator for Communications, Education and Public Affairs
EPA 168 Program Advisor to the Assistant Administrator, Office of Air and Radiation
EPA 170 Staff Assistant (Management) to the Assistant Administrator for Office of Policy, Planning and Evaluation
EPA 171 Congressional Liaison Specialist to the Director, Congressional Liaison Division
EPA 172 Special Assistant to the Assistant Administrator, Office of Solid Waste and Emergency Response
EPA 175 Director, Office of the Executive Secretariat to the Chief of Staff, Office of the Administrator
EPA 176 Staff Assistant to the Deputy Associate Administrator, Office of Communications
EPA 177 Senior Policy Advisor to the Assistant Administrator, Office of Air and Radiation
EPA 178 Policy Advisor to the Assistant Administrator, Office of Air and Radiation
EPA 179 Advanced Program Advisor to the Assistant Administrator for Enforcement
EPA 180 Special Assistant to the Associate Administrator for Regional Operations and State/Local Relations
EPA 182 Legal Advisor to the Assistant Administrator for Prevention, Pesticides and Toxic Substances
EPA 183 Confidential Assistant to the Chief of Staff
EPA 184 Chief, Policy Counsel to the Assistant Administrator, Office of Water
EPA 185 Special Assistant to the Associate Administrator for Regional Operations and State/Local Relations
EPA 187 Counsel to the Assistant Administrator for Air and Radiation
EPA 188 Legislative Coordinator to the Assistant Administrator, Office of Solid Waste and Emergency Response
EPA 189 Director, Policy Development to the Assistant Administrator for Water
EPA 190 Special Assistant to the General Counsel
EPA 191 Special Assistant to the Regional Administrator, Region III, Philadelphia, PA
EPA 192 Director, State/Local Relations Division to the Associate Administrator, for Regional Operations and State/Local Relations
EPA 193 Executive Assistant to the Assistant Administrator for Prevention, Pesticides and Toxic Substances
EPA 194 Special Assistant to the Associate Administrator for Communications, Education, and Public Affairs
EPA 196 Counsel to the Assistant Administrator
EPA 197 Confidential Assistant to the Chief of Staff

213.3319 *Administrative Conference of the United States*

ACUS 6 Special Assistant to the Chairman, Administrative Conference of the United States

213.3321 *Overseas Private Investment Corporation*

OPIC 14 Special Assistant to the Senior Vice President for Policy and Investment Development

213.3322 *Interstate Commerce Commission*

ICC 1 Confidential Assistant to the Commissioner
ICC 6 Confidential Assistant to the Commissioner
ICC 8 Confidential Assistant to the Chairman
ICC 67 Special Assistant to the Director, Office of Congressional and Legislative Affairs
ICC 69 Congressional Affairs Advisor to the Chairman
ICC 72 Staff Advisor (Management) to the Commissioner
ICC 74 Executive Assistant to the Commissioner
ICC 75 Congressional Affairs Assistant to the Congressional Affairs Advisor

213.3323 *Federal Communications Commission*

FCC 21 Special Assistant to the Chief, Common Carrier Bureau
FCC 23 Special Assistant to the Director, Office of Legislative Affairs
FCC 24 Research Assistant to the Director, Office of Public Affairs
FCC 25 Special Assistant to the Deputy Chief, Cable Services Bureau
FCC 26 Special Assistant (Public Affairs) to the Chief, Cable Services Bureau

213.3325 *United States Tax Court*

TCOUS 40 Secretary and Confidential Assistant to a Judge
TCOUS 41 Secretary and Confidential Assistant to a Judge
TCOUS 42 Secretary and Confidential Assistant to a Judge
TCOUS 43 Secretary and Confidential Assistant to a Judge
TCOUS 44 Secretary and Confidential Assistant to a Judge
TCOUS 45 Secretary and Confidential Assistant to a Judge
TCOUS 46 Secretary and Confidential Assistant to a Judge

TCOUS 47 Secretary and Confidential Assistant to a Judge
TCOUS 48 Secretary and Confidential Assistant to a Judge
TCOUS 49 Secretary and Confidential Assistant to a Judge
TCOUS 50 Secretary and Confidential Assistant to a Judge
TCOUS 51 Secretary and Confidential Assistant to a Judge
TCOUS 52 Secretary to a Judge
TCOUS 53 Secretary and Confidential Assistant to a Judge
TCOUS 54 Secretary and Confidential Assistant to a Judge
TCOUS 55 Secretary and Confidential Assistant to a Judge
TCOUS 56 Secretary and Confidential Assistant to a Judge
TCOUS 57 Secretary and Confidential Assistant to a Judge
TCOUS 58 Secretary and Confidential Assistant to a Judge
TCOUS 59 Secretary and Confidential Assistant to a Judge
TCOUS 60 Secretary (Confidential Assistant) to a Judge
TCOUS 61 Secretary and Confidential Assistant to a Judge
TCOUS 62 Secretary and Confidential Assistant to a Judge
TCOUS 63 Secretary and Confidential Assistant to a Judge.
TCOUS 64 Secretary and Confidential Assistant to a Judge
TCOUS 65 Secretary and Confidential Assistant to a Judge
TCOUS 66 Trial Clerk to a Judge
TCOUS 67 Trial Clerk to a Judge
TCOUS 68 Trial Clerk to a Judge
TCOUS 69 Trial Clerk to a Judge
TCOUS 70 Trial Clerk to a Judge
TCOUS 71 Trial Clerk to a Judge
TCOUS 72 Trial Clerk to a Judge
TCOUS 74 Trial Clerk to a Judge
TCOUS 75 Trial Clerk to a Judge
TCOUS 77 Trial Clerk to a Judge
TCOUS 78 Trial Clerk to a Judge
TCOUS 79 Trial Clerk to a Judge
TCOUS 81 Secretary (Confidential Assistant) to a Judge

213.3327 Department of Veterans Affairs

VA 72 Special Assistant to the Assistant Secretary for Congressional Affairs
VA 73 Special Assistant to the Secretary of Veterans Affairs
VA 74 Special Assistant to the Secretary of Veterans Affairs
VA 76 Special Assistant to the Assistant Secretary for Congressional Affairs
VA 77 Special Assistant to the Director, National Cemetery System
VA 78 Special Assistant to the Assistant Secretary for Finance and Information Resources Management
VA 79 Special Assistant to the Assistant Secretary for Human Resources and Administration
VA 80 Special Assistant to the Deputy Secretary of Veterans Affairs
VA 81 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs
VA 82 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs
VA 83 Special Assistant to the Assistant Secretary for Policy and Planning
VA 84 Special Assistant to the Assistant Secretary for Congressional Affairs
VA 85 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs
VA 86 Executive Assistant to the Secretary of Veterans Affairs

213.3328 United States Information Agency

USIA 12 Special Assistant to the Director, Office of Congressional and Intergovernmental Affairs
USIA 14 Program Officer to the Associate Director, Bureau of Information
USIA 22 Supervisory Public Affairs Specialist (New York, N.Y.) to the Associate Director Bureau of Information, Foreign Press Center
USIA 37 Special Assistant to the Director, Office of Citizen Exchanges, Bureau of Educational and Cultural Affairs
USIA 45 Director, Office of Program Coordination and Development, to the Associate Director, Bureau of Policy and Programs
USIA 54 Special Assistant to the Director, Office of Citizen Exchanges
USIA 67 Chief, Voluntary Visitors Division to the Director, Office of International Visitors, Bureau of Educational and Cultural Affairs
USIA 80 Special Advisor to the Director, Office of Public Liaison
USIA 83 Special Assistant to the Director, Office of Research
USIA 89 Staff Director, Advisory Board for Cuba Broadcasting to the Chairman of the Advisory Board
USIA 93 Program Officer to the Deputy Director, Office of European Affairs
USIA 99 White House Liaison to the Chief of Staff, Office of the Director
USIA 101 Public Affairs Specialist to the Director, New York Foreign Press Center, New York, NY
USIA 112 Special Assistant to the Associate Director, Office of Program Coordination and Development, Bureau of Policy and Programs
USIA 116 Special Projects Officer to the Director, Office of Citizen Exchanges
USIA 118 Senior Assistant to the Director, United States Information Agency
USIA 124 Special Assistant to the Associate Director for Programs, Bureau of Information
USIA 125 Special Assistant to the Director, Office of Academic Affairs, Bureau of Educational and Cultural Affairs
USIA 126 Special Assistant to the Director, Office of Congressional and Intergovernmental Affairs
USIA 127 Writer to the Director, Office of Policy
USIA 129 Special Assistant to the Director of Worldnet Television and Film Service, Bureau of Broadcasting
USIA 130 Confidential Assistant to the Director, Voice of America, Bureau of Broadcasting
USIA 131 Director, Policy and Planning Unit to the Deputy Director, United States Information Agency
USIA 132 Director, Office of International Visitors, to the Associate Director of the Bureau of Educational and Cultural Affairs
USIA 134 Director, Office of Thematic Programs to the Associate Director, Bureau of Information
USIA 135 Senior Advisor to the Associate Director, Bureau of Information
USIA 136 Senior Advisor to the Director, Office of Public Liaison
USIA 137 Deputy Director to the Director, Office of Arts America

213.3330 Securities and Exchange Commission

SEC 3 Confidential Assistant to the Commissioner
SEC 4 Confidential Assistant to the Chief of Staff
SEC 8 Secretary (OA) to the Chief Accountant
SEC 11 Confidential Assistant to the Chairman
SEC 12 Supervisory Public Affairs Specialist to the Chairman
SEC 15 Secretary to the Director, Division of Market Regulations
SEC 16 Secretary to the Director, Division of Enforcement
SEC 19 Secretary (OA) to the Director, Division of Corporate Finance
SEC 24 Secretary to the Chief Economist

SEC 27 Secretary (Typing) to the Director, International Affairs
SEC 28 Confidential Assistant to the Chairman of the Securities and Exchange Commission
SEC 29 Secretary to the Deputy Director of Market Regulation
SEC 31 Public Affairs Specialist to the Director of Public Affairs, Office of Public Affairs, Policy Evaluation and Research
SEC 32 Confidential Assistant to the Director of Public Affairs
SEC 33 Confidential Assistant to the Regional Administrator
SEC 34 Secretary to the Executive Director
SEC 35 Secretary to the General Counsel
SEC 36 Confidential Assistant to the Chairman
SEC 37 Writer-Editor to the Chairman
SEC 38 Director, Office of Consumer Affairs to the Chairman

213.3331 *Department of Energy*

DOE 574 Confidential Assistant to the Chief of Staff
DOE 576 Director, Office of Scheduling and Logistics to the Secretary of Energy
DOE 580 Staff Assistant to the Director, Office of Nonproliferation and National Security
DOE 581 Staff Assistant to the Assistant Secretary for Energy Efficiency and Renewable Energy
DOE 582 Special Assistant to the Deputy Secretary for Scheduling and Logistics
DOE 587 Staff Assistant to the Assistant Secretary for Environmental Safety and Health
DOE 589 Congressional Liaison Officer to the Deputy Assistant Secretary for House Liaison
DOE 590 Staff Assistant to the Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy
DOE 591 Staff Assistant to the Deputy Assistant Secretary for Building Technologies
DOE 592 Staff Assistant to the Deputy Assistant Secretary for Gas and Technology
DOE 596 Legislative Affairs Specialist to the Assistant Secretary for Congressional, Intergovernmental and International Affairs
DOE 598 Staff Assistant to the Deputy Secretary of Energy
DOE 599 Staff Assistant to the Director, Office of Civilian Radioactive Waste Management
DOE 600 Special Assistant to the Principal Deputy Assistant Secretary for Policy
DOE 601 Program Information Coordinator to the Director, Office of Strategic Planning
DOE 602 Technology Transfer Specialist to the Director, Office of Technology Utilization
DOE 603 Special Assistant to the Director, Office of Strategic Planning and Analysis
DOE 604 Special Assistant to the Principal Deputy Assistant Secretary for Policy
DOE 605 Special Assistant to the Principal Deputy Assistant Secretary for Policy, Planning and Program Evaluation
DOE 606 Staff Assistant to the Senior Staff Assistant, Office of the Deputy Assistant Secretary for Gas and Petroleum Technology
DOE 607 Special Assistant to the General Counsel
DOE 608 Staff Assistant to the Assistant Secretary for Defense Programs
DOE 609 Special Assistant to the Under Secretary of Energy
DOE 610 Staff Assistant to the Director, Office of Energy Research
DOE 611 Staff Assistant to the Principal Deputy Assistant Secretary, Office of Energy Efficiency and Renewable Energy
DOE 613 Special Assistant to the Assistant Secretary for Environmental Restoration and Waste Management
DOE 615 Staff Assistant to the Director, Office of Intelligence and National Security
DOE 616 Policy Analyst to the Chief Financial Officer
DOE 617 Senior Advisor for Diversity Programs and Education Initiatives to the Director, Office of Science Education and Technical Information
DOE 618 Special Assistant to the Director, Office of Public Accountability, Environmental Restoration and Waste Management
DOE 619 Confidential Assistant to the General Counsel
DOE 620 Executive Assistant to the Chief of Staff
DOE 622 Legislative Affairs Specialist to the Deputy Assistant Secretary for Senate Liaison, Office of Congressional and Intergovernmental Affairs
DOE 623 Staff Assistant to the Assistant Secretary for Energy Efficiency and Renewable Energy
DOE 624 Special Assistant to the Assistant Secretary for Energy Efficiency and Renewable Energy
DOE 625 Staff Assistant to the Deputy Associate Deputy Secretary for Field Management
DOE 626 Staff Assistant to the Director, Office of Public Accountability
DOE 627 Staff Assistant to the Assistant Secretary for Environmental Restoration and Waste Management
DOE 628 Policy Analyst to the Assistant Secretary for Policy, Planning and Program Evaluation
DOE 629 Staff Assistant to the Administrator, Office of Energy Information Administration
DOE 631 Special Assistant to the Press Secretary, Press Services Division, Office of Public and Consumer Affairs
DOE 633 Staff Assistant to the Under Secretary
DOE 634 Staff Assistant to the Director, Scheduling and Logistics
DOE 635 Staff Assistant to the Director, Scheduling and Logistics
DOE 636 Deputy Director, Scheduling and Logistics to the Director, Scheduling and Logistics
DOE 637 Executive Assistant to the Secretary of Energy
DOE 638 Staff Assistant to the Director, Scheduling and Logistics
DOE 639 Staff Assistant to the Press Secretary, Office of Public and Consumer Affairs
DOE 640 Special Assistant to the Deputy Assistant Secretary for Facility Transition and Management
DOE 641 Staff Assistant (Legal) to the Assistant General Counsel for General Law
DOE 642 Staff Assistant to the Assistant Secretary for Policy
DOE 644 Staff Assistant to the Assistant Secretary for Efficiency and Renewable Energy
DOE 645 Special Assistant to the Deputy Secretary of Energy
DOE 646 Staff Assistant to the Deputy Assistant Secretary for Transportation Technologies
DOE 649 Special Assistant to the Director, Office of Public Accountability
DOE 650 Special Assistant to the Director, Office of Nuclear Energy
DOE 651 Staff Assistant to the Associate Deputy Secretary for Field Management
DOE 652 Staff Assistant to the Director, Office of Strategic Planning and Analysis
DOE 653 Special Assistant to the Assistant Secretary for Policy
DOE 654 Confidential Staff Assistant to the Director, Office of Economic Impact and Diversity
DOE 655 Special Assistant for Regulatory Compliance to the

Deputy Assistant Secretary for Compliance and Program Coordination
DOE 656 Special Assistant to the Director, Office of Nuclear Energy
DOE 657 Special Assistant to the Director, Office of Economic Impact and Diversity
DOE 658 Director, Office of Natural Gas Policy to the Principal Deputy Assistant Secretary for Policy
DOE 659 Staff Assistant to the Principal Deputy Assistant Secretary for Policy
DOE 660 Special Assistant to the Deputy Secretary of Energy
DOE 661 Staff Assistant to the Principal Deputy Assistant Secretary for Human Resources and Administration
DOE 662 Staff Assistant to the Assistant Secretary for Human Resources and Administration
DOE 663 Special Assistant for Communications to the Director, Office of Energy Research
DOE 664 Staff Assistant to the Assistant Secretary for Environmental Management
DOE 665 Special Liaison (Federal Power Marketing Administration) to the Assistant Secretary for Energy Efficiency and Renewable Energy
DOE 666 Special Assistant to the Director, Press Services Division
DOE 667 Special Assistant to the Assistant Secretary for Energy and Renewable Energy
DOE 668 Staff Assistant to the Assistant Secretary for Energy Efficiency and Renewable Energy
DOE 669 Staff Assistant to the Assistant Secretary for Energy Efficiency and Renewable Energy
DOE 670 Staff Assistant to the Director, Office of Nuclear Energy
DOE 671 Staff Assistant to the Principal Deputy Assistant Secretary for Congressional and Intergovernmental Affairs
DOE 672 Staff Assistant to the Assistant Secretary for Policy

Federal Energy Regulatory Commission
FERC 1 Executive Assistant to the Chairman, Federal Energy Regulatory Commission
FERC 2 Attorney Advisor (Public Utilities) to the Chairman
FERC 3 Confidential Assistant to a Member
FERC 4 Attorney-Adviser (Public Utilities) to a Member of the Federal Energy Regulatory Commission
FERC 5 Staff Assistant to the Director, Office of External Affairs

213.3332 Small Business Administration

SBA 4 Special Assistant to the Deputy Administrator
SBA 11 Deputy Assistant Administrator for Congressional and Legislative Affairs to the Assistant Administrator for Congressional and Legislative Affairs
SBA 92 Assistant to the Administrator, Small Business Administration
SBA 97 Confidential Assistant to the General Counsel
SBA 100 Special Assistant to the Regional Administrator, Dallas Regional Office
SBA 114 Special Assistant to the Assistant Administrator for Women's Business Ownership
SBA 151 Director of External Affairs to the Associate Administrator for Communications and Public Liaison
SBA 157 Special Assistant to the Associate Deputy Administrator for Economic Development
SBA 168 Director of Intergovernmental Affairs to the Associate Administrator for Communications and Public Liaison
SBA 169 Regional Administrator, Region I, Boston, MA, Administrator, Small Business Administration
SBA 170 Regional Administrator, Region VIII, Denver, CO, to the Administrator, Small Business Administration
SBA 172 Regional Administrator, Region VII, Kansas City, MO, to the Administrator, Small Business Administration
SBA 173 Regional Administrator, Region VI, Dallas, TX, to the Administrator, Small Business Administration
SBA 174 Regional Administrator, Region V, Chicago, IL, to the Administrator, Small Business Administration
SBA 175 Regional Administrator, Region IV, Atlanta, GA, to the Administrator, Small Business Administrator
SBA 176 Regional Administrator, Region II, New York, NY, to the Administrator, Small Business Administration
SBA 178 Regional Administrator, Region III, Philadelphia, PA, to the Administrator, Small Business Administration
SBA 179 Press Secretary to the Administrator to the Associate Administrator for Communications and Public Liaison
SBA 180 Special Assistant to the Associate Administrator for Communications and Public Liaison
SBA 182 Assistant Administrator for Marketing and Outreach to the Associate Administrator for Communications and Public Liaison
SBA 186 Special Assistant to the Associate Administrator for Investment
SBA 188 Regional Administrator, Region IX, San Francisco, CA, to the Administrator, Small Business Administration
SBA 189 Regional Administrator, Region X, Seattle, WA, to the Administrator, Small Business Administration
SBA 190 Chief of Staff to the Administrator
SBA 191 Director of Consumer Affairs to the Associate Administrator, Communications and Public Liaison
SBA 192 Special Assistant to the Director of Consumer Affairs

213.3333 Federal Deposit Insurance Corporation

FDIC 15 Secretary to the Chairman

213.3334 Federal Trade Commission

FTC 2 Director of Public Affairs (Supervisory Public Affairs Specialist) to the Chairman
FTC 14 Congressional Liaison Specialist to the Chairman
FTC 18 Executive Secretary to the Chairman
FTC 20 Special Assistant to the Commissioner
FTC 21 Special Assistant to the Commissioner
FTC 22 Secretary (Office Automation) to the Director, Bureau of Competition

213.3337 General Services Administration

GSA 11 Special Assistant to the Administrator, General Services Administration
GSA 24 Special Assistant to the Commissioner, Public Buildings Service
GSA 26 Special Assistant to the Commissioner, Public Buildings Service
GSA 44 Special Assistant to the Chief of Staff
GSA 52 Special Assistant to the Commissioner, Public Buildings Service
GSA 58 Special Assistant to the Deputy Administrator
GSA 62 Special Assistant to the Commissioner, Information Resources Management Service
GSA 82 Special Assistant to the Regional Administrator, Region 4,

Atlanta, GA
GSA 88 Special Assistant to the Regional Administrator, Region 10, Auburn, WA
GSA 89 Congressional Liaison Officer to the Associate Administrator for Congressional and Intergovernmental Affairs
GSA 90 Deputy Associate Administrator for Congressional and Intergovernmental Affairs to the Associate Administrator for Congressional and Intergovernmental Affairs
GSA 94 Congressional Relations Officer to the Associate Administrator, Office of Congressional and Intergovernmental Affairs
GSA 105 Special Assistant to the Associate Administrator for Public Affairs
GSA 106 Special Assistant to the Associate Administrator for Public Affairs
GSA 107 Special Assistant to the Associate Administrator for Administration
GSA 113 Senior Advisor (Region 1—Boston, MA) to the Regional Director
GSA 114 Special Assistant to the Regional Administrator
GSA 126 Director, Office of Media Relations to the Associate Administrator for Public Affairs
GSA 127 Special Assistant to the Director of Small and Disadvantaged Business Utilization
GSA 128 Director of Industry and Public Outreach to the Commissioner, Information Resources Management Services
GSA 129 Special Assistant to the Associate Administrator for FTS 2000

213.3339 U.S. International Trade Commission

ITC 1 Staff Assistant to a Commissioner
ITC 3 Staff Assistant (Legal) to a Commissioner
ITC 5 Staff Assistant to the Chairman
ITC 6 Staff Assistant (Legal) to a Commissioner
ITC 7 Special Assistant (Economics) to a Commissioner
ITC 9 Confidential Assistant to a Commissioner
ITC 12 Staff Assistant to a Commissioner
ITC 13 Staff Assistant (Economics) to a Commissioner
ITC 14 Staff Assistant (Legal) to a Commissioner
ITC 15 Confidential Assistant to a Commissioner
ITC 17 Staff Assistant (Legal) to a Commissioner
ITC 18 Staff Assistant (Legal) to a Commissioner
ITC 19 Staff Assistant (Economics) to a Commissioner
ITC 20 Staff Assistant (Economics) to a Commissioner
ITC 22 Staff Assistant to a Commissioner
ITC 24 Staff Assistant (Legal) to the Chairman
ITC 25 Staff Assistant (Legal) to a Commissioner
ITC 26 Staff Assistant (Legal) to a Commissioner
ITC 27 Congressional Liaison to the Chairman
ITC 29 Staff Assistant to a Commissioner
ITC 30 Confidential Assistant to a Commissioner
ITC 31 Executive Assistant to a Commissioner
ITC 32 Special Assistant to a Commissioner
ITC 33 Staff Assistant (Economics) to the Chairman

213.3340 National Archives and Records Administration

NARA 3 Presidential Diarist to the Archivist of the United States

213.3341 National Labor Relations Board

NLRB 1 Confidential Assistant to the Chairman

213.3342 Export-Import Bank of the United States

EXIM 3 Administrative Assistant to the Director
EXIM 30 Administrative Assistant to the Director
EXIM 38 Assistant to the Chairman and President
EXIM 39 Assistant to the Chairman and President
EXIM 40 Assistant to the Chairman and President
EXIM 42 Assistant to the President and Chairman
EXIM 44 Personal and Confidential Assistant to the Vice Chairman
EXIM 45 Administrative Assistant to the Bank Director
EXIM 46 Administrative Assistant to the Chief of Staff
EXIM 47 Confidential Assistant to the President and Chairman
EXIM 48 Administrative Assistant to the Chairman

213.3343 Farm Credit Administration

FCA 1 Special Assistant to the Chairman
FCA 8 Secretary to the Chairman
FCA 11 Special Assistant to a Member
FCA 15 Congressional and Public Affairs Specialist to the Director of Congressional and Public Affairs

213.3344 Occupational Safety and Health Review Commission

OSHRC 2 Special Assistant to the Chairman of the Occupational Safety and Health Review Commission
OSHRC 3 Confidential Assistant to a Member (Commissioner)
OSHRC 11 Counselor to a Member (Commissioner)

213.3347 Federal Mediation and Conciliation Service

FMCS 7 Special Assistant to the Director, Federal Mediation Conciliation Service
FMCS 8 Public Affairs Director to the Director, Federal Mediation and Conciliation Service
FMCS 9 Staff Assistant to the Director, Federal Mediation and Conciliation Service

213.3348 National Aeronautics and Space Administration

NASA 21 Public Affairs Specialist to the Associate Administrator for Public Affairs
NASA 24 Legislative Affairs Assistant to the Special Assistant to the Associate Administrator for Legislative Affairs
NASA 25 Public Affairs Specialist to the Senior Public Affairs Specialist
NASA 26 Intergovernmental Affairs Specialist to the Associate Administrator Office of Policy and Plans
NASA 28 Public Affairs Specialist to the Associate Administrator for Public Affairs
NASA 29 Public Affairs Specialist to the Associate Administrator for Public Affairs

213.3351 Federal Mine Safety and Health Review Commission

FM 7 Attorney-Advisor (General) to a Commissioner
FM 17 Confidential Assistant to the Chairman
FM 19 Attorney-Advisor (General) to the Chairman
FM 22 Attorney-Advisor to the Chairman
FM 23 Confidential Assistant to a Commissioner

213.3352 Government Printing Office

GPO 3 Congressional and Public Affairs Officer to the Public Printer

213.3356 Commission on Civil Rights

CCR 9 Executive Assistant to the

Staff Director
CCR 10 Special Assistant to the Staff Director, Office of the Staff Director
CCR 12 Special Assistant to a Commissioner
CCR 13 Special Assistant to a Commissioner
CCR 14 Deputy General Counsel to the General Counsel, Office of the General Counsel
CCR 15 Special Assistant to a Commissioner
CCR 15 Special Assistant to a Commissioner
CCR 23 Special Assistant to a Commissioner
CCR 28 Special Assistant to a Commissioner
CCR 29 Special Assistant to a Commissioner
CCR 30 Special Assistant to a Commissioner
CCR 32 Special Assistant to a Commissioner

213.3357 National Credit Union Administration

NCUA 12 Executive Assistant to the Vice Chairman
NCUA 20 Executive Assistant to a Board Member
NCUA 21 Secretary (Typing) to a Board Member
NCUA 23 Special Assistant to the Executive Director
NCUA 24 Deputy Director to the Director of Community Development Credit Unions

213.3358 United States Court of Appeals for the Armed Forces

CAAF 1 Personal and Confidential Assistant to the Judge
CAAF 2 Personal and Confidential Assistant to the Chief Judge
CAAF 3 Private Secretary to the Judge
CAAF 4 Private Secretary to the Judge
CAAF 5 Personal and Confidential Assistant to the Judge
CAAF 6 Private Secretary to the Judge
CAAF 7 Private Secretary to the Judge, U.S. Court of Appeals for the Armed Forces
CAAF 8 Personal and Confidential Assistant to the Judge, U.S. Court of Appeals for the Armed Forces
CAAF 9 Personal and Confidential Assistant to the Judge, U.S. Court of Appeals for the Armed Forces
CAAF 10 Private Secretary to the Judge, U.S. Court of Appeals for the Armed Forces
CAAF 11 Paralegal Specialist to the Chief Judge
CAAF 12 Paralegal Specialist to the Chief Judge Court of Appeals for the Armed Forces
CAAF 13 Paralegal Specialist to the Judge, U.S. Court of Appeals for the Armed Forces
CAAF 14 Paralegal Specialist to the Judge, U.S. Court of Appeals for the Armed Forces

213.3359 Corporation for National and Community Service

CNCS 4 Executive Assistant to the Managing Director
CNCS 5 Special Assistant to the Director of Action
CNCS 7 Special Assistant to the Director
CNCS 10 Special Assistant to the Director of Public Liaison
CNCS 12 Special Assistant to the Director of Action
CNCS 13 Confidential Assistant to the Director of ACTION
CNCS 14 Legislative and Intergovernmental Specialist to the Director, Congressional and Intergovernmental Affairs
CNCS 17 Executive Assistant to the Vice President/Director, Domestic Volunteer Service Programs
CNCS 19 Special Assistant to the Director of Public Affairs
CNCS 20 Legislative Officer to the Director, Congressional and Intergovernmental Affairs
CNCS 22 Director, Higher Education and Youth Communication to the Director, Public Affairs
CNCS 23 Deputy Director to the Director, Domestic Volunteer Service Programs
CNCS 24 Director of Constituency Relations to the Director of Public Liaison
CNCS 25 Public Affairs Officer to the Chief External Affairs Officer

213.3360 Consumer Product Safety Commission

CPSC 49 Office of a Commissioner
CPSC 50 Staff Assistant to a Commissioner
CPSC 52 Director, Office of Information and Public Affairs to the Chairman
CPSC 53 Special Assistant to the Chairman
CPSC 55 Executive Assistant to the Chairman
CPSC 56 Director, Office of Congressional Relations to the Chairman
CPSC 59 Special Assistant to the Chairman
CPSC 60 Special Assistant to the Chairman
CPSC 61 Staff Assistant to a Commissioner
CPSC 62 Special Assistant to a Commissioner
CPSC 63 Special Assistant to a Commissioner

213.3361 Social Security Administration

SSA 1 Executive Assistant to the Commissioner, Social Security Administration
SSA 2 Special Assistant to the Principal Executive Officer

213.3364 U.S. Arms Control and Disarmament Agency

ACDA 2 Secretary (Steno O/A) to the Deputy Director, U.S. Arms Control and Disarmament Agency
ACDA 4 Secretary (Office Automation) to the Assistant Director, Intelligence, Verification and Information Support Bureau
ACDA 5 Secretary to the Assistant Director of the Nonproliferation and Regional Arms Control Bureau
ACDA 13 Confidential Assistant to the Special Representative to the Treaty on the Nonproliferation of Nuclear Weapons Office
ACDA 17 Secretary (OA) to the Director
ACDA 23 Confidential Assistant to the Assistant Director, Multilateral Affairs Bureau
ACDA 27 Special Assistant to the Director, U.S. Arms Control and Disarmament Agency
ACDA 28 Special Assistant to the Director, U.S. Arms Control and Disarmament Agency
ACDA 31 Speechwriter to the Director, U.S. Arms Control and Disarmament Agency
ACDA 35 Policy Analyst to the Director, U.S. Arms Control and Disarmament Agency
ACDA 36 Director of Public Information to the Director of Arms Control and Disarmament Agency

213.3367 Federal Maritime Commission

FMC 5 Counselor to a Commissioner
FMC 10 Special Assistant to a Commissioner
FMC 26 Administrative Assistant to the Counsel to the Chairman
FMC 30 Special Assistant to a Commissioner
FMC 31 Counsel to a Commissioner
FMC 32 Special Assistant to a Commissioner
FMC 33 Counsel to the Chairman
FMC 34 Special Assistant to a Commissioner
FMC 35 Counsel to a

Commissioner
FMC 36 Counsel to a Commissioner

213.3368 Agency for International Development

AID 125 Executive Assistant to the Chief of Staff
AID 127 Supervisory Public Affairs Specialist to the Director, Office of External Affairs
AID 130 Public Affairs Specialist to the Deputy Chief of Public Liaison Division, Office of External Affairs
AID 131 Public Affairs Specialist to the Chief of Public Liaison Division, Office of External Affairs
AID 133 Public Affairs Specialist to the Chief of Public Relations Division, Office of External Affairs
AID 134 Special Assistant to the Chief of Public Relations, Office of External Affairs
AID 135 Junior Press Officer to the Chief of Press Relations Division, Office of External Affairs
AID 136 Congressional Liaison Officer to the Deputy Assistant Administrator, Bureau of Legislative Affairs
AID 137 Congressional Liaison Officer to the Deputy Assistant Administrator, Bureau of Legislative Affairs
AID 138 Public Affairs Specialist to the Assistant Administrator, Bureau of Legislative and Public Affairs
AID 139 Deputy Director, Office of Public Affairs to the Assistant Administrator, Bureau of Legislative and Public Affairs
AID 141 Special Assistant and Legal Counsel to the General Counsel
AID 145 Public Affairs Specialist to the Chief, Public Liaison Office, Bureau for Legislation and Public Affairs
AID 146 Special Assistant to the Assistant Administrator, Bureau for Europe and New Independent States

213.3371 Office of Government Ethics

OGE 2 Executive Secretary to the Director, Office of Government Ethics

213.3373 United States Trade and Development Agency

TDA 2 Congressional Liaison Officer to the Director, Trade and Development Agency
TDA 3 Special Assistant for Policy and Public Affairs to the Director, Trade and Development Agency

213.3376 Appalachian Regional Commission

ARC 12 Senior Policy Advisor to the Federal Co-Chairman
ARC 13 Special Assistant to the Federal Co-Chairman

213.3377 Equal Employment Opportunity Commission

EEOC 9 Special Assistant to a Chairman
EEOC 13 Confidential Assistant to the Director, Legal Counsel
EEOC 15 Media Contact Specialist to the Director, Office of Communications and Legislative Affairs
EEOC 17 Special Assistant to a Commissioner
EEOC 18 Media Contact Specialist to the Director for the Office of Communications and Legislative Affairs
EEOC 22 Director Legislative Affairs Staff to the Director, Office of Communications and Legislative Affairs
EEOC 32 Special Assistant to a Commissioner
EEOC 34 Special Assistant for Communications and Special Projects to the Director, Office of Communications and Legislative Affairs
EEOC 41 Confidential Assistant to the Director, Office of Communications and Legislative Affairs

213.3379 Commodity Futures Trading Commission

CFTC 1 Administrative Assistant to the Chairman
CFTC 3 Administrative Assistant to a Commissioner
CFTC 4 Administrative Assistant to a Commissioner
CFTC 5 Administrative Assistant to a Commissioner
CFTC 6 Administrative Assistant to a Commissioner
CFTC 14 Special Assistant to a Commissioner
CFTC 26 Special Assistant to a Commissioner

213.3382 National Endowment for the Arts

NEA 9 Congressional Liaison Officer to the Chairman
NEA 68 Attorney Adviser to the Chairman
NEA 70 Special Assistant to the Chairman
NEA 72 Director of Policy, Planning and Research to the Chairman
NEA 73 Chief of Staff and White House Liaison to the Chairman
NEA 76 Executive Secretary to the Chairman
NEA 77 Director of Public Affairs to the Chairman, National Endowment for the Arts
NEA 78 Special Assistant to the Chairman
NEH 48 Congressional Liaison Officer to the Chairman
NEH 63 Special Assistant to the Chairman for Institutional Relations
NEH 65 Special Assistant to the Chairman
NEH 67 Special Assistant to the Deputy Chairman

213.3384 Department of Housing and Urban Development

HUD 39 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations
HUD 41 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations
HUD 42 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations, Office of Congressional and Intergovernmental Relations
HUD 45 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations
HUD 64 Staff Assistant to the Deputy Assistant Secretary for Operations, Office of Community Planning and Development
HUD 65 Special Assistant to the Assistant Secretary for Community Planning and Development
HUD 68 Special Assistant to the Assistant Secretary for Community Planning and Development
HUD 126 Special Assistant (Litigation Liaison) to the Assistant Secretary for Fair Housing and Equal Opportunity
HUD 137 Special Assistant to the Assistant Secretary for Fair Housing and Equal Opportunity
HUD 153 Executive Assistant to the President, Government National Mortgage Association
HUD 160 Special Assistant to the Assistant Secretary for Policy Development and Research
HUD 163 Special Assistant to the Deputy Assistant Secretary for Multifamily Housing Programs
HUD 176 Staff Assistant to the Special Assistant to Secretary
HUD 187 Special Assistant to the Deputy Assistant Secretary for Single Family Housing, Federal Housing Commission
HUD 188 Special Assistant to the

Assistant Secretary for Administration
HUD 190 Special Assistant to the Deputy Assistant Secretary for Multifamily Housing Programs
HUD 215 Special Assistant to the Assistant Secretary for Housing, Federal Housing Commission
HUD 238 Special Assistant to the Secretary of Housing and Urban Development
HUD 247 Special Assistant to the Assistant Secretary for Housing, Federal Housing Commissioner
HUD 249 Intergovernmental Relations Specialist to the Deputy Assistant Secretary for Intergovernmental Relations
HUD 259 Special Assistant to the Secretary of Housing and Urban Development
HUD 263 Special Assistant (Speechwriter) to the Assistant Secretary for Public Affairs, Office of Policy Support
HUD 272 Deputy Assistant Secretary for Grant Programs to the Assistant Secretary for Community Planning and Development
HUD 280 Special Assistant to the Assistant Secretary for Community Planning and Development
HUD 281 Special Administrator to Regional Administrator
HUD 288 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations
HUD 292 Special Assistant to the Deputy Assistant Secretary for Economic Development
HUD 317 Special Assistant to the Regional Administrator Regional Housing Commissioner, Region V, Chicago, IL
HUD 323 Executive Assistant to the Assistant Secretary for Housing, Federal Housing Commission
HUD 328 Deputy Assistant Secretary for Public Affairs to the Assistant Secretary for Public Affairs
HUD 335 Deputy Assistant Secretary for Economic Development to the Assistant Secretary for Community Planning and Development
HUD 336 Special Assistant to the Assistant Secretary for Administration
HUD 339 Special Assistant to the Secretary's Representative
HUD 340 Special Assistant to the Secretary
HUD 341 Special Assistant to the Secretary of Housing and Urban Development
HUD 354 Special Assistant to the Assistant Secretary for Public and Indian Housing
HUD 370 Special Assistant to the Assistant Secretary for Public and Indian Housing
HUD 372 Staff Assistant (Advance) to the Assistant Secretary for Administration, Office of Executive Scheduling
HUD 381 Special Assistant to the Secretary of Housing and Urban Development
HUD 384 Special Assistant to the Assistant Secretary for Public and Indian Housing
HUD 385 Special Assistant to the Assistant Secretary for Public Affairs, Office of Press Relations
HUD 387 Staff Assistant to the Assistant Secretary for Public Affairs
HUD 390 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Relations
HUD 398 Special Assistant to the Assistant to the Secretary for Field Management
HUD 400 Deputy Assistant Secretary for Legislation to the Assistant Secretary for Congressional and Intergovernmental Relations
HUD 404 Special Assistant to the Regional Administrator/ Regional Housing Commissioner, Region V, Chicago, IL
HUD 410 Special Assistant to the General Counsel
HUD 412 Special Assistant to the Secretary of Housing and Urban Development
HUD 418 Special Assistant to the Deputy Assistant Secretary for Distressed and Troubled Housing Recovery
HUD 421 Assistant Director to the Director, Executive Secretariat, Office of Administration
HUD 428 Special Assistant to the Assistant Secretary for Public and Indian Housing
HUD 436 Staff Assistant to the Director, Office of Executive Scheduling
HUD 437 Special Assistant to the Assistant Secretary for Public Affairs
HUD 438 Director, Hospital Mortgage Insurance Staff to the Assistant Secretary for Housing-Federal Housing Commissioner
HUD 441 Deputy Assistant Secretary for Policy Development to the Assistant Secretary for Policy Development and Research
HUD 445 Special Assistant to the Deputy Assistant Secretary for Economic Development
HUD 446 Senior Intergovernmental Relations Officer to the Deputy Assistant Secretary for Intergovernmental Relations
HUD 447 Special Assistant to the Assistant Secretary for Administration
HUD 448 Special Assistant to the Assistant Secretary for Administration
HUD 449 Legislative Assistant to the Deputy Assistant Secretary for Legislation, Office of Congressional and Intergovernmental Relations
HUD 450 Special Assistant to the Deputy Assistant Secretary for Federal Relief-South Dade County (Miami, FL)
HUD 452 Deputy Director, Special Actions Office to the Director, Special Actions Office
HUD 457 Staff Assistant to the Deputy Assistant Secretary for Federal Relief (South Dade County)
HUD 458 Special Assistant to the Assistant Secretary for Administration
HUD 460 Staff Assistant to the Assistant Secretary for Administration
HUD 461 Special Assistant to the Chief Financial Officer
HUD 462 Staff Assistant to the Assistant Secretary for Administration
HUD 466 Director, Special Actions Office to the Secretary
HUD 468 Special Assistant to the Deputy Assistant Secretary for Economic Development, Office of Community Planning and Development
HUD 469 Special Assistant to the Deputy Assistant Secretary for Economic Development, Office of Community Planning and Development
HUD 470 Staff Assistant to the General Counsel
HUD 471 Special Projects Officer, Boston, MA, to the Senior Advisor to the Secretary
HUD 472 Deputy Assistant Secretary for Congressional Relations to the Assistant Secretary for Congressional and Intergovernmental Relations
HUD 474 Special Assistant to the Deputy Assistant Secretary for Distressed and Troubled Housing
HUD 478 Special Projects Officer to the Senior Advisor to the Secretary
HUD 480 Special Assistant to the Deputy Assistant Secretary for Distressed and Troubled Housing
HUD 481 Special Projects Officer to the Director, Special Actions Office
HUD 482 Special Projects Officer

to the Director, Special Actions Office
HUD 483 Special Assistant (Advance/Security) to the Director, Executive Scheduling
HUD 485 Special Assistant (Advance) to the Assistant Secretary for Administration, Office of Executive Scheduling
HUD 487 Staff Assistant (Advance) to the Assistant Secretary for Administration, Office of Executive Scheduling
HUD 488 Special Assistant to the Director, Office of Distressed and Troubled Housing Recovery
HUD 489 Special Assistant to the Deputy Assistant Secretary for Distressed and Troubled Housing
HUD 490 Special Advisor to the Assistant Secretary for Community Planning and Development
HUD 491 Deputy Assistant Secretary for Planning to the Assistant Secretary for Community Planning
HUD 492 Special Assistant to the Deputy Assistant, Assistant Secretary for Economic Development
HUD 494 Intergovernmental Relations Specialist to the Deputy Assistant Secretary for Intergovernmental Relations
HUD 495 Community Outreach Officer to the Senior Advisor to the Secretary
HUD 496 Staff Assistant to the Deputy Assistant Secretary for Intergovernmental Relations
HUD 498 Special Projects Officer to the Senior Advisor to the Secretary
HUD 500 Deputy Assistant Secretary for Plan and Policy to the Assistant Secretary, Office of Congressional and Intergovernmental Relations
HUD 501 Executive Assistant to the Assistant Secretary for Community Planning and Development
HUD 502 Special Assistant to the Deputy Assistant Secretary for Distressed and Troubled Housing Recovery
HUD 503 Special Projects Officer to the Deputy Secretary, Field Management
HUD 504 Special Assistant to the Deputy Assistant Secretary for Distressed and Troubled Housing
HUD 505 Legislative Officer to the Deputy Assistant Secretary for Legislation
HUD 506 Deputy Assistant Secretary for Empowerment Zones to the Assistant Secretary for Community Planning and Development
HUD 507 Field Operations Officer to the Secretary's Representative
HUD 508 Special Assistant/ Director of Scheduling to the Secretary
HUD 509 Special Assistant to the Assistant Secretary for Public and Indian Housing
HUD 510 Special Assistant to the Secretary of Housing and Urban Development
HUD 511 Special Projects Officer to the Secretary's Representative, Mid-Atlantic Office

213.3389 National Mediation Board

NMB 52 Confidential Assistant to a Board Member
NMB 53 Confidential Assistant to a Board Member
NMB 54 Confidential Assistant to the Chairman

213.3391 Office of Personnel Management

OPM 7 Deputy Director to the Director, Office of Congressional Relations
OPM 62 Confidential Assistant to the Director
OPM 63 Confidential Assistant to the Director, Office of Congressional Relations
OPM 64 Director of Program Management to the Chief of Staff
OPM 65 Special Assistant to the Director, Office of Congressional Relations
OPM 67 Executive Assistant to the Deputy Director
OPM 68 Deputy Director, Office of Communications to the Director, Office of Communications
OPM 71 Special Assistant to the Director, Office of Congressional Relations
OPM 72 Director of International Affairs to the Director
OPM 73 Public Affairs Specialist to the Deputy Director, Office of Communications
OPM 74 Public Affairs Specialist to the Deputy Director, Office of Communications
OPM 76 Speech Writer to the Director, Office of Communications
OPM 78 Coordinator, Interagency Affairs to the Director of Agency Initiatives

213.3392 Federal Labor Relations Authority

FLRA 13 Staff Assistant to the General Counsel
FLRA 14 Executive Assistant to the General Counsel
FLRA 15 Public Affairs Officer to the Chairman
FLRA 19 Staff Assistant to the Chairman

213.3393 Pension Benefit Guaranty Corporation

PBGC 7 Assistant Executive Director for Legislative Affairs to the Executive Director
PBGC 11 Special Assistant to the Deputy Executive Director and Chief Financial Officer
PBGC 14 Special Assistant to the Deputy Executive Director and Chief Financial Officer

213.3394 Department of Transportation

DOT 54 Congressional Liaison Officer to the Director, Office of Congressional Affairs
DOT 55 Senior Congressional Liaison Officer to the Director of Congressional Affairs
DOT 61 Special Assistant to the Deputy Secretary of Transportation
DOT 69 Public Affairs Officer to the Administrator, Federal Railroad Administration
DOT 70 Special Assistant to the Assistant Secretary for Governmental Affairs
DOT 100 Chief, Consumer Information Division to the Director, Office of Public and Consumer Affairs
DOT 105 Staff Assistant to the Administrator, Federal Highway Administration
DOT 127 Special Assistant and Chief, Administrative Operations Staff to the Assistant Secretary for Budget and Programs
DOT 128 Special Assistant to the Deputy Administrator, Federal Highway Administration
DOT 129 Special Assistant to the General Counsel
DOT 142 Intergovernmental Relations Officer to the Director, Intergovernmental and Consumer Affairs
DOT 147 Special Assistant to the Assistant to Secretary and Director of Public Affairs
DOT 148 Associate Director of Media Relations and Special Projects to the Assistant to the Secretary and Director of Public Affairs
DOT 150 Special Assistant to the Administrator, National Highway Traffic Safety Administration
DOT 151 Director of Technology Deployment to the Deputy Secretary of Transportation
DOT 173 Special Assistant to the Administrator, Federal Railroad Administration
DOT 217 Special Assistant to the

Administrator, Research and Special Programs Administration
DOT 226 Special Assistant to the Maritime Administrator
DOT 235 Special Assistant for Scheduling and Advance to the Secretary of Transportation
DOT 254 White House Liaison to the Chief of Staff
DOT 257 Deputy Director of Public Affairs to the Assistant to the Secretary and Director of Public Affairs
DOT 265 Special Assistant to the Director of External Communications
DOT 271 Special Assistant to the Administrator Federal, Aviation Administration
DOT 274 Special Assistant to the Associate Director for Media Relations and Special Projects
DOT 279 Associate Director for Speechwriting and Research to the Assistant to the Secretary and Director of Public Affairs
DOT 287 Scheduling Assistant to the Special Assistant for Scheduling and Advance, Office of the Secretary
DOT 292 Intergovernmental Liaison Officer to the Director of Intergovernmental Affairs
DOT 294 Special Assistant to the Associate Deputy Secretary
DOT 296 Special Assistant to the Deputy Administrator, Maritime Administration
DOT 301 Director, Office of Intergovernmental Affairs and Consumer Affairs to the Assistant Secretary for Governmental Affairs
DOT 315 Director of Intergovernmental Affairs to the Administrator, National Highway Traffic Safety Administration
DOT 316 Special Assistant to the Assistant Secretary for Transportation Policy
DOT 317 Deputy Assistant Administrator for Government and Industry Affairs to the Assistant Administrator for Government and Industry Affairs, Federal Aviation Administration
DOT 319 Congressional Liaison Officer to the Assistant Administrator for Government and Indian Affairs
DOT 320 Special Assistant to the Secretary of Transportation
DOT 324 Scheduling Assistant to the Special Assistant for Scheduling and Advance
DOT 338 Special Assistant to the Deputy Administrator, Federal Highway Administration
DOT 341 Congressional Liaison Officer to the Director, Office of Congressional Affairs
DOT 342 Special Assistant to the Special Assistant for Scheduling and Advance
DOT 347 Deputy Scheduler to the Special Assistant for Scheduling and Advance
DOT 351 Special Assistant to the Deputy Secretary
DOT 352 Regional Administrator, Region II, New York, N.Y. to the Deputy Administrator, Federal Transit Administration
DOT 353 Special Assistant to the Director, Bureau of Transportation Statistics

213.3395 Federal Emergency Management Agency

FEMA 53 Policy Advisor to the Director, Federal Emergency Management Agency

213.3396 National Transportation Safety Board

NTSB 1 Special Assistant to a Member
NTSB 25 Special Assistant to a Member
NTSB 30 Confidential Assistant to the Chairman
NTSB 31 Confidential Assistant to the Chairman
NTSB 92 Director, Office of Government Affairs to the Chairman
NTSB 106 Director, Office of Public Affairs to the Chairman

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954-1958 Comp., P.218

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

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Wednesday
August 30, 1995

Part III

Department of Agriculture

Forest Service

36 CFR Parts 251 and 261
Land Uses and Prohibitions; Final Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 251 and 261

[RIN 0596–AA80]

Land Uses and Prohibitions

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the existing rules governing noncommercial group uses and noncommercial distribution of printed material within the National Forest System. These revisions ensure that the authorization procedures for these activities comply with First Amendment requirements of freedom of speech, assembly, and religion, while providing a reasonable administrative system for allocating space among scheduled and existing uses and activities, addressing concerns of public health and safety, and controlling or preventing adverse impacts on forest resources.

EFFECTIVE DATE: This rule is effective September 29, 1995.

FOR FURTHER INFORMATION CONTACT: John Shilling, telephone number (202) 205–1426, or Sharon Prell, telephone number (202) 205–1414, Recreation, Heritage, and Wilderness Resources Management Staff (2340), Forest Service, USDA, PO Box 96090, Washington, DC 20090–6090, or Ellen R. Hornstein, telephone number (202) 720–9616, Natural Resources Division, Office of the General Counsel, USDA.

SUPPLEMENTARY INFORMATION:

Statutory and Regulatory Background

The First Amendment of the United States Constitution provides in part that the government may not abridge the freedom of speech or the right to assemble peaceably and that the government may not pass laws prohibiting the free exercise of religion (U.S. Const., amend. I). Freedom of speech means the right to disseminate ideas freely, both orally or in writing. Free exercise of religion means the right to practice one's religion freely.

It is well established that the government may enforce reasonable time, place, and manner restrictions on First Amendment activities. Such restrictions are constitutional when justified without regard to the content of the regulated speech, when narrowly tailored to further a significant governmental interest, and when they leave open ample alternative channels for communication of information. *Clark* v. *Community for Creative Non-Violence,* 468 U.S. 288, 293 (1984). Permits have been recognized as constitutional restrictions of time, place, and manner for activities involving the expression of views, including religious gatherings, when specific and objective standards guide the licensing authority. *Shuttlesworth* v. *City of Birmingham,* 394 U.S. 147, 150–51, 153 (1969); *Cantwell* v. *Connecticut,* 310 U.S. 296, 304–05 (1940).

On March 3, 1891, Congress authorized the President to set aside federal lands as public forest reservations (16 U.S.C. 471). On June 4, 1897, Congress directed the Secretary of the Interior to protect the forests within those reservations and to regulate their occupancy and use (16 U.S.C. 551). On February 1, 1905, Congress transferred the authority to manage the national forest from the Secretary of the Interior to the Secretary of Agriculture (16 U.S.C. 472).

Today there is 155 national forests comprising approximately 191 million acres in 42 States, the Virgin Islands, and Puerto Rico. These forests, together with 20 national grasslands, land utilization projects, purchase units, and other lands, constitute the National Forest System.

The Forest Service, an agency of the United States Department of Agriculture, is charged with managing the resources of the National Forest System for multiple uses as well as for the provision of goods, services, and other amenities for current and future generations. The Multiple-Use Sustained-Yield Act of 1960 (MUSY) (16 U.S.C. 528–531) authorizes the Forest Service to manage diverse public, private, governmental, and commercial uses of National Forest System lands. These uses are collectively known as special uses.

The Forest Service regulates activity on National Forest System lands by issuing special use authorizations. Issuing special use authorizations allows the Forest Service to protect resources and improvements on National Forest System lands, to allocate space among potential or existing uses and activities, and to address concerns of public health and safety. The rules at 36 CFR part 251, subpart B, govern the issuance of special use authorizations for all uses of National Forest System lands, improvements, and resources, except for the disposal of timber (part 223) and minerals (part 228) and the grazing of livestock (part 222).

The Forest Service administers approximately 65,000 special use authorizations annually. Examples of authorized uses include ski resorts and marinas, campground concessions, pipelines, communication sites, and commercial outfitting and guiding services. Competition for available sites for these uses and activities has increased as more legal restrictions, such as the Endangered Species Act (ESA) (16 U.S.C. 531 *et seq.*) and the National Historic Preservation Act (NHPA) (16 U.S.C. 470 *et seq.*), have been placed on the use of National Forest System lands.

The Forest Service hosts many types of group activities, both commercial and noncommercial, on National Forest System lands. Examples of these activities include fishing contests, mountain bicycle and motorcycle races, group camping, hikes, and horseback rides, and demonstrations and assemblies.

Large group gatherings in the national forests have significant adverse impacts on forest resources, public health and safety, and the agency's ability to allocate space in the face of increasing constraints on the use of National Forest System lands. These adverse impacts include the spread of disease, pollution from inadequate site cleanup, soil compaction from inadequate site restoration, damage to archaeological sites, and traffic congestion.

On June 21, 1984, the Secretary of Agriculture promulgated a revision to 36 CFR part 251, subpart B. The purpose of the rule was to allow the Forest Service to protect forest resources, to address concerns of public health and safety, and to allocate space among uses and activities by regulating all types of noncommercial group uses. The rule required a special use authorization for two types of noncommercial group uses, recreation events and special events, both of which involved ten or more participants or spectators. As defined, recreation events included activities involving competition, entertainment, or training, and special events included meetings, assemblies, demonstrations, parades, or other activities involving the expression of views. Noncommercial groups that did not fall into either of these categories did not require a special use authorization. Moreover, the rule contained different standards for denying a special use authorization for each type of group use (49 FR 25449).

Subsequently, a federal district court held that it is unconstitutional to require a group to obtain a special use authorization simply because its members gather to exercise their constitutional right of free speech. The court explained that the Forest Service has the right to regulate large group activities on government land, but only if the regulation is content-neutral and

applies to all large groups. *United States* v. *Israel,* No. CR–86–027–TUC–RMB (D. Ariz. May 10, 1986).

On May 10, 1988, the Forest Service published an interim rule amending 36 CFR 251.50 through 251.54 to comport with First Amendment rights of assembly and free speech within the National Forest System (53 FR 16548). Upon challenge of this rule, a federal district court held that the Forest Service had failed to show good cause for adopting the interim rule without prior notice as required by the Administrative Procedure Act (APA) under 5 U.S.C. 553. *United States* v. *Rainbow Family,* 695 F. Supp. 294, 302–06 (E.D. Tex. 1988). In addition, the court invalidated the classification established by the 1984 rule, which on its face singled out group uses involving expressive activities and required that they be treated differently from other types of group uses. The court held that the 1984 rule lacked clear and objective standards for determining when a group activity is a ''recreation event'' and when it is a ''special event'' involving the exercise of free speech. *Rainbow Family,* 695 F. Supp. at 309, 312. The court further held that the standards for evaluating an application for an authorization for expressive conduct were unconstitutionally vague as they vested too much discretion in the authorized officer. *Id.* at 309–12. The court also ruled that the 1984 regulations were invalid for failure to impose a timeframe for filing and acting on an application and that the absence of any requirement in the 1984 regulations that a reason be stated for denial of a special use authorization made it impossible to discern the grounds for an authorized officer's decision. *Id.* at 311–12. Finally, the court held that the 1984 rule was invalid for failure to provide for judicial review of the administrative determination. *Id.* at 311.

As a result of these court rulings, on May 6, 1993, the Forest Service published a proposed rule to regulate noncommercial group uses and noncommercial distribution of printed material on National Forest System lands in compliance with First Amendment requirements of assembly and free speech (58 FR 26940). To achieve this goal, the proposed rule contained specific, content-neutral criteria for evaluating applications for noncommercial group uses and noncommercial distribution of printed material and required that the same criteria be applied to those activities regardless of whether they involve the exercise of First Amendment rights. The proposed rule also required an authorized officer to notify an applicant in writing of the reasons for denial of a special use authorization and provided for immediate judicial review of a decision denying an authorization.

In addition to publishing the proposed rule in the **Federal Register**, the Forest Service gave direct notice of the proposed rule to numerous interested parties and invited their comments. The comment period for the proposed rule lasted 90 days, closing August 4, 1993.

Summary of Comments and Responses

A total of 603 comments were received during the comment period. Of these, 590 comments were received from individuals, two from elected officials, one from a State department of health, and ten from organizations, including two chapters of the American Civil Liberties Union. Most comments were individually written letters or postcards; several comments were form letters and some were petitions containing 20,451 signatures. All comments have been given full consideration in adoption of this final rule.

General Comments

Comment. Freedom of Assembly. Approximately 175 respondents stated that requiring permits for expressive activities violates the constitutional right of assembly. Most of these respondents indicated that the First Amendment right of assembly is absolute and that any attempt to regulate assemblies on public land is invalid *per se.* Specific and recurrent comments from these respondents were as follows:

—That the special use authorization requirement in the proposed rule is generally illegal;
—That no possible governmental interest can justify restrictions on free speech;
—That any regulation of First Amendment activities is content-based *per se;*
—That there are no acceptable criteria by which to judge an application for authorization of First Amendment activities;
—That *Clark* v. *Community for Creative Non-Violence,* 468 U.S. 288 (1984), a case cited in the preamble in support of the proposed rule, violates both the letter and spirit of the Bill of Rights;
—That the significant governmental interest standard should not apply because it is too low to justify abridgment of constitutional rights, and that the standards of compelling governmental interest and clear and present danger should apply instead;
—That *Clark* v. *Community for Creative Non-Violence,* 468 U.S. 288 (1984), and *Shuttlesworth* v. *City of Birmingham,* 394 U.S. 147 (1969), cases cited in the preamble in support of the proposed rule, are too recent and untested;
—That although courts may allow reasonable time, place, and manner restrictions on First Amendment activities, the United States Constitution is still the highest law of the land;
—That the United States Constitution is a permit;
—That humanity is a permit;
—That Americans do not need authorization to exercise basic constitutional rights;
—That the proposed rule imposes a prior restraint and is an undue burden on the public;
—That the Rainbow Family cannot comply with the permit requirement;
—That rights cannot be extinguished by decree of an executive agency;
—That one person should not be able to tell another person what to do;
—That everyone should be able to choose when and where they want to gather on public land and distribute noncommercial printed material;
—That in exercising their First Amendment right of assembly, people should be able to act as they please;
—That national forests should remain open to all;
—That national forests are supported by tax dollars and that taxpayers have a right to gather on public lands;
—That public land belongs to the people and that they should be able to use it without a permit;
—That the proposed rule discriminates against humans, who are given fewer rights than animals to gather in the national forests;
—That assemblies on the national forests provide thousands of people with a fine vacation; and
—That if a similar rule were applied in cities or towns, the rule would amount to imposition of martial law.

Response. The United States Supreme Court, the highest court in the country, is the ultimate arbiter of the United States Constitution. *Marbury* v. *Madison,* 5 U.S. (1 Cranch) 137, 177–78 (1803). As noted in the preamble to the proposed rule and the preamble to this final rule, the Supreme Court has repeatedly held that the government may enforce reasonable time, place, and manner restrictions on First Amendment activities. Such restrictions are appropriate where they are content-neutral, where they are narrowly tailored to further a significant

governmental interest, and where they leave open ample alternative channels for communication of information. *Clark* v. *CCNV*, 468 U.S. at 293. Permits have been recognized as constitutional restrictions of time, place, and manner for expressive activities when specific and objective standards guide the licensing authority. *Shuttlesworth*, 394 U.S. at 150–51, 153. Both *Clark* v. *CCNV* and *Shuttlesworth* involve time, place, and manner restrictions on demonstrations in urban areas. *Clark* v. *CCNV* has been cited nearly 400 times by numerous courts, including over 40 times by the Supreme Court. *Shuttlesworth* has been cited over 600 times by numerous courts, including over 50 times by the Supreme Court. These cases have been extensively tested.

The final rule meets the constitutional requirements of *Clark* v. *CCNV* and *Shuttlesworth*. The final rule does not restrict, and is not intended to restrict, freedom of thought or expression, nor does the final rule prohibit expressive activities. Rather, the final rule establishes a permit system with specific and objective standards that further the significant governmental interests of resource protection, allocation of space in the face of greater restrictions on the use of public land, and promotion of public health and safety. The final rule presumes that a special use authorization will be granted and restricts the content of an application to information concerning time, place, and manner for activities subject to the rule. Under the final rule, if an application is denied and an alternative time, place, or manner will allow the applicant to meet the evaluation criteria, the authorized officer must offer that alternative.

Comment: Free Exercise of Religion. Forty-eight respondents commented that the proposed rule infringes on the free exercise of religion. Specifically, these respondents stated that permits are unconstitutional as applied to religious activity, citing *Shuttlesworth* and *Cantwell*; that Rainbow Family Gatherings are protected under the free exercise clause of the United States Constitution; that Rainbow Family Gatherings involve the exercise of religion; that Rainbow Family Gatherings are a religious experience; that Rainbow Gatherings provide spiritual growth; that the woods are the Rainbow Family's church; that people choose to gather with those of similar religious beliefs in the cathedral of nature; that the proposed rule would restrict gatherings for the purpose of spiritual expression; that the proposed rule targets those who go to the forest to worship; and that, to many, particularly Native Americans, public land includes sacred ground.

Response. The final rule does not infringe and is not intended to infringe upon the free exercise of religion. Under *Shuttlesworth* and *Cantwell*, permits have been recognized as constitutional restrictions of time, place, and manner for activities involving the expression of views, including religious gatherings, when specific and objective standards guide the licensing authority. 394 U.S. at 150–51, 153; 310 U.S. at 304–05. In *Cantwell*, the Supreme Court stated that the regulation of solicitation generally in the public interest is constitutional where the regulation does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, even if the collection is for a religious purpose. The Court held that this type of regulation does not constitute a prohibited prior restraint or impose an impermissible burden on the free exercise of religion. *Id*. at 305.

Similarly, this final rule is a general regulation in the public interest, does not involve any religious test, and does not unreasonably obstruct or delay activities subject to the rule. Therefore, the final rule is not open to any constitutional objection under the Free Exercise Clause of the First Amendment, even if some of the activities subject to the rule are for a religious purpose.

Requiring a special use authorization for all group uses of National Forest System lands does not substantially burden the free exercise of religion and therefore does not trigger the compelling interest standard under the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb note).

The Supreme Court has held that the nature of the burden is relevant to the standard the government must meet to justify the burden. *Bowen, Secretary of Health and Human Serv.* v. *Roy*, 476 U.S. 693, 707 (1986). In cases in which the Supreme Court has invalidated a governmental action that interfered with an individual's practice of religion, the Court has relied directly or indirectly on the coercive nature of the governmental action or regulation and the imposition of penalties on the free exercise of religion. *See, e.g., Thomas* v. *Review Bd. of Indiana Employment Sec. Div.*, 450 U.S. 707, 716–17 (1991) (denial of unemployment benefits to applicant whose religion forbade him to fabricate weapons); *Wisconsin* v. *Yoder*, 406 U.S. 205, 218–19 (1972) (enforcement of compulsory high school attendance law against Amish, in violation of their religion and way of life); *Sherbert* v. *Verner*, 374 U.S. 398, 403–06 (1963) (denial of unemployment compensation benefits to applicant who refused to accept work requiring her to violate the Sabbath). In these cases, the governmental action or legislation criminalized religiously inspired activity or inescapably compelled conduct that some find objectionable for religious reasons.

In contrast, the Supreme Court has upheld governmental action or regulation that indirectly and incidentally imposes a burden on the practice of religious beliefs or calls for a choice between securing a governmental benefit and adherence to religious beliefs. *See, e.g., Roy*, 476 U.S. at 707–08 (federal statute requiring states in administering certain welfare programs to use Social Security numbers, where use of these numbers violated Native American applicants' religious beliefs); *Hamilton* v. *Regents of University of California*, 293 U.S. 245, 262–65 (1934) (curriculum in state university requiring all students to take military courses, where some students sought exclusion from those courses on grounds of their religious beliefs and conscientious objections to war). In these cases, the challenged governmental action interfered significantly with the ability of private persons to pursue spiritual fulfillment according to their own religious beliefs. In none of these cases, however, were the affected individuals coerced by the government's action into violating their religious beliefs, nor did the governmental action penalize religious activity by denying any person an equal share of the rights, benefits, and privileges enjoyed by other citizens. *Roy*, 476 U.S. at 703. Under these cases, absent proof of an intent to discriminate against particular religious beliefs or against religion in general, the government meets its burden when it demonstrates that a challenged requirement for governmental benefits, neutral and uniform in its application, is a reasonable means of promoting a legitimate public interest. *Id*. at 707–08.

Like the governmental action in *Hamilton* and *Roy*, this final rule has no direct or indirect tendency to coerce individuals into acting contrary to their religious beliefs. Nothing in the final rule suggests antagonism by the Department towards religion generally or towards any particular religious beliefs. The special use authorization requirement for group uses is facially neutral and applies to all types of these activities. The Department has made no provisions for individual exemptions to this requirement. Moreover, the requirement is a reasonable means of

promoting the legitimate public interests of resource protection, allocation of space in the face of increasing competition for the use of National Forest System lands, and promotion of public health and safety.

Comment: Noncommercial Distribution of Printed Material. Several respondents commented on some issues pertaining to the requirement to obtain a special use authorization for noncommercial distribution of printed material. Approximately 19 respondents stated that the agency's concerns about adverse impacts associated with noncommercial distribution of printed material are hypothetical or inadequate to justify the regulation. One respondent stated that the Bible or other religious tracts could be banned under the proposed rule. Four respondents stated that the special use authorization requirement for noncommercial distribution would allow the agency to censor printed material. Six respondents stated that the proposed rule singles out expressive conduct in regulating noncommercial distribution of printed material. Three respondents stated that the agency can address resource problems associated with noncommercial distribution by establishing a specific and objective policy on posting, fixing, or erecting printed material and on maintaining safe traffic conditions, rather than deciding on a case-by-case basis where and when the activity will be allowed.

One respondent, citing *United States* v. *Picciotto,* 875 F.2d 345 (D.C. Cir. 1989), argued that resource problems associated with posting, affixing, or erecting printed material cannot be addressed by adding unpublished conditions to special use authorizations, and that any desired restrictions must be published in a rule. Another respondent advised the agency to promulgate regulations making each group responsible for its own discarded printed material. Three respondents commented that regulations already exist for dealing with resource impacts associated with distribution of printed material. Seven respondents questioned where they could distribute noncommercial printed material if they could not do it on public lands. One respondent stated that distribution is defined too broadly in the proposed rule to allow for ample alternative channels of communication. Five respondents stated that the special use authorization requirement for noncommercial distribution of printed material could have the effect of stifling legitimate public protests of Forest Service activities. One respondent commented that a permit for noncommercial distribution of printed material could be denied for any reason.

Response. The Department has carefully examined the special use authorization requirement for noncommercial distribution of printed material. Based on the comments received on resource impacts and on the Department's review of resource impacts associated with noncommercial distribution of printed material, the Department has determined that these impacts are not significant enough to warrant regulation at this time. Therefore, the Department has removed from the final rule the special use authorization requirement for noncommercial distribution of printed material.

Comment: Significant Governmental Interests. Approximately 75 respondents commented that the Forest Service had not established a significant interest in promulgating the rule. Specifically, these respondents stated that there is no significant governmental interest in protecting the nation's public lands; that the Forest Service's mandate to protect the national forests under 16 U.S.C. 551 is not at issue; that there is no beneficial reason for the regulation; that the proposed rule fails the significant governmental interest test in *Clark* v. *CCNV*; that time, place, and manner restrictions are being imposed without an initial finding that they are required; and that restrictions on group uses should exist only when there is a clear environmental reason.

Respondents also stated that the agency's concerns about resource impacts are hypothetical or vague and insignificant; that the agency needs proof of resource damage in order to justify the proposed rule; that the agency has not cited evidence that 25 or more people have a greater impact on forest resources and facilities than fewer than 25 people; that 25 or even several hundreds of people gathered for peaceful purposes cannot be a threat to public safety or the environment; that the collective impact on forest resources by a group is equal to or less than the cumulative impact of an identical number of individuals; that it is easier to monitor large group gatherings than small bands of individuals; that individuals in aware groups can monitor each other; that the respondent takes care of the land; that the respondents are not harming the land; that unlike off-road motorcycle races, activities involving the expression of views do not harm forest resources; that group uses cannot cause irreparable damage; that the proposed regulation would take the national forests away from people who gather there at no one else's expense; that large group gatherings do not cost the government a lot of money; and that there have not been any public health problems associated with group uses.

Approximately 30 respondents recognized the Forest Service's significant interest in protection of forest resources. In particular, these respondents stated the following:

—That requiring a special use authorization is appropriate if the size of a group exceeds the capacity of a given area, including campgrounds and parking and staging areas;
—That to protect natural resources, it may be necessary for the Forest Service to regulate activity on National Forest System lands through issuance of special use authorizations;
—That to further the public interest, there is sometimes a need for the government to require a special use authorization for some First Amendment activities;
—That the concerns associated with large numbers of people gathering on unspoiled land are a challenge and that the people's right to assemble needs to be balanced against the custodial responsibility of the Forest Service;
—That any reasonable rules that would protect and preserve the integrity of the National Forest System are appropriate, that the National Forest is an invaluable asset that must be accessible to responsible public use, and that the Forest Service is charged with balancing these concerns;
—That the Forest Service has a mandate to manage National Forest System lands;
—That gatherings on public lands should be subject to guidelines established by the Forest Service;
—That some rules and regulations are essential;
—That regulations protecting natural resources are warranted, provided the rules do not infringe upon constitutional rights and provided they target only those who damage natural resources;
—That any rule that helps preserve the national forests is appropriate;
—That restricting access to National Forest System lands is permissible where human impact would harm native wildlife;
—That sanitation and site clean-up are important;
—That the agency's concern for the safety and integrity of the national forests is appropriate;
—That Forest Service employees are to be commended for dedicating their lives to protecting the national forests so that all can enjoy them;

—That the Forest Service gets paid to protect the national forests and the safety of forest visitors;
—That the agency should be concerned about the well-being of the national forests and those who use them;
—That more people have a greater impact on forests;
—That 25 or more people would definitely have a greater impact on resources and facilities than a smaller group of people.

Response. As numerous respondents noted, the Forest Service has a mandate to protect the 155 national forests and regulate their occupancy and use for all members of the public (16 U.S.C. 472, 551). Under that mandate, the Department has established three significant interests in promulgating this rule: (1) Protection of forest resources and facilities; (2) promotion of public health and safety; and (3) allocation of space in the face of greater competition for the use of National Forest System lands. While noncommercial group use is an appropriate use of National Forest System lands and exercise of First Amendment rights is extremely important, it is vital to address these significant interests. Numerous respondents have also recognized that these interests are significant. In addition, the Supreme Court has specifically held that protection of public lands for current and future generations is a significant governmental interest. *See Clark* v. *CCNV,* 468 U.S. at 296.

The Forest Service has encountered a variety of problems in connection with noncommercial group use of National Forest System lands. These problems, which are attributable to the size of groups, the concentration of people in a given area, and the physical intensity of the use, have arisen in connection with many different types of noncommercial group uses, both those involving and those not involving the expression of views. These problems have included the spread of disease, pollution from inadequate site clean-up, soil compaction from inadequate site restoration, resource damage in critical salmon habitat, resource damage in riparian zones and meadows, damage to archaeological sites, and traffic congestion.

Although one individual could cause much damage, for example, by setting a forest fire, and a series of individuals could perhaps over time have a significant impact on forest resources, in the Forest Service's experience large groups typically have more impact on a given area than individuals and, with limited exceptions, a special use authorization is not needed for individual uses. Regardless of whether the damage caused by these problems is irreparable, the Department believes that it would further the public interest to control or prevent the damage through a special use authorization system for noncommercial group uses. The authorization system also will allow the Forest Service to allocate space among noncommercial group uses and scheduled and existing uses and activities, including protection of habitat for endangered, threatened, or other plant and animal species.

Comment. Adverse Impacts of Group Uses. Approximately 64 respondents argued that other activities, such as off-road motorcycling, clear-cutting, mining, and grazing, have a greater impact on forest resources than noncommercial group uses. Specifically, these respondents stated:

—That the agency's resource impacts rationale seems inadequate, given that the disposal of timber and minerals and the grazing of livestock are exempted from regulation;
—That noncommercial uses and activities are regulated more stringently than other uses that have greater impacts;
—That noncommercial uses and activities should not be included in the same regulatory framework as other special uses, such as the disposal of timber and minerals and the grazing of livestock, that have greater impacts;
—That under the proposed rule, exploitation of the forest for monetary gain would take precedence over the right to assemble;
—That the Forest Service has done more damage to public lands than noncommercial group uses;
—That commercial uses of the national forests should be banned; and
—That clear-cutting authorized by the agency was responsible for the listing as an endangered species of a fresh water mussel in a creek at the site of the 1993 Alabama Rainbow Family Gathering.

Response. The Department disagrees with these comments. The disposal of timber and minerals and the grazing of livestock are not exempted from regulation. As noted in the preamble to the proposed and final rules, the disposal of timber is regulated in 36 CFR part 223; the disposal of minerals is regulated in 36 CFR part 228; and the grazing of livestock is regulated in 36 CFR part 222. The disposal of timber and minerals and the grazing of livestock are thus subject to separate regulations from noncommercial uses and activities. The regulation of timber and mineral disposal and livestock grazing has no bearing on the regulation of noncommercial uses and activities, including activities involving the expression of views. All other commercial uses and activities of National Forest System land require a special use authorization under 36 CFR part 251, subpart B. All commercial uses of National Forest System lands undergo environmental and other reviews prior to approval of any on-the-ground activities.

Commercial use of the National Forest System is appropriate. MUSY authorizes the Forest Service to manage National Forest System lands for both commercial and noncommercial uses (16 U.S.C. 528–531). The agency's regulation of the disposal of timber and minerals and the grazing of livestock is beyond the scope of this rulemaking. The relative impacts of commercial uses and noncommercial group uses are not relevant to this rulemaking. What is relevant are the impacts of noncommercial group uses and whether controlling and preventing those impacts warrant regulation of noncommercial group uses. This Department believes that mitigation and prevention of the impacts associated with noncommercial group uses are significant interests that justify the special use authorization requirement.

Noncommercial group uses will not be regulated more stringently under the final rule than other uses and activities that have greater impacts. The final rule restricts the content of an application to information concerning time, place, and manner for noncommercial group uses and establishes very limited circumstances under which an authorized officer can deny or revoke a special use authorization for noncommercial group uses. In contrast, commercial uses and activities subject to 36 CFR parts 222, 223, 228, and 251 are governed by complex regulations that give the authorized officer broad discretion administering the applicable authorization.

Comment. Significant Governmental Interests With Respect to Rainbow Family Gatherings. The Rainbow Family of Living Light organizes regular gatherings in the national forests to celebrate life, worship, express ideas and values, and associate with others who share their beliefs. The largest of these meetings is the annual Rainbow Family Gathering. The annual Gathering is held at an undeveloped site in a different national forest each summer and attracts as many as 20,000 people from across the Nation and around the world.

Approximately 130 respondents wrote that the Forest Service has not established a significant interest in requiring a special use authorization for Rainbow Family Gatherings. These respondents stated that concerns associated with Rainbow Family Gatherings have not materialized; that there has been no significant damage in 20 years of Rainbow Family Gatherings; that the Rainbow Family has had gatherings of up to a few thousand people for over a two-week period without major impact to the land or input from the Forest Service; that there is no reason to believe that any similar group would behave differently; and that reports of Rainbow Family Gatherings do not describe any adverse impacts associated with the Gatherings, which have less impact on forest resources than twelve Boy Scouts.

These respondents further stated that there is no hazardous situation, taking of an endangered species, or out of the ordinary resource damage associated with Rainbow Family Gatherings; that the forest is left in better condition after Rainbow Family Gatherings, unlike the way most campers and hunters leave public lands; that at the 1993 Rainbow Family Gathering in Alabama, campsites were carefully planned, garbage was neatly collected and recyclables separated, signs were posted so as to ensure no significant impact on trees, latrines were strategically placed and plainly marked, and an effort was made to notify all Rainbow Family members of the presence of endangered fresh water mussels in a creek at the site; that there has never been a serious illness or public health problem at a Rainbow Family gathering; that Rainbow Family Gatherings usually occur without adverse impact to public health, safety, land, or property; that the Rainbow Family does not need to be regulated by the Forest Service because it has an internal consensus process for regulating itself; that the Rainbow Family takes care of parking; water supply, kitchen hygiene, latrines, and camp safety; that the agency's concern for public health and safety is specious; and that considerations of public health are not related to the purposes of the rule.

Four respondents acknowledged that the annual Rainbow Family Gatherings have a significant impact on the national forests. One respondent stated that camping by any group the size of the annual Rainbow Family Gathering will necessarily have some noticeable impact on the land. Another commented that national forests should be protected and that Rainbow Family Gatherings have a detrimental effect on the plants and animals in the forests. A third acknowledged that Rainbow Family Gatherings take their toll on the ecosystem, and a fourth noted that the annual Rainbow Family Gatherings have a considerable impact on the undeveloped sites chosen for the Gatherings. One respondent noted that many Rainbow Family members required emergency room care during the 1993 Gathering and suggested that the Rainbow Family should arrange for community liaisons prior to the annual Gathering. Two respondents commented that water pollution is evident in the National Forest System: one respondent stated that all water on National Forest System lands should be tested; the other stated that Rainbow Family Gatherings must address the sufficiency of potable drinking water before the Gatherings take place.

Response. Forest Service experience is that the Rainbow Family has encouraged gatherers to pick up trash, recycle, compost, protect water sources by not camping or washing near them, naturalize campsites and trails, use latrines, and bury waste. The Rainbow Family also has shown a concern for sanitation at the Gatherings. Nevertheless, the annual Gatherings have a considerable impact on the national forest sites selected by the Rainbow Family and in some instances on public health and safety as well. Controlling or preventing adverse impacts on forest resources and addressing concerns of public health and safety are two purposes of this rule.

Typically, the Rainbow Family chooses an undeveloped site with open fields or meadows. Access to the site is limited. Backcountry eating, sleeping, and cooking facilities are set up for as many as 20,000 people. Parking must be available for their vehicles, which range from cars to double decker buses.

At the 1987 Gathering in North Carolina, for example, impacts included soil compaction and loss of vegetation in the paths to various camps and in the surrounding fields. At the end of the Gathering, there were four acres of fields and about eight miles of paths 12 to 25 feet wide with compacted soil and complete loss of vegetation. Only the latrines near the fields where activities took place were covered; latrines in outlying camps were left open with human waste exposed. The Forest Service had to complete rehabilitation of the site because the Rainbow Family had failed to rehabilitate it adequately. Garbage and trash were not always removed promptly from collection points and piled up. Although the garbage and trash were separated, they were mixed together in receptacles provided by the county. At the end of the Gathering, the Forest Service had to remove a dump truck load and a pickup truck load of garbage that had been left along the sides of the main road through the site.

A serious public health threat arose at the 1987 Gathering. At the site of this Gathering, many Rainbow Family members did not boil water from springs that were high in fecal coliform bacteria. During the week of July 1–4, many people had diarrhea and fever. As people at the Gathering became sick, they used the latrines less and less. Uncovered human wastes were scattered where people traveled and camped. Many people went barefoot and their stepping in uncovered human wastes helped transmit the disease. Hospitals in two states notified the Centers for Disease Control (CDC, now called the Centers for Disease Control and Prevention) in Atlanta that cases of confirmed shigellosis had been detected among people who had attended the Gathering. Shigellosis is a highly contagious form of dysentery, caused by shigellae bacteria. The disease is transmitted by direct or indirect fecal-oral contact from one person to another or by contaminated food or water. Individuals primarily responsible are those who fail to clean adequately their fecally contaminated hands. Transmission by water, milk, or flies may occur as a result of direct fecal contamination. One need ingest only a small number of organisms to contract the disease, and symptoms normally appear within seven days.

Two CDC doctors visited the site of the Gathering the week after July 4 and interviewed a large percentage of the Rainbow Family members remaining at the site. The doctors estimated that 65 percent of those people had shingellosis. At the doctors' suggestion, the Forest Service closed the site to other members of the public from July 15 to 29 for health reasons. By the middle of August, 25 states reported outbreaks of shigellosis traced to people who had attended the Gathering. In early October, cases of the disease were still being reported in 25 states.

Forest Service reports of Rainbow Family Gatherings document adverse impacts associated with the Gatherings. Two of these reports, on the 1991 and 1992 annual Gatherings, were submitted by a respondent along with comments on this rulemaking.

The report on the 1991 Gathering in Vermont documents that site clean-up and rehabilitation were inadequate after the 1990 Gathering in Minnesota. Gatherers left cigarette butts and plastic twist ties on the ground, dumped glass

bottles and metal spoons in compost pits, abandoned a 200-gallon water tank, and left latrines uncovered.

The report on the 1991 Gathering documents that while conducting site clean-up and rehabilitation inspections after the 1991 Gathering, agency officials found a large amount of human waste scattered throughout the woods, even though a sufficient number of well-constructed latrines were distributed throughout the Gathering site.

In addition, the 1991 report notes resource damage that resulted from the impact of large numbers of people using the area. Soil compaction occurred wherever human use was concentrated, that is, at the main meadow, kitchens, camps, and heavily used trails. Vegetation and duff layers in these areas were worn away. New trails made during the Gathering showed varying amounts of erosion. Soil was dug up and sloughed downhill, leaving tree roots exposed. Gatherers made trails down to brooks, often on steep slopes. Eroding soils from these trails threatened the stability and integrity of stream banks and water quality. In several places trails crossed historic rock walls. Heavy pedestrian traffic over the walls caused them to crumble and flatten. An archaeological site located on the trail from the front gate to the main meadow of the Gathering was damaged.

At the 1992 Gathering in Colorado, an insufficient number of latrines were dug at two areas with large concentrations of people (approximately 4200 total). Latrines that were dug at these areas were not placed at flagged locations, and some were too near open water. In general, latrine locations were not adequately marked, particularly at the beginning of the Gathering, which resulted in some surface deposition. Many latrines were not properly covered. No sanitation lime was available until one county health department worker donated 150 pounds to the Rainbow Family.

During the clean-up effort, however, all evidence of surface deposition was removed and all but a few latrines in remote locations were filled in correctly. Clean-up was reasonably orderly, but not timely. While all physical evidence of the Gathering was removed or rearranged to present a natural appearance, the quality of scarification and seeding of exposed soil was variable.

Twenty-seven acres of National Forest System lands in Colorado used for the 1992 Gathering were affected. Soil compaction and loss of vegetation occurred in areas of concentrated use. There were also several traffic and parking problems at the 1992 Gathering. Most of the access routes were steep, winding, single-lane gravel roads. The increased traffic and unfamiliarity of gatherers with these types of road conditions created a safety hazard.

CALM (Center for Alternative Living Medicine) is the group in the Rainbow Family entrusted with the medical care of Family members. At annual Gatherings, CALM sets up health units to treat gatherers' ailments and injuries. CALM represented that they could furnish more than basic first aid at the 1992 Gathering. Visits to CALM units by health department officials and local hospital staff revealed that CALM was equipped to provide only first aid. Many of the bandages at the units were old surplus military issue. Other supplies were limited. No protocol was established to deal with emergency situations. Because CALM was not equipped to deal with emergencies or injuries requiring more than basic first aid, 46 people attending the Gathering had to be treated at a local hospital.

The Department believes that it would be more effective and efficient for the Rainbow Family to address these types of medical and sanitation issues prior to the annual Gathering through the special use authorization process and through enhanced coordination with state and local authorities than on a spontaneous or *post hoc* basis.

Comment. Need for Law Enforcement at Rainbow Family Gatherings. Approximately 25 respondents commented that law enforcement at Rainbow Family Gatherings is unnecessary. These respondents stated that there are no threatening incidents at Rainbow Family Gatherings; that Rainbow Family members police themselves; that Rainbow Family members always comply with Forest Service regulations; that all serious problems and violent individuals are brought to the attention of local law enforcement; that Rainbow Family Gatherings have posed fewer security problems than other gatherings of equivalent size; that there are a smaller number of incidents each year; that no drug use was observed at the 1993 Gathering in Alabama; and that unlike uses of public streets or public property in a city, which have impacts on traffic, parking, and neighborhoods and require law enforcement services, group uses of National Forest System lands have no impacts on public facilities and do not require law enforcement services.

In contrast, one respondent acknowledged that Rainbow Family Gatherings attract some people who are not responsible. Several respondents noted that there has been public nudity at the Gatherings. Citing use of marijuana and psychedelics, one respondent noted that the actions of many Rainbow Family members are illegal under present drug laws. Two others noted the use of drugs by some members of the Rainbow Family. One respondent also noted the use of alcohol at Rainbow Family Gatherings.

Response. The Department disagrees that law enforcement at Rainbow Family Gatherings is unnecessary. Most Rainbow Family members who gather on national forests are peaceful and law-abiding. As several respondents noted, however, the annual Gatherings attract some who are not.

Consumption of alcoholic beverages is not condoned by the Rainbow Family and is discouraged within the main Gathering. A separate camp, known as ''A'' Camp, is usually set up along the access route to the main Gathering for those who drink alcoholic beverages. ''A'' camp has been a problem at several Rainbow Family Gatherings because of its location. ''A'' Camp gatherers have panhandled, extorted money, and confiscated liquor from people entering the Gathering. Gatherers at ''A'' Camp also have harassed law enforcement officers and Forest Service personnel.

Forest Service and local law enforcement officers issue a sizeable number of citations for various violations of federal and local law at Rainbow Family Gatherings. For instance, at the 1987 Gathering, there were 311 violations, including citations for driving violations, resource violations, public nudity, impeding traffic, public nuisance, and interfering with an officer. After the Gathering, marijuana plants sprouted where the soil had been dug up by members of the Rainbow Family to plant flowers. Within three weeks after the Gathering, the Forest Service found seventeen marijuana plants approximately one to two feet tall growing from seeds scattered from the handling of marijuana. Possession of marijuana is a violation of federal law. *See* 21 U.S.C. 844.

At the 1991 Gathering, the Forest Service issued 69 notices for ten different violations, including camping in a restricted area, public nudity, parking in violation of instructions, operating a vehicle recklessly, failing to stop for an officer, operating off road carelessly, occupying a day use area, parking in other than designated areas, operating a vehicle off road, and giving false information. Two Rainbow Family members were arrested on drug charges, one for possession and the other for sale of LSD.

The Forest Service's non-environmental concerns were met with resistance at the 1992 Gathering. For example, 20 to 30 Rainbow Family members staged a civil disobedience protest of a Forest Service order closing an area to camping and parking because of safety risks (the area was located on a timber haul route) and commitments made to other users (livestock was scheduled to use the area). Gatherers gradually removed vehicles from the area, but the agency had to tow five from the site.

During the 1992 Gathering, there were 43 arrests of Rainbow Family members on nine different charges, including use of a controlled substance, child abuse, traffic violations, theft, disorderly conduct and harassment, disorderly conduct and possession of a concealed weapon, motor vehicle theft, a wildlife violation, and existence of outstanding warrants.

By comparison, there were 82 arrests of non-Rainbow Family members during the period of the Gathering in the county where the Gathering was held, and 81 during that same period in the previous year. Thus, there was more than a 50 percent increase in the number of arrests in the county during that period, due solely to the presence of the Rainbow Family.

Comment: Government's Intent With Respect to the Rainbow Family. Approximately 50 respondents commented that Rainbow Family Gatherings contribute to world peace and love. Many of these respondents asked the agency not to break up the Gatherings.

Seventy-two respondents stated that the proposed rule is a direct attack on the Rainbow Family or is written with the Rainbow Family in mind. Specifically, these respondents believed that the Rainbow Family is the group most affected by the proposed rule; that no other group is mentioned in showing a need for the regulations; that in *United States* v. *Israel* and *United States* v. *Rainbow Family*, the agency tried to stop Rainbow Family Gatherings; that the agency imposes less stringent standards for site clean-up on more mainstream groups; that the proposed rule is a vehicle for spying on Rainbow Family members; that Forest Service and state and local law enforcement officers have selectively enforced laws to harass and intimidate people attending Rainbow Family Gatherings; that law enforcement officers have looked for activity that could be construed as illegal; that the Forest Service has been unreasonable and hostile at Rainbow Family Gatherings; that the number of law enforcement officers at Rainbow Family Gatherings is excessive and a waste of money; that law enforcement officers have established checkpoints at the entrance to Rainbow Family Gatherings to search cars and to verify car registration, car insurance, and driver's licenses; that at the 1993 Gathering in Alabama, a few people without car registration or insurance were held in chains and beaten; that state police at the 1993 Gathering conducted regular armed patrols and random searches; and that some Rainbow Family members have been taken into custody and forced to pay a fine for their release.

In contrast, one respondent stated that the proposed rule is clearly aimed at more than just one type of gathering. Another respondent noted that to comply with cases on point, the regulation has been modified to treat all group uses the same, regardless of whether they involve the expression of views. One respondent commented that the Forest Service was hospitable and kept order and did a remarkable job handling the crowd at the 1993 Gathering. Another respondent stated that the Forest Service did an excellent job helping the Rainbow Family have a safe and healthy gathering in 1993 and added that the Forest Service was friendly and helpful.

Response. The intent of this rule is not to break up or prohibit any group uses, including Rainbow Family Gatherings. Rather, the intent of this rule is to control or prevent harm to forest resources, address concerns of public health and safety, and allocate space. In *United States* v. *Israel* and *United States* v. *Rainbow Family*, the Forest Service was not attempting to prohibit the Rainbow Family Gathering, but rather to enforce existing group use regulations where the Rainbow Family had failed to obtain a special use authorization.

The Forest Service hosts many types of noncommercial group uses on National Forest System lands, such as company picnics, weddings, group hikes and horseback rides, demonstrations, and group gatherings. This final rule does not single out any particular group or type of event. As two respondents noted, this rule applies to all noncommercial group uses, both those involving and those not involving the expression of views. The Department intends to apply this rule consistently and fairly as required by law to all noncommercial group uses.

The Forest Service makes every effort to be friendly and hospitable and to help every group have a safe and healthy visit to the national forests. The agency's law enforcement approach at large group gatherings reinforces this effort. As shown by the reports on the 1991 and 1992 Rainbow Family Gatherings, agency law enforcement officers endeavor to act as good hosts to prevent potential problems; to provide for public safety; to maintain close coordination with other involved agencies, such as the local highway patrol, sheriff's office, and health department; and to ensure in a courteous, professional manner compliance with federal, state, and local law and agency regulations.

To meet these objectives, enhanced law enforcement is needed for group uses. Perimeter patrols by local and federal law enforcement agencies during the 1991 Rainbow Family Gathering, for example, focused on protecting local residents and their property, facilitating traffic flows, maintaining safety on all state and local roads, and responding to visitors' needs or calls for help.

The Forest Service has endeavored to enforce its regulations not only fully but fairly. Some Rainbow Family members who have committed violations at the annual Gatherings have been taken into custody and/or have had to pay a fine. For example, after coordinating with a local United States Magistrate and Assistant United States Attorney, Forest Service law enforcement officers adopted a procedure at the early stages of the 1992 Rainbow Family Gathering to allow prosecution of violators who were temporarily residing in the area. This procedure required violators either to pay a fine upon issuance of a violation notice or to be taken into custody and brought before a magistrate. By paying the fine, the violator did not forego the right to appear in court and contest the violation.

Shortly after receiving complaints about the procedure from Rainbow Family members, the United States Attorney's office recommended that the procedure be altered. The new procedure required that a violation notice for an optional appearance be issued if the violator could present sufficient identification (driver's license, vehicle registration, and proof of insurance in the driver's name). If adequate identification could not be presented, the violator would have to pay the fine upon issuance of the violation notice or be detained. This change in procedure illustrates the agency's effort to balance its law enforcement obligations against its concern for due process.

The Department acknowledges that the level of law enforcement activities may not always have been appropriate for group uses. For example, while it may be appropriate to post Forest

Service officials at the entrance to a Rainbow Family Gathering to deter illegal activity and to provide helpful information on the national forests and resource protection, it is not necessary or appropriate to search cars entering the Gathering or to verify the driver's car registration, insurance, and license. This practice was curtailed at a gathering in Mississippi in July 1993 as soon as it came to the attention of responsible Forest Service officials. Promulgation of this rule will help the Department ensure a consistent, nationwide approach to law enforcement for group uses.

Comment: Government's Intent Generally. Approximately 40 respondents believed that the intent of the proposed rule is to allow the Forest Service to deny the use of public lands to groups the agency finds undesirable. These respondents stated that the history of the rule shows that the agency's intent is to restrict speech and that by regulating all noncommercial activities under the same standards, the agency is in effect still attempting to restrict First Amendment rights. These respondents felt that if the agency really supported the rights of free speech and assembly, it would be apparent from the proposed rule and there would be no need to state it in the preamble.

Other respondents stated that the proposed rule masks an agenda that has nothing to do with protecting resources and addressing public health and safety; that the Forest Service has invoked public health concerns rigidly and arbitrarily to discourage gatherings and has used these concerns as a pretext for taking other enforcement action, such as dealing with the use of illegal drugs; and that given the proposed rule is written like a legal brief, with a provision for immediate judicial review, and the agency's past attempts to regulate noncommercial group use, it is reasonable to view this regulation as an attempt to restrict assemblies via court order.

Other respondents stated that the agency should specify what will be done to ensure that enforcement of the rule will not result in acts of terrorism against those who like to gather in the national forests; that the proposed rule targets those who go to the forests to worship; that the proposed rule is a direct attack on naturists; that the agency doesn't need a regulation to ensure equal treatment for all groups because equal treatment is already guaranteed by the Constitution; that the proposed rule can be selectively enforced and is therefore discriminatory in nature; that the proposed rule is discriminatory in nature, particularly in view of the severe restrictions on Native Americans' access to tribal lands and the intimidation of Native Americans by law enforcement; and that those responsible for the inception and formulation of the proposed rule are enemies of the people of this country.

Response. The intent of this rule is not to deny the use of National Forest System lands to any group, nor is the intent of this rule to restrict speech. Rather, the intent of this rule is to implement reasonable time, place, and manner restrictions on group uses of National Forest System lands.

In addition to the need to mitigate adverse impacts on forest resources and to address concerns of public health and safety, there is a need to allocate space in the face of increasing legal constraints on the use of National Forest System lands, including the need to protect endangered, threatened, or other plant and animal species. The competition for available sites in the national forests among animals, plants, and humans has increased as more demands and restrictions have been placed on use of the national forests. Requiring a special use authorization allows the agency to act as a kind of ''reservation desk'' for proposed uses and activities, including noncommercial group uses.

The Department believes that its support for the rights of free speech and assembly is not only stated in the preamble, but is apparent from the language and structure of the rule. The rule does not single out any group. On the contrary, the final rule establishes one category called ''noncommercial group uses''; restricts the content of an application for noncommercial group uses to information concerning time, place, and manner; applies the same evaluation criteria to all applications for noncommercial group uses regardless of whether they involve the expression of views; establishes specific, content-neutral evaluation criteria for noncommercial group uses; provides that applications for noncommercial group uses will be granted or denied within a short, specific timeframe; provides that if an application is denied and an alternative time, place, or manner will allow the applicant to meet all the evaluation criteria, the authorized officer will offer that alternative; provides that the authorized officer will explain in writing the reason for denial of applications for noncommercial group uses; and provides that such a denial is immediately subject to judicial review. These provisions have been included to meet the constitutional requirements of a valid time, place, and manner restriction identified in case law, including *United States* v. *Israel* and *United States* v. *Rainbow Family.*

This rule is needed to ensure equal treatment for all groups. Various members of the public and state and local governments have criticized the Forest Service for applying a double standard in not requiring all large groups to obtain a special use authorization. This rule ensures that all noncommercial groups are treated equally under the law.

It is the Department's intent that this rule will be applied consistently to all noncommercial groups as required by law. Moreover, it is essential, both as a matter of fairness and as a matter of constitutional law, that this rule be applied uniformly. The Forest Service intends to provide training to its personnel to ensure that the rule is implemented consistently.

Comment: Least Restrictive Means To Further the Government's Interests. Approximately 95 respondents indicated that the Forest Service has not employed the least restrictive means to achieve its interests. These respondents stated that the proposed rule is unnecessary because, as the court in the *Rainbow Family* case held, there are other laws and regulations that address the agency's interests in promulgating the proposed rule; that the agency should deal with violations of other regulations as they occur; that there is no need for a permit requirement because encouraging groups to contact the agency prior to their proposed activities is sufficient to address the agency's concerns; that the agency does not need to require a permit because requiring notice of a proposed activity is sufficient; that mid-sized groups of 50 to 100 people should only have to notify the Forest Service of their activity, rather than obtain a permit; that there is no need for an application and permitting system and that the agency should allow a group to gather if they meet all other parts of the proposed rule; and that the proposed rule should not apply at developed campgrounds or areas set aside for group uses.

Additionally, these respondents stated that given that impacts vary depending upon the type of activity, the Forest Service should issue specific and objective standards for those activities that are problematic, and that the agency could also intensify education programs for specific groups that cause problems; that a special use authorization should not be required for church, club, or family gatherings; that a simple assessment, roping off of high-risk areas, and site-specific camping requirements have sufficed for

gatherings of over 20,000; and that with respect to the Rainbow Family, the Forest Service has been able through informal cooperation to achieve its objectives concerning resource protection, promotion of public health and safety, and space allocation.

Response. Less restrictive alternatives are not part of the test for the validity of a time, place, and manner regulation like this final rule. Rather, the test is limited to whether the regulation is content-neutral, whether it is narrowly tailored to further a significant governmental interest, and whether it leaves open ample alternative channels for communication. *Clark* v. *CCNV,* 468 U.S. at 293.

In *Clark* v. *CCNV,* where the Court upheld a National Park Service regulation that prohibited camping in certain parks in Washington, D.C., the Supreme Court rejected the Court of Appeals' view that the challenged regulation was unnecessary, and hence invalid, because there were less speech-restrictive alternatives that could have satisfied the governmental interest in preserving national park lands. The Supreme Court held that the less-restrictive alternatives proposed by the Court of Appeals represented no more than a disagreement with the National Park Service over how much protection the core parks require or how an acceptable level of preservation is to be attained. 468 U.S. at 299.

Thus, it is immaterial if there are less restrictive alternatives to the special use authorization requirement for noncommercial group uses, as long as the final rule meets the test for constitutionality enunciated in *Clark* v. *CCNV.* Under *Clark* v. *CCNV,* the federal land management agencies, rather than the courts, have the authority to manage federal lands and the competence to judge how much protection of those lands is wise and how that level of conservation is to be attained. 468 U.S. at 299.

Even though less restrictive alternatives are not part of the test for constitutionality for time, place, and manner regulations, the Department believes that the special use authorization requirement is the least restrictive means to accomplish the government's interests. Other laws and regulations, such as the Endangered Species Act and rules providing for the issuance of closure orders, address resource protection and public health and safety in general. Other laws and regulations do not, however, provide the framework necessary for applying those standards for resource protection and public health and safety to noncommercial group uses. Other laws and regulations do not allow the Forest Service to control or prevent adverse impacts on forest resources from noncommercial group uses, to address concerns of public health and safety associated with noncommercial group uses, or to allocate space for noncommercial group uses and other uses and activities.

In *United States* v. *Rainbow Family,* the court denied the government's motion for a preliminary injunction to enforce the group use regulation on the grounds that the regulation was unconstitutional and not validly implemented. The court stated in dicta that the government had an adequate remedy at law which would also preclude granting the motion, in that there were other laws and regulations to address the government's concerns in seeking the injunction. 695 F. Supp. at 314. The court never ruled on the existence of an adequate remedy at law for purposes of obtaining a preliminary injunction. Even if the court had ruled on this issue, it would have been immaterial to the assessment of the constitutional validity of this final rule.

Requiring notice of a proposed activity is also insufficient to address the concerns underlying the final rule because the agency still lacks the ability to regulate the activity. Without the application and permitting system, the authorized officer cannot determine whether the evaluation criteria in the final rule are satisfied. This final rule will not apply at developed recreation sites where use is allocated under a formal reservation system and where the agency has the authority to manage and to charge a user fee to the public under the Land and Water Conservation Fund Act (16 U.S.C. 4601–6a).

The Department has determined that it has sufficient interests in regulating noncommercial group uses. Regulating only those activities or groups that have caused problems in the past would be difficult to defend. The courts in *United States* v. *Israel* and *United States* v. *Rainbow Family* held that in regulating noncommercial group uses the agency cannot single out expressive conduct and treat it differently from other activities, and that the regulation must have clear and objective standards. Regulating only certain groups or activities based on a judgment of which ones have caused problems sufficient to warrant regulation could be viewed as singling out expressive conduct on the basis of a subjective standard. The same concern would apply if the Department exempted certain types of noncommercial group uses, like church, club, or family gatherings, from the special use authorization requirement.

Finally, as shown by the reports on the 1991 and 1992 Rainbow Family Gatherings, the Forest Service has not always been able to achieve its objectives concerning resource protection and space allocation through informal cooperation with the Rainbow Family. In particular, agency personnel have been frustrated in dealings with Rainbow Family members because informal agreements made with one individual or subgroup have not been respected by other group members. It has thus been difficult for the agency to obtain commitments from the Rainbow Family on issues pertaining to the Gatherings. On a number of issues, the agency has had to recommence discussions at each encounter with Rainbow Family members. The special use authorization process will enhance the agency's ability to achieve its objectives by allowing the agency to obtain commitments from the Rainbow Family that apply to the group as a whole.

Comment: Ample Alternative Channels for Communication. Approximately 27 respondents felt that the proposed regulation does not leave open ample alternative channels of communication. These respondents stated that there is no adequate substitute for peaceable assembly as a form of communication; without a permit, a proposed activity could not occur on National Forest System lands; and that the Rainbow Family is not an organized group and has no other place to go.

Response. The Department disagrees with these comments. The final rule leaves open ample alternative channels of communication. The final rule does not restrict, and is not intended to restrict, freedom of thought or expression. Nor does the final rule prohibit any expressive activities. Rather, the final rule requires a special use authorization for noncommercial group uses on the national forests. Moreover, § 251.54(h)(2) of the final rule provides that if an application is denied and an alternative time, place, or manner will allow the applicant to meet all the evaluation criteria, the authorized officer shall offer that alternative.

Comment: Enforceability. Approximately 28 respondents commented on the enforceability of the proposed rule. Specifically, six respondents stated that enforcement of the rule would be provocative and confrontational because the rule would be ignored and the agency would have to make mass arrests, disperse large crowds, or obtain a restraining order to enforce it. Thirty respondents stated

that the cost to administer or enforce the rule either would exceed income, would be a waste of taxpayer dollars, or would overburden the Forest Service and the court system.

Response. The Forest Service currently works to the extent possible with organizers of group uses before, during, and after the activities take place to try to prevent problems. Adoption of this final rule will not change the agency's efforts to work cooperatively with groups who wish to use National Forest System lands, nor does the agency foresee any problem with implementation of the final rule. If a group fails to obtain a special use authorization that is required by the rule, the agency can take other action short of making mass arrests or obtaining a restraining order. For example, in most federal judicial districts, the agency may impose a fine for failure to obtain a special use authorization required for use and occupancy of National Forest System lands.

No income to the U.S. Treasury is generated under the final rule. There are always costs to the taxpayer when large groups use the national forests. As the reports on the 1991 an 1992 Rainbow Family Gathering indicate, the agency incurs substantial costs in connection with group uses in order to protect the resource, address concerns of public health and safety, and allocate space. For example, some of the costs cover water quality testing, road maintenance, personnel, scarification, and law enforcement. Requiring a special use authorization should decrease rather than increase these costs by enhancing the agency's ability to prevent or minimize resource damage.

Comment: Efficacy of the Rulemaking. Approximately 23 respondents commented that promulgating this regulation is a waste of time and money because it will be struck down by the federal courts, like the two prior attempts before it.

Response. The final rule ensures that the authorization procedures for noncommercial group uses comply with First Amendment requirements while providing a reasonable administrative framework for addressing the significant governmental interests identified in the rule. The Department has structured this rule very differently from the 1984 rule that was struck down in *United States* v. *Israel* and *United States* v. *Rainbow Family.* Those courts held that the 1984 rule on its face singled out expressive conduct and required that it be treated differently from other activity; lacked clear and objective standards for evaluating applications for expressive activities; and lacked procedural safeguards required by constitutional law. The court in *United States* v. *Rainbow Family* invalidated the 1988 version because the agency had failed to show good cause under the APA for adopting an interim rule without prior notice and comment.

In contrast, this final rule establishes a single regulatory category that includes expressive and non-expressive activities; applies the same specific, content-neutral evaluation criteria to all applications in that category; and contains all the procedural safeguards required by case law. Rather than publish an interim rule that goes into effect upon publication but before comments are received and analyzed, the agency published a proposed rule for notice and comment, and the Department is publishing a final rule incorporating the analysis of timely received comments. The final rule does not go into effect until 30 days after it is published. In promulgating this rule, the Department has meticulously complied with all requirements of the APA.

Comment: Consequences of Noncompliance. Nine respondents stated that the penalty for violating the rule is excessive. One of these respondents commented that the proposed rule could make too many things a crime and could provide for excessive penalties for the pettiest infractions. One respondent commented that the agency gave insufficient notice of the penalty.

Response. The penalty for violating any prohibition in 36 CFR part 261, including use and occupancy of National Forest System lands without a special use authorization when an authorization is required, is a fine of up to $5,000 or imprisonment for up to six months, or both (*see* 16 U.S.C. 551; 18 U.S.C. 3559, 3571). This penalty is authorized by statute and is not subject to amendment by regulation. Consequently, the penalty was not discussed in the proposed rule.

In the context of this rule, the penalty would apply only if a noncommercial group failed to obtain a special use authorization for a group use of National Forest System lands. In such a case, noncommercial groups would be subject to the same penalty imposed on other forest users for violation of the prohibitions found at 36 CFR part 261.

Summary of Comments by Section of the Proposed Rule

The vast majority of respondents opposed the rule. Many did not state the reason for their opposition. Most opposed the rule in the belief that the rule would infringe upon their First Amendment rights to gather and to disseminate information.

The following is a section-by-section summary of timely received comments and the Department's responses to those comments in the final rule.

Amendments to Part 251

Section 251.51—Definitions

The definitions in the rule are important because they determine applicability of the rule. The following terms were defined in the proposed rule: *Commercial use or activity, Distribution of printed material, Group event, Noncommercial use or activity,* and *Printed material.* Approximately 47 respondents commented on the definitions in the proposed rule. Eleven respondents commented on the definition of *Commercial use or activity.* Thirty-one respondents commented on the definition of *Group event.* Other definitions addressed were *Distribution of printed material* and *Printed material.* One respondent commented that the definitions are generally illegal.

Comment: ''Commercial use or activity.'' Respondents commented that the definition for commercial use or activity is too vague and broad and could include activities that are considered to be noncommercial. For example, respondents felt that the following could be considered a commercial activity under this definition:

—A scout troop sharing food;
—A school troop pooling meal and travel expenses;
—An activity involving the exchange of clean-up chores;
—An exchange of pocket knives;
—Bartering;
—Children trading beads or baseball cards; or
—A hug, smile, or handshake.

Respondents felt that bonding could be required if the costs of the activity were supported in part by donations; that the term ''commercial'' should apply to business activities that generate a profit, rather than to the exchange of gifts or barter; and that a better definition of ''commercial use or activity'' would include the phrase ''having profit as the primary aim.''

Response. The Department agrees that the definition for commercial use or activity in the proposed rule was ambiguous and could be construed to include some activities that are noncommercial. However, the Department believes that uses or activities that do not have profit as the primary aim may still be considered commercial and that the phrase ''having

profit as the primary aim'' is too vague and too difficult to apply to all the uses and activities on National Forest System lands.

Instead, the Department has clarified the definition for commercial use or activity in the final rule to include only those uses or activities (1) where an entry or participation fee is charged, or (2) where the primary purpose is the sale of a good or service.

Under this definition, uses or activities involving the exchange of a product or service, such as trading pocket knives or clean-up chores, will not be considered commercial. Uses or activities where the sale of a good or service is merely secondary, such as a gathering where the primary purpose is to worship and exchange views, but where some arts and crafts may be sold incidentally to the gathering, will not be considered commercial.

Comment: ''Group event.'' One respondent commented that the definition for group event would now include special events, recreation events, and all other noncommercial groups, and that this equal treatment of all groups is an outrageous misuse of power which allows for complete disregard for the intent of the group.

Two respondents commented that the threshold of 25 or more in the definition for group event is arbitrary and irrelevant, and that other than with extremely large groups, it is not the size of a group but the actions of a group and the site selected that determine the amount of impact. One of these respondents stated that an orderly church group of 200 can do less damage than a group of 50 demonstrators; the other commented that one person who is careless with a match can do more damage than 50 people swimming in a stream.

One respondent commented that the public has not had an opportunity to read, analyze, and comment on the agency's review of potential impacts that led to the definition of a group as 25 or more people. Two respondents commented that the agency should set different thresholds for a group according to the duration of the proposed activity and its impact on the land, and that the 25-person threshold is arbitrary and may be too large or small depending on special local conditions.

Another respondent voiced strong support for a 25-person cutoff, while eleven other respondents stated that 25 people is too low a threshold for a group event. One suggested 50 or 50 to 100 people. One suggested 50 people, which the respondent stated is the number used by the Bureau of Land Management. Another respondent who suggested 50 people felt that the 25-person threshold would create an undue burden by including many school camping groups and groups gathering only to secure academic credentials, and that the agency does not need to regulate these groups because group leaders with college and graduate-level degrees will always choose sites for their groups where the seven evaluation criteria will be met. One respondent suggested 95 people. One respondent stated that with the 25-person threshold, every family reunion and church picnic would require a permit. Another respondent suggested 250 people in order to allow most ''average'' group activities, such as family reunions and church or company picnics, to use National Forest System lands without an undue paperwork burden.

One respondent stated that the number of people for a group event should be as large as possible and that there are areas of National Forest System lands that can accommodate far more than 25 people. This respondent suggested that like the National Park Service, the Forest Service should designate such areas by regulation and establish a higher number for these areas, so that large groups can gather on short or no notice. In support, this respondent cited the National Park Service's regulations for the National Capital Region at 36 CFR 7.96(g)(2)(ii).

Four respondents were unclear about how the rule would be applied if more than 25 people unexpectedly end up using the same site. One of these respondents stated that it would also be unclear how the rule would be applied if several score people were camping in a large area, but far apart.

Two respondents stated that there is no way to tell how many people will appear at a group event, and that 23 people could be anticipated, but two more could show up, for example, for Rainbow Family site scouting parties. Two respondents stated that the phrase ''and/or attracts'' should be deleted. Specifically, one of these respondents stated that it is reasonable to hold a group responsible for predicting the size of its own turnout, but not for predicting how many unrelated and uninvited outsiders may be attracted to an event. This respondent noted that it is appropriate to require a group that anticipates attracting 25 or more uninvited people to notify the agency in advance.

Three respondents commented that spontaneous gatherings would be eliminated. Two of these respondents commented that large families and church groups that spontaneously camp or conduct other activities on the national forests would not have time to get a permit.

Response. The Department has substituted the term ''group use'' for ''group event'' in the definitions section and elsewhere in the final rule because use of the term ''group event'' in this rule could be confused with use of the term ''recreation event'' in the Forest Service Manual. In section 2721.49 of the Forest Service Manual, ''recreation event'' refers to commercial group uses where an entry or participation fee is charged, such as certain motorcycle races or fishing contests. This final rule applies only to noncommercial, not commercial, group uses.

The definition for group use includes all noncommercial group uses, regardless of whether they involve the expression of views, because the courts have held that it is unconstitutional for the regulation to single out expressive activity and treat it differently from other activity.

The Department agrees that the duration of the activity and the site selected have some effect on the amount of resource impacts and that one individual could cause a lot of damage, for example, by starting a forest fire. However, in the Forest Service's experience, the size of a group has a significant effect on the potential for resource damage: Typically, large groups have more impact on a given area than individuals. A numerical threshold is a purely objective, non-discretionary way to determine applicability of the regulation. In contrast, an assessment based on the type of activity could be subjective and discretionary and therefore unconstitutional.

The Department has carefully reviewed the comments concerning the appropriate numerical threshold for a group use and has carefully reviewed the Forest Service's experience with all types of noncommercial group uses on National Forest System lands, particularly with respect to resource impacts associated with these uses. The Department's review of impacts associated with noncommercial group uses is not based on a study, but on the Forest Service's experience in the field. Parts of this review were discussed in the response to comments on the Department's significant interests in promulgating this rule.

Based on its review of the comments on the numerical cutoff for a group and of the adverse impacts associated with group uses, the Department has determined that a 25-person threshold is too low and that 75 people would be a

more appropriate threshold for applicability of the rule.

The Department recognizes that any numerical threshold is arbitrary in that a group of 74 people could have as much impact on forest resources as a group of 75, and that 25 people could have more impact than 100, depending on the type of activity and the characteristics of the site. Nevertheless, the Department believes that a numerical threshold is the fairest and most objective standard for applicability of the rule and that groups with 75 or more people tend to have a greater impact on National Forest System lands than smaller groups.

The National Park Service designates sites that are available for public assemblies in the National Capital Region and other park areas. These regulations can be found at 36 CFR 2.51, 7.96(g)(2)(ii). The Department does not believe it is practicable or necessary to require designation of sites that are available for noncommercial group uses of National Forest System lands. In general, the National Park Service and the Forest Service administer different amounts and types of land and different varieties of uses and activities on the land and therefore cannot take exactly the same approach to land management.

In the contiguous 48 states the National Park Service manages approximately 25.5 million acres of land with many fairly developed sites and an extensive reservation system. To a significant degree, public use of National Park Service land is concentrated. In contrast, in the contiguous 48 states the Forest Service manages approximately 169 million acres of land with primarily expansive, undeveloped resources. Management units in the National Forest System are generally not subject to the same level of regulation as National Park Service management units, and the Forest Service oversees a broader variety of uses and activities than the National Park Service. Generally, whereas the National Park Service has a preservation mission, the Forest Service has a multiple-use mission.

Finally, the Department does not need to designate specific sites because this final rule allows noncommercial groups to gather on very short notice without designation of specific sites. Section 251.54(f)(5) of the final rule provides for submission of applications up to 72 hours before a proposed activity and provides for a very short, specific timeframe for granting or denying applications.

This rule is intended to apply to noncommercial uses that involve groups of 75 or more people. The rule is not intended to apply to 75 or more individuals who do not arrive as part of a particular group or in connection with an organized activity, such as 75 or more people who reserve campsites individually rather than as a group at a popular developed recreation area on a holiday weekend. To clarify this intent, the Department is adding the words ''a group of'' to the definition for group use.

The rule is intended to apply to groups of 75 or more people that have requested use of a certain area for a noncommercial activity. The rule will apply to a group of 75 or more people that request to camp in the same area, even if they intend to camp far apart from each other.

The Department believes that it is reasonable for groups to estimate the expected number of participants and spectators at their activities. For example, groups could base their estimate on past experience and/or how many have expressed interest or have committed to participate in an activity. The Department agrees, however, that the phrase ''and/or attracts'' should be deleted from the definition for group use because it is not reasonable for groups to predict how many unrelated and uninvited outsiders may be attracted to an activity. Accordingly, the Department has deleted the phrase ''and/or attracts,'' but has added the phrase ''either as participants or spectators,'' to make it clear that an activity involving a group of 75 or more people, regardless of whether they are participants or spectators, requires a special use authorization.

The Department believes that in order to meet its objectives of ensuring resource protection, addressing public health and safety concerns, and allocating space in the face of greater legal constraints on the use of the land, it is both fair and necessary to require noncommercial groups of 75 or more people to obtain a special use authorization prior to their activity. Under the final rule, noncommercial group uses can be very close to spontaneous because applications for a special use authorization may be submitted up to 72 hours prior to the activity.

Comment. ''Distribution of printed material.'' One respondent stated that including the solicitation of views or signatures in the definition for distribution of printed material violates the First Amendment. Another respondent stated that this definition is broadly defined to include soliciting information in conjunction with the distribution of printed material. Another stated that the definition for distribution of printed material is too broad and that any distribution of printed material would be regulated, not just distribution associated with a group use.

Response. The definition for ''distribution of printed material'' has not been included in the amendments to part 251 in the final rule, as the Department has decided not to require a special use authorization for noncommercial distribution of printed material in the final rule.

Comment. ''Printed material.'' Two respondents commented that including photographs in the definition for printed material is unjustified because the rule could be construed to cover one person showing a photograph to another. One respondent stated that the definition for printed material is too broad and that any distribution of printed material would be regulated, not just distribution associated with a group use.

Response. As previously noted, the Department has removed the special use authorization requirement for noncommercial distribution of printed material from the final rule. Therefore, the definition for ''printed material'' has been removed from the amendments to part 251 in the final rule.

The Department believes that the changes noted in response to comments received make the definitions clear and help ensure that the final rule is constitutional, both as written and as applied.

Section 251.54—Special Use Applications. This section of the existing rule prescribes procedures and requirements for processing applications for special use authorizations.

Comment. Section 251.54(a) of the existing rule encourages all proponents to contact an authorized officer as early as possible so that potential constraints may be identified, the proposal can be considered in forest land and resource management plans (forest plans) if necessary, and processing of an application can be tentatively scheduled. The proposed rule offered a technical amendment to § 251.54(a) to make clear that the proponent will be given guidance and information about the items listed in §§ 251.54(a)(1) through (a)(8) only to the extent applicable to the proposed use and occupancy.

Three respondents commented on this provision. One respondent commented that the word ''encourage'' in § 251.54(a) is too vague. Another respondent commented that § 251.54(a) is too vague and allows the Forest Service to delay processing of an application by asking for more information. Another

respondent noted that ''providing for consideration of proposals in forest plans if necessary'' allows the agency either to move existing uses or activities that conflict with a proposal or to deny a permit for the proposal.

Response. These comments address a provision in the existing rule that was not proposed for amendment and which is therefore beyond the scope of this rulemaking. However, the Department wishes to assure those who commented that the intent of § 251.54(a) is to encourage proponents to talk to the Forest Service about proposed uses and activities as early as possible and even before an application is submitted so as to facilitate, not delay, the processing of applications.

The rules in subpart B of part 251 apply to all special uses, both commercial and noncommercial. The amendment proposed to § 251.54(a) was in the last sentence and was necessary to ensure that applicants for noncommercial group uses receive relevant information. For example, as noted in the preamble of the proposed rule, fees and bonding requirements listed in § 251.54(a)(4) do not apply to applications for noncommercial group uses.

Comment. Section 251.54(e) of the existing rule specifies the information that must be contained in an application for a special use authorization. The proposed rule amended § 251.54(e)(1) to specify applicant identification requirements applicable to all special uses. Specifically, § 251.54(e)(1) of the proposed rule required an applicant for any type of special use authorization to provide his or her name and mailing address, and, if the applicant is not an individual, the name and address of the applicant's agent who is authorized to receive notice of actions pertaining to the application.

Two respondents noted that it makes sense to require applicants to provide their names and mailing addresses so that the Forest Service will be able to contact applicants and send them their permits. One of these respondents also stated that there would be no need for this provision if a permit were not required. The other commented that providing a name in a cooperative spirit and signing a permit are two different matters.

One respondent stated that the requirement for an applicant's address discriminates against the homeless.

Approximately 25 respondents commented that the Rainbow Family has no leader who can act as agent for the group. These respondents stated that Rainbow Family Gatherings are often spontaneous and that the group lacks the requisite hierarchy; that this provision infringes on freedom of speech by requiring the Rainbow Family to retreat from one of its fundamental principles—*i.e.*, lack of hierarchy—in order to gather in practice of that principle; and that this provision violates the Rainbow Family's tribal sovereignty and spiritual integrity and is equivalent to asking the Catholic Church to submit an application to have a Mass.

Response. The proposed rule amended § 251.54(e)(1) for clarity by reorganizing its contents. No amendment in substance was made. These comments address a provision in existing § 251.54(e)(1) that was not proposed for amendment and which is therefore beyond the scope of this rulemaking.

For administrative purposes, it is necessary to require an applicant for any kind of special use authorization to provide his or her name and mailing address, and, if the applicant is not an individual, the name and address of the applicant's agent. Without that information, the Department has no way of contacting the applicant concerning the content or disposition of the application. This provision does not discriminate against anyone because it applies to any applicant for any type of special use authorization.

As discussed in response to comments on § 251.50(c), this regulation also does not impose an undue burden on free exercise of religion. Religious groups, including the Catholic Church, have applied for and obtained permits in order to hold services on public lands. *See e.g.*, *O'Hair* v. *Andrus*, 613 F.2d 931 (D.C. Cir. 1979) (National Park Service permit authorizing outdoor Mass conducted by Pope John Paul II on National Mall).

The Department believes it is both fair and appropriate to apply this provision to all applicants, including the Raimbow Family. Even if the Rainbow Family has no leader, members of the group can still designate a representative who can receive notice of actions pertaining to an application for a special use authorization. For example, several respondents commented that the Rainbow Family engages in decisionmaking by consensus and that councils meet to make decisions that affect the group. Thus, one of these councils could select a representative for the purpose of § 251.54(e)(1).

The court in *United States* v. *Rainbow Family* held that the Rainbow Family is an unincorporated association that can sue and be sued. 695 F. Supp. at 298. The court also held that service of process upon the Rainbow Family was properly effected in that case by service upon several individuals who acted as agents or representatives of the Rainbow Family. *Id.* Moreover, in 1987, representatives of the Rainbow Family signed a consent judgment in a suit brought by the Health Director of the State of North Carolina against the Rainbow Family for failure to obtain a permit under the State's mass gathering statute. It is therefore reasonable to believe that the Rainbow Family could designate a person or persons to receive notice of actions pertaining to an application for a special use authorization.

Comment. Under the heading ''Minimum information,'' § 251.54(e)(2)(i) of the proposed rule required applicants for noncommercial group uses to provide a description of the proposed activity, a description of the National Forest System lands and facilities the applicant would like to use, the estimated number of participants and spectators, and date and time of the proposed activity, and the name of the person or persons 21 years of age or older who will sign a special use authorization on behalf of the applicant.

Four respondents commented on § 251.54(e)(2)(i). One respondent stated that this requirement is generally illegal. Another respondent stated that the agency should only require a group's name, address, and a description and the date of the proposed activity. A third respondent commented that it is reasonable for the agency to require information about proposed activities on National Forest System lands, including their location, the number of participants, and the date and time of the proposed activity. However, this respondent stated that requiring applicants to submit minimum information subjects them to arbitrary standards of accuracy and demands for further information—especially where the activity is diverse and organic, exact participation is unknown, and set-up and clean-up times are imprecise—and that an authorized officer could delay or deny an application because the information provided is deemed incomplete or inaccurate. Two other respondents stated that the agency could deny a permit if an application was not filled out correctly or completely.

Response. The Department believes that requiring minimal information about proposed noncommercial group uses is both reasonable and necessary for administrative purposes and is in no way illegal. Failure to require this information before these activities occur

would defeat the Department's purposes of resource protection, promotion of public health and safety, and allocation of space within the National Forest System. Without this information, for example, the Forest Service would not know the kinds of mitigative and preventive measures to take in authorizing noncommercial group uses. As a result, these uses could pose a substantial risk of damage to National Forest System lands and resources.

The Department's intent is to limit the information required to those items contained in §§ 251.54(e)(2)(i)(A)–(E), which address only the time, place, and manner of the proposed activity. To clarify that intent, the heading for § 251.54(e)(2) has been changed from ''Minimum information'' to ''Required information.'' In addition, a sentence has been added to § 251.54(e)(2)(i) to make explicit that the additional requirements enumerated in §§ 251.54(e)(3) through (e)(6) of the final rule do not apply to applications for noncommercial group uses.

While the Department intends that information be provided for each of the five categories as accurately and completely as possible, Forest Service officers will not hold applicants to standards of accuracy or completeness that are impracticable to attain. For example, § 251.54(e)(2)(i)(C) requires an estimate, not an exact number, of participants and spectators. Under § 251.54(e)(2)(i)(B), the Department is not requiring a legal description of the land proposed for the activity, but rather a description that is accurate and complete enough to allow the authorized officer to determine where the activity will occur.

Finally, the Forest Service cannot delay an application because the information provided is incomplete or inaccurate. Section 251.54(f)(5) of the final rule provides that an application for noncommercial group uses must be granted or denied within 48 hours of receipt.

For the reasons stated, the final rule retains the requirement in § 251.54(e)(2)(i) without change from the proposed rule.

Comment. Section 251.54(e)(2)(i)(A) of the proposed rule required applicants to provide a description of the proposed activity.

Three respondents commented on this provision. One respondent felt that it is reasonable for the Forest Service to want an idea of what people are going to do on public lands, but that if authorized officers already know, then this issue is addressed. This respondent stated that this information should be provided when authorized officers ask for it, but that requiring it to be provided in advance places an undue burden on the public.

Two respondents commented that the requirement for a description of the proposed activity is very ambiguous and that it is not clear how much detail is required. One of these respondents stated that the agency could increase the chances of revocation of a permit by requiring strict compliance with a condition that would be very difficult to meet and that the actions of one person could put everyone at a legal risk.

Response. It is both reasonable and necessary to require proponents to provide in advance a description of the proposed activity. Failure to provide prior notice of proposed activities would defeat the Department's purposes of resource protection, promotion of public health and safety, and allocation of space within the National Forest System. Without this information, for example, the Forest Service would not know the kinds of mitigative and preventive measures to take in authorizing noncommercial group uses. As a result, these uses could pose a substantial risk of damage to National Forest System lands and resources.

The Department believes that § 251.54(e)(2)(i)(A) is unambiguous. Under this provision the Department is requiring a description of the proposed activity that is accurate and complete enough to allow the authorized officer to determine the nature of the proposed activity, for example, whether it is a wedding reception or a group ride. Moreover, a lack of detail in describing the proposed activity is not a basis for revocation under § 251.60(a)(1) of the final rule.

Revocation will not be more likely for special use authorizations issued for noncommercial group uses than for other types of uses. The Forest Service endeavors and will continue to endeavor to ensure compliance with all the terms and conditions of all special use authorizations. Requiring a description of the proposed activity has no bearing on the legal risk assumed by individual group members or the group as a whole in connection with the proposed activity. Under this rule, individual group members will be personally responsible for their own actions, while the group will be responsible for the actions of its members as a whole that relate to compliance with the special use authorization.

Having considered the comments received, the Department has retained without change § 251.54(e)(2)(i)(A) in the final rule.

Comment. Section 251.54(e)(2)(i)(B) of the proposed rule required applicants to provide a description of the National Forest System lands and any facilities the applicant would like to use.

Four respondents commented on this provision. One respondent commented that it is reasonable for the Forest Service to request a description of the National Forest System lands a proponent would like to use, but that requiring this information prior to the proposed activity places an undue burden on the public. This respondent stated that if the land selected by a proponent is not available at the time requested, the agency should address the problem at the time of the activity, not before.

One respondent stated that this provision would require a church group to tell the agency where it wants to pray, which would violate religious freedom. Another respondent commented that the agency could authorize a smaller area than requested and that if 25 or more people spilled over the permit boundary, use of that area would not be authorized by the permit. One respondent stated that a group would have to commit to a site early on, given the amount of time needed to process an application.

Response. The Department has amended § 251.54(e)(2)(i)(B) in the final rule to require an applicant to provide the location as well as a description of the National Forest System lands and facilities the applicant would like to use. It is both reasonable and necessary to require proponents to provide this information in advance. Failure to provide prior notice of the location and a description of the proposed activity would defeat the Department's purposes of resource protection, promotion of public health and safety, and allocation of space within the National Forest System. Without this information, for example, the Forest Service would not know the kinds of mitigative and preventive measures to take in authorizing noncommercial group uses. As a result, these uses could pose a substantial risk of damage to National Forest System lands and resources.

In addition, the National Environmental Policy Act (NEPA) mandates that federal agencies prepare an environmental analysis on proposals for major federal actions significantly affecting the quality of the human environment (42 U.S.C. 4332(2)(C)). As one of the examples of a major federal action, NEPA's implementing regulations include actions approved by federal permit (40 CFR 1508.18(b)(4)). In order to comply with NEPA, the Forest Service needs to know which National

Forest System lands may be impacted by a proposed activity.

Requiring religious groups to provide a description of the National Forest System lands and facilities they would like to use does not impose an undue burden on free exercise of religion. Religious groups have applied for and have obtained permits to hold services at specific sites on public lands. *See, e.g., O'Hair* v. *Andrus,* 613 F.2d 931 (D.C. Cir. 1979) (National Park Service permit authorizing outdoor Catholic Mass on National Mall).

Authorization of noncommercial group uses will not be less likely than authorization of other uses. On the contrary, the Department intends to authorize noncommercial group uses to the full extent allowed under this rule. The Department also intends to apply this rule consistently and fairly as required by law to all noncommercial group uses. While the agency retains the discretion to determine the size of an area needed to support an activity, drawing an authorization boundary smaller than required would not be environmentally defensible as that approach would increase rather than reduce risks to forest resources.

The amount of time needed to process an application will not require a group to commit to a site early. Under § 251.54(f)(5) of the final rule, applications will be granted or denied within 48 hours of receipt. However, a group may still find it necessary to commit to a site early due to factors that are beyond the control of the Forest Service, such as the popularity of the site.

Comment. Section 251.54(e)(2)(i)(C) of the proposed rule required the applicant to provide the estimated number of participants and spectators.

Three respondents commented on this provision. One respondent commented that it is reasonable for the Forest Service to request an estimate of the number of participants and spectators, but that requiring that estimate prior to an activity places an undue burden on the public. Another respondent stated that this provision could be used to limit attendance at an activity on the pretext of mitigating environmental impact. One respondent commented that regulating the number of participants and spectators is not a valid time, place, and manner restriction.

Response. The Department believes that it is both reasonable and necessary to require proponents to provide in advance an estimate of the number of participants and spectators. Failure to require prior notice of the anticipated attendance would defeat the Department's purposes of resource protection, promotion of public health and safety, and allocation of space within the national Forest System. Without this information, for example, the Forest Service would not know the kinds of mitigative and preventive measures to take in authorizing noncommercial group uses. As a result, these uses could pose a substantial risk of damage to National Forest System lands and resources.

This provision is a necessary component of a valid time, place, and manner restriction. For example, the applicable forest plan might limit the number of people that can be accommodated at a proposed site. The Forest Service would need an estimate of the number of participants and spectators to determine whether that number fell within the limit established by the forest plan. In addition, the agency would need to know the anticipated attendance in order to determine the number of toilets or latrines needed or the sufficiency of potable drinking water at the proposed site. Finally, while numbers of people can have varying degrees of environmental impact on a site, the agency cannot under this rule limit the number of people attending an activity. The agency can only accommodate that number.

Having considered the comments received, the Department has retained without change § 251.54(e)(2)(i)(C) in the final rule.

Comment. Section 251.54(e)(2)(i)(D) of the proposed rule required applicants to provide the date and time of the proposed activity.

Two respondents commented on this provision. One respondent stated that it is reasonable for the Forest Service to request the date and time of a proposed activity, but that requiring that information before an activity places an undue burden on the public. Another respondent commented that the agency could authorize a shorter time than requested, so that anyone at the site before or after that time would be in violation of the permit.

Response. The proposed rule merely required the date and time of the proposed activity. Thus, the proposed rule required applicants to specify when but not how long a proposed activity would occur. Accordingly, the Department has amended § 251.54(e)(2)(i)(D) in the final rule to require applicants to provide the starting and ending date and time of a proposed activity.

The Department believes that it is both reasonable and necessary to require applicants to indicate in advance both when and how long a proposed activity will occur. Failure to require prior notice of this information would defeat the Department's purposes of resource protection, promotion of public health and safety, and allocation of space within the National Forest System. Without this information, for example, the Forest Service would not know the kinds of mitigative and preventive measures to take in authorizing noncommercial group uses. As a result, these uses could pose a substantial risk of danger to National Forest System lands and resources.

Authorization of noncommercial group uses will not be less likely than authorization of other uses. On the contrary, the Department intends to authorize noncommercial group uses to the full extent allowed under this rule. The Department also intends to apply this rule consistently and fairly as required by law to all noncommercial group uses.

It would be inconsistent with this intent to authorize a shorter time than requested for the purpose of finding anyone at the site before or after that time in violation of the authorization. However, there could be a compelling need to adjust the requested time period. For example, the agency might suggest an alternate date or site for a school-sponsored camping event if the requested date and site would place students in jeopardy on the opening day of deer hunting season.

Comment. Section 251.54(e)(2)(i)(E) of the proposed rule required applicants to provide the name of the person or persons 21 years of age or older who will sign a special use authorization on behalf of the applicant.

Four respondents recommended dropping the age limitation in this provision. These respondents believed that the age limitation prevents persons under the age of 21 from exercising their First Amendment rights, and that the agency should lower the age limit to 18 or drop it altogether; that those under the age of 21 would not be able to gather unless the ideas they espouse have been adopted by someone 21 years of age or older; that the provision discriminates against citizens under the age of 21, who will not be able to gather in groups of 25 or more; that this provision establishes a restriction on First Amendment activity that does not apply to other activities, since younger people can still go camping in small groups without a permit, which could present equal or greater risks to the resource; and that although each Rainbow Family member could get his or her own permit, then no one under the age of 21 could attend the Gathering.

Approximately 19 respondents indicated that it is not appropriate to make one individual responsible for an entire group. Specifically, these respondents stated that individual group members will no longer be responsible for themselves; that individuals should accept responsibility only for themselves; that it is reasonable for a group to give a person's name in the spirit of cooperation, but that it is not reasonable to require one person to assume responsibility for others; that a group should take responsibility for itself, and that if one person signs a permit, the group's solidarity will be broken; that this requirement is unreasonable if a group is not a legal entity and acts by consensus rather than by hierarchy; that if no representative from the group will sign because the group has no leader and because decisions are made by consensus, the Forest Service could find anyone 21 years of age or older or a representative from a different group to sign the permit, thus circumventing the process of decisionmaking by consensus; that individuals in the group will lose their autonomy; that those individuals who are responsible for any damage could make restitution with the aid of the whole group; that this requirement is particularly inappropriate where a group hesitates on philosophical grounds to appoint agents or representatives to speak on its behalf, and that the agency has said that it is unreasonable and impracticable to deal separately with each member of a large group, but that there is no reason for such a group to alter its philosophical grounds unless the agency shows that it has had to deal separately with each group member; that certain religious practices do not recognize a leader who takes responsibility for the group; that making one individual responsible for a permit makes the activity seem like a commercial venture.

Two respondents commented that this provision is unenforceable against the Rainbow Family because they have no leader. One of these respondents stated that no member of the Rainbow Family can speak for, sign for, or be held responsible for another.

Response. The Department believes that the age limitation in § 251.54(e)(2)(i)(E) of the final rule is a reasonable time, place, and manner restriction. The restriction is necessary to ensure that those who are designated to sign and who do sign a special use authorization on behalf of a group are of the age of legal majority. The signature gives the authorization legal effect. If the person or persons who sign the authorization are not of the age of legal majority, the authorization is not legally enforceable. Since the age of legal majority is not the same in every state but in no state exceeds the age of 21, the final rule requires that the person or persons who are designated to sign and who do sign a special use authorization be at least 21 years of age.

The Department does not believe that this age limitation imposes an undue burden on the exercise of First Amendment rights by those under the age of 21. The final rule does not prohibit groups of 75 or more people under the age of 21 from gathering in the national forests, nor does the final rule require that these groups include a person 21 years of age or older. Rather, the final rule requires that a person or persons 21 years of age or older be designated to sign a special use authorization and that that designated person sign an authorization on behalf of the group.

It is not appropriate or necessary for each member of a group to sign a special use authorization. It is also not appropriate or necessary for one member or a few members of a group to assume personal responsibility for the actions of other group members. Individual group members are personally responsible for their own actions. A person who signs a special use authorization for a noncommercial group use acts as an agent for the group, but does not assume personal responsibility for the group's actions.

However, it is appropriate and necessary to ensure that a group will be responsible for the actions of its members as a whole that relate to the use and occupancy of National Forest System lands by requiring a person or persons to sign a special use authorization as an agent or representative of the group. Requiring that a person or persons sign the special use authorization on behalf of the group will not weaken the group's solidarity; on the contrary, this requirement can serve to enhance the group's solidarity by ensuring that the group will take responsibility for its actions. By signing a special use authorization on behalf of the group, the agent or representative gives the authorization legal effect and subjects the group to the authorization's terms and conditions.

In addition, the Forest Service needs to have someone to contact for purposes of special use administration. The authorized officer may have questions about the application or may need to notify the applicant in the event of an emergency. If the application does not identify a contact person, the Forest Service cannot make the appropriate notifications.

As shown by the reports on the 1991 and 1992 Rainbow Family Gatherings, if a group does not designate a representative or representatives, the Forest Service has to deal separately with various individual members and subgroups. Informal agreements made with one individual member or subgroup are not always respected by other group members, which makes it difficult for the agency to obtain commitments from the group as a whole. The special use authorization process will allow the agency to obtain commitments from the Rainbow Family that apply to the group as a whole.

Non-members of a group cannot sign a special use authorization on behalf of a group unless they are designated by the group to act as its agents or representatives and are authorized to make the group responsible for the actions of its members as a whole. Requiring a group to designate a person or persons who will sign a special use authorization on behalf of the group does not make a group use a commercial venture under this rule. Under the final rule, a group use is a commercial use or activity if an entry or participation fee is charged or if the primary purpose of the activity is the sale of a good or service, and in either case, regardless of whether the use or activity is intended to produce a profit. All groups, both commercial and noncommercial, should be responsible for the actions of their members as a whole that relate to the use and occupancy of National Forest System lands.

The Department believes that it is both fair and appropriate to apply this provision to all applicants, including groups like the Rainbow Family that make decisions by consensus. The group can, for example, designate a representative or representatives who can sign a special use authorization on behalf of the group. Groups that make decisions by consensus could select a representative through that decisionmaking process.

As one respondent noted, the court in *United States* v. *Rainbow Family* held that the Rainbow Family is an unincorporated association that can sue and be sued. 695 F. Supp. at 298. The court also held that service upon the Rainbow Family was properly effected in that case by service upon several individuals who acted as agents or representatives of the Rainbow Family. *Id.* Moreoover, in 1987, representatives of the Rainbow Family signed a consent judgment in a suit brought by the Health Director of the State of North Carolina against the Rainbow Family for failure to obtain a permit under the State's mass gathering statute. It is therefore

reasonable to believe that the Rainbow Family could designate a person or persons to sign a special use authorization on behalf of the group as provided in § 251.54(e)(2)(i)(E).

Having considered the comments received, the Department has retained without change § 251.54(e)(2)(i)(E) in the final rule.

Comment. Section 251.54(e)(2)(ii)(D) of the existing rule enumerates certain information that might have to be provided by a private corporation applying for a special use authorization. The proposed rule redesignated this provision but did not offer any substantive change.

One respondent commented that the minimum amount of information required from a private corporation applying for a special use authorization is much greater than what is required from any other category of applicant and that the only information needed from private corporations is evidence of incorporation and good standing.

Response. This provision was not subject to substantive amendment under the proposed rule, is not being amended by the final rule, and has no bearing on the subject matter of this rule. Therefore, this provision is beyond the scope of this rulemaking. However, the Department believes that it may be appropriate to require private corporations applying for a special use authorization to provide more than evidence of incorporation and good standing.

Comment. A provision in § 251.54(e)(1) of the existing rule requiring the Forest Service to give due deference to the findings of another agency, such as a public utility commission, the Federal Energy Regulatory Commission, or the Interstate Commerce Commission, in lieu of another detailed finding, was proposed to be moved to a new § 251.54(f)(4) of the proposed rule, since this provision relates to the processing of applications rather than to their content. This was a technical rather than a substantive amendment.

Two respondents commented on this provision. One respondent stated that if the Forest Service defers to the findings of another agency, an application for a special use authorization could be subjected to the agenda of any part of government. The other respondent commented that this provision applies a large body of administrative law to the review of applications for a special use authorization, subject to the discretion of the authorized officer, and places the burden of documenting the findings of other agencies on the applicant.

Response. This provision was not subject to substantive amendment under the proposed rule, is not being amended by the final rule, and has no bearing on the subject matter of this rule. Therefore, this provision is beyond the scope of this rulemaking. Nevertheless, the Department believes that this provision makes the application process more efficient by allowing the Forest Service to defer to relevant findings of other agencies, rather than making another detailed finding, in evaluating applications for commercial special use authorizations.

Comment. Section 251.54(f)(5) of the proposed rule provided that the agency would grant or deny an application for noncommercial group uses without unreasonable delay. On the one hand, First Amendment due process considerations require a specific timeframe for granting or denying an application for noncommercial group uses. On the other hand, a decision to issue a special use authorization triggers extensive statutory and regulatory requirements such as those imposed by the ESA and NEPA. Section 251.54(f)(5) of the proposed rule reflected the agency's effort to balance the competing concerns of complying with these First Amendment due process considerations and the statutory and regulatory requirements triggered by a decision to issue a special use authorization.

Approximately 65 respondents commented that this proposed provision is too vague and would allow for too much discretion because it fails to provide a definite timeframe for granting or denying an application. Four respondents cited *United States* v. *Rainbow Family* in support of their position. One respondent cited footnote 5 in *United States* v.*Abney,* 534 F.2d 984 (D.C. Cir. 1976), for the proposition that applications for First Amendment activities must be handled on an expedited basis to avoid de facto censorship of certain points of view.

Several respondents recommended an expeditious procedure for reviewing applications. Four respondents stated that the National Park Service has a specific timeframe for evaluating permit applications for First Amendment activities. One respondent cited 36 CFR 7.96(g)(3), which provides that National Park Service permit applications for demonstrations in the National Capital Region are deemed granted if not acted upon within 24 hours of receipt.

Two respondents commented that the need to comply with statutory and regulatory requirements could not justify the agency's position and that the Forest Service should set a short timeframe and deny an application within that timeframe if the agency needed more time to complete an environmental impact statement.

One respondent suggested that permits should be issued immediately where the forest plan identifies the proposed activity as appropriate for the requested area and where the proposed activity meets applicable standards and guidelines. Another respondent commented that if the group threshold remains at 25, the decision should be made almost immediately where the requested stay is three days and two nights or less, where the activity is to be held in an area designed for a large group, such as a developed campground, and where the forest plan recognizes the activity as appropriate for the desired area. The same respondent added that if the group threshold was raised to 50, the decision should be made within 15 days.

One respondent suggested that the agency grant or deny applications within three working days. Another respondent recommended a timeframe of six weeks for evaluating applications. One respondent suggested that an application should be granted or denied 30 to 60 days after completion of the necessary NEPA analysis, which could range from categorically excluding the proposed activity from documentation in an environmental impact statement or an environmental assessment to preparation of an environmental impact statement, depending on the intensity, scope, duration, and location of the activity.

Others stated that the agency could take as long as it liked to review applications, which could wreck a group's plan; that because the agency could take a long time to evaluate applications, proponents would have to apply far in advance; that this provision could allow denial by slow response; that applicants would have to go to court to expedite the process; that the lack of a specific timeframe undercuts the due process protection of immediate judicial review since access to the courts would be denied until a decision was made; that it is unclear why it is infeasible to specify a timeframe; that there is no evidence that NEPA, the ESA, and the NHPA apply to applications for noncommercial group uses or noncommercial distribution of printed material and that even if these statutes did apply, the Forest Service could survey the land and as part of the planning process either identify sensitive areas that need protective or designate areas suited for the activities in question; that the proposed rule does not define ''unreasonable''; that this provision injects too much uncertainty

into the application process and that while the need to comply with NEPA, ESA, and other statutes might in rare instances justify an indefinite timeframe for extremely large groups, such a need does not justify an indefinite timeframe for groups of 25 to 500 engaging in activities such as educational field trips, company picnics, and family reunions.

Response. Upon consideration of the comments received, the Department agrees that a short, specific timeframe for processing applications is needed to meet First Amendment requirements. *See, e.g., Shuttlesworth,* 394 U.S. at 162–64 (Harlan, J., concurring) (applications for First Amendment activities must be handled on an expedited basis to avoid *de facto* censorship of certain points of view); *A Quaker Action Group,* 516 F.2d at 735 (a permit system must have a fixed deadline for administrative action on a permit application for First Amendment activities; suggests that 24 hours be the maximum time for processing an application, and that applications be deemed granted if not acted upon within that time limit); *Rainbow Family,* 695 F. Supp, at 311 (1984 Forrest Service regulations are invalid for failure to specify a deadline for submitting an application and for granting or denying an authorization for First Amendment activities); *see also Rainbow Family,* 695 F. Supp. at 325 (although NEPA is unquestionably constitutional, even an otherwise valid statute cannot be applied in a manner designed to suppress First Amendment activity) (citing *CCNV,* 468 U.S. at 293; *Police Dep't of Chicago* v. *Mosley,* 408 U.S. 92 (1972)).

However, as the court noted in the *Rainbow Family* case, 695 F. Supp. at 323–24, the agency must comply with certain statutory and regulatory requirements under NEPA before issuing a special use authorization. NEPA mandates that federal agencies undertake an environmental analysis on proposals for major Federal actions significantly affecting the quality of the human environment (42 U.S.C. 4332(2)(C)). The Council on Environmental Quality (CEQ) has developed regulations implementing NEPA (40 U.S.C. part 1500).

In general, under the CEQ regulations, an agency must conduct an environmental analysis to determine whether a proposed action may constitute a major federal action significantly affecting the quality of the human environment (40 CFR 1501.4, 1508.9, 1508.13). If a proposed action may significantly affect the quality of the human environment, an environmental impact statement (EIS) must be prepared (40 CFR 1501.4, 1502.4). As one of the example of a major federal action, the CEQ regulations list approval of specific projects, such as actions approved by permit (40 CFR 1508.18(b)(4)).

Thus, as a general matter, the issuance of Forest Service special use authorizations constitutes a federal action for NEPA purposes which may require documentation in a categorical exclusion (CE), environmental analysis (EA), or an EIS. Proposed actions implementing forest plans for which an EA or an EIS is prepared are subject to the Forest Service's appeal regulations for project decisions (36 CFR 215.3(a) (58 FR 58911), which add substantially to the processing time (36 CFR part 215 (58 FR 58904)).

However, the CEQ regulations encourage agencies to reduce paperwork and delay by categorically excluding certain types of proposed actions from documentation in an EA or an EIS which do not individually or cumulatively have a significant effect on the human environment (40 CFR 1500.4(p), 1500.5(k), 1507.3, 1508.4)). The Forest Service NEPA procedures categorically exclude certain types of proposed actions from documentation in an EA or an EIS, including proposed actions that fall within a category listed in § 31.1b of Forest Service Handbook 1909.15 (57 FR 43180), if no extraordinary circumstances are related to or affected by the proposed action.

One of the categories listed in § 31.1b is:

> 8. Approval . . . of minor, short-term (one year or less) special uses of National Forest System lands. Examples include but are not limited to:
>
> a. Approving, on an annual basis, the intermittent use and occupancy by a State-licensed outfitter or guide.
>
> b. Approving the use of National Forest System land for apiaries.
>
> c. Approving the gathering of forest products for personal use.

As explained in section 30.3(2) of the Handbook, extraordinary circumstances include, but are not limited to, the presence of:

> a. Steep slopes or highly erosive soils.
>
> b. Threatened and endangered species or their critical habitat.
>
> c. Flood plains, wetlands, or municipal watersheds.
>
> d. Congressionally designated areas, such as wilderness, wilderness study areas, or National Recreation Areas.
>
> e. Inventoried roadless areas.
>
> f. Research Natural Areas.
>
> g. Native American religious or cultural sites, archaeological sites, or historic properties or areas.

The Department does not intend to preclude reliance on a categorical exclusion because of the mere presence of or a *de minimis* impact on one or more extraordinary circumstances. Rather, the Department intends to preclude reliance on a categorical exclusion if the proposed action materially impacts the characteristics or functions of one or more extraordinary circumstances.

The Department believes it essential to reconcile the First Amendment requirement for a short, specific timeframe with the need to comply with NEPA procedures. Thus, in response to the comments received, the Department gives notice that the Forest Service will categorically exclude authorization of noncommerical group uses from documentation in an EA or EIS under § 31.1b(8) of Forest Service Handbook 1909.15, provided there are no extraordinary circumstances related to or affected by the proposed activity.

The Department believes that authorization of noncommercial group uses qualifies for categorical exclusion under § 31.1b(8) because noncommercial group uses are short-term, typically for only a few days or weeks, and because they are minor in that they entail readily mitigable environmental disturbance.

This determination is further supported by the reports on the 1991 and 1992 Rainbow Family Gatherings and by the *Rainbow Family* case. In the context of an extensive analysis of NEPA requirements, the court in the *Rainbow Family* case concluded that it is questionable whether the annual Rainbow Family Gatherings would have any significant impact on the environment for NEPA purposes. The court stated that environmental impacts associated with these activities, such as the temporary contamination of streams, are likely to be short-term. 695 F. Supp. at 324.

The Department's determination is also supported by the approach taken by the National Park Service: The National Park Service categorically excludes from documentation in an EA or an EIS ''the issuance of permits for demonstrations, gatherings, ceremonies, concerts, arts and crafts shows, etc., entailing only short-term or readily mitigable environmental disturbance'' provided extraordinary circumstances are not adversely impacted by these activities (Department of the Interior NEPA Procedures, 516 DM 6, Appendix 7, sec. 7.4(D)(5); 516 DM 2, Appendix 2, sec. 2.1 through 2.10). By categorically excluding these types of activities from documentation in an EA or an EIS if they do not adversely affect any extraordinary circumstances, the National Park Service is able to process

applications for these activities within the 24-hour timeframe imposed by 36 CFR 7.96(g)(3).

In addition to having determined that noncommercial group uses conform to the categorical exclusion in § 31.1b(8) of Forest Service Handbook 1909.15, the Department has incorporated the extraordinary circumstances exception to categorical exclusions into the evaluation process as an additional criterion at § 251.54(h)(1)(iii) of the final rule. If an authorized officer determines that all the evaluation criteria are met, including the criterion concerning the extraordinary circumstances exception, the application will be granted. With this assurance that the most sensitive environmental lands and resources will be protected, an extensive NEPA analysis is not required.

Categorically excluding noncommercial group uses from documentation in an EA or an EIS under § 31.1b(8) of Forest Service Handbook 1909.15 allows the Forest Service to expedite the processing of applications for these activities in compliance with both NEPA and the First Amendment. Moreover, proposed actions that are categorically excluded from documentation in an EA or an EIS under § 31.1b are exempt from the potentially lengthy notice and comment procedures in the Forest Service's appeal regulations for project decisions (36 CFR 215.4(b) (58 FR 58911)).

Finally, like the National Park Service regulation at 36 CFR 7.96(g)(3), § 251.54(f)(5) of the final rule specifies a short timeframe both for submitting and processing applications for noncommercial group uses. Section 251.54(f)(5) provides that applications for noncommercial group uses may be submitted up to 72 hours before the activity and that applications for noncommercial group uses are deemed granted and that an authorization will be issued for those uses unless the applications are denied within 48 hours of receipt.

The 48-hour and 24-hour timeframes for submission and processing of applications under the National Park Service's regulation apply only to activities in the National Capital Region, which is a fairly concentrated and developed park area. This final rule applies to the entire National Forest System. The Department believes that the additional 24 hours both for submitting and processing applications under this rule are warranted given the sizable amounts of undeveloped land and the wide variety of uses and activities that are subject to this regulation.

As provided in 36 CFR 7.96(g)(3), where an application for a special use authorization has been granted or has been deemed granted under § 251.54(f)(5) and an authorization has been issued, an authorized officer may revoke the authorization under the limited circumstances provided in § 251.60(a)(1) of the final rule.

Under § 251.54(f)(5), as under 36 CFR 7.96(g)(4), applications for noncommercial group uses will be processed in order of receipt, and the use of a particular area will be allocated in order of receipt of a fully executed application, subject to any relevant limitations set forth in § 251.54.

Comment. Section 251.54(h) of the proposed rule specified the procedures and criteria for evaluating applications for noncommercial group uses. Section 251.54(h)(1) of the proposed rule established a presumption in favor of granting an application for a special use authorization for all noncommercial group uses. Under § 251.54(h)(1) of the proposed rule, an authorized officer had to grant an application for a special use authorization for any noncommercial group use upon a determination that seven specific, content-neutral evaluation criteria were met.

Approximately 70 respondents argued that the proposed rule gives the Forest Service too much discretionary power. These respondents stated that an application for a special use authorization could be granted or denied at will; that the proposed rule results in too much governmental control; that the proposed rule does not meet the stringent standards of *Forsyth County* v. *Nationalist Movement, 505 U.S. 123* (1992), because the evaluation criteria are not ''narrowly drawn, reasonable and definite'' and vest ''unbridled discretion in a government official''; that the Forest Service could deny a permit to any group, and that simply restricting conditions under which permits can be denied does not erase a violation of constitutional rights; that the regulation is intentionally vague and was drafted to fail, thereby inviting harsher legal remedies; that a permit could be approved or denied based on an authorized officer's personal interpretation of the public interest; that an authorized officer cannot decide on a whim how many people should gather or what may be discussed at the gathering; that the proposed rule allows an authorized officer to grant or deny an application on the basis of what might happen; that an application could be denied on the basis of prejudice and that if one gives others an opportunity to abuse one's rights, they will; that the agency's intent may not be carried out by subsequent administrators; that the agency may make it difficult to find out where to obtain a permit; and that the agency may add reasons for denying a permit and may start requiring permits for individuals.

Response. The Department disagrees with these comments. Under the proposed and final rules, applications for noncommercial group uses cannot be granted or denied at will, on the basis of prejudice, on the basis of what might happen, or on the basis of a personal interpretation of the public interest. Rather, these applications must be granted or denied on the basis of the specific, content-neutral evaluation criteria at § 251.54(h)(1) that vest little or no discretion in the authorized officer. These criteria merely regulate time, place, and manner with respect to a proposed activity.

The Department drafted the criteria this way to ensure that the rule complies with constitutional requirements. The Department intends that the evaluation criteria be applied consistently and fairly as required by law to all noncommercial groups. After this rule goes into effect, the Department may not change it in any material way without publishing another proposed rule for notice and comment (5 U.S.C. 553).

Application forms for special use authorizations subject to this rule may be obtained from the Forest Service office responsible for management of the affected land. That office will evaluate applications received and decide whether to issue a special use authorization on the basis of those applications.

This rule meets the stringent standards of *Forsyth*. In that case, the Supreme Court held that a permit fee requirement was not narrowly drawn to provide reasonable and definite standards for fee determinations and that the ordinance at issue was content-based rather than content-neutral because the determination of the amount of the fee turned on a review of the content of the message conveyed. 112 S. Ct. at 2403–04. In contrast, the evaluation criteria in this final rule are narrowly tailored to minimize resource damage, to ensure compliance with federal, state, and local law, and to address specific concerns of public health and safety. None of these considerations has any connection with the content of any message that may be conveyed by a proposed activity.

Accordingly, the Department has retained without change the introductory text in § 251.54(h)(1) in the final rule.

Comment. Seventeen additional respondents commented on the evaluation criteria in general. These respondents stated that the criteria are an undue burden; that the criteria impose unreasonable restrictions on freedom of assembly by restricting where, when, and how citizens gather, and what types of activities can occur at a gathering; that denial of a permit for constitutionally protected activities goes beyond a regulation of time, place, and manner; that these criteria are unnecessary, unlawful, redundant, and waste money; that the criteria are unnecessary since most applicants would meet them anyway; that none of the criteria addresses conduct that may have adverse impacts on forest resources; that the issues addressed in the criteria are never a problem at Rainbow Family Gatherings; that with the exception of the criterion on halting, delaying, or preventing other uses and activities, the issues addressed in the seven criteria are either dealt with in other law or are common sense health and safety measures; that applicants have to show cause before a permit is issued; that the proposed rule would shift the burden of proof from the government to its citizens in requiring them to show, through the application process, that they deserve a permit; and that the burden should be on the agency to establish a basis for denial of a permit.

Response. The Department disagrees with these comments. The final rule is a constitutional restriction of time, place, and manner because the standards in the rule, including the evaluation criteria, are content-neutral, are narrowly tailored to further significant governmental interests, and leave open ample alternative channels for communication of information.

As noted earlier in this preamble, the Forest Service has encountered a variety of problems in connection with noncommercial group use of National Forest System lands. These problems have arisen in the context of many different types of noncommercial group uses, including Rainbow Family Gatherings. Some of these problems have included the spread of disease, pollution from inadequate site clean-up, and resource damage in critical salmon habitat. In view of these problems, the Department has established three significant interests in promulgating this rule: Protection of forest resources and facilities; promotion of public health and safety; and allocation of space within the National Forest System.

The Department believes that the eight evaluation criteria in this rule are narrowly tailored to address these issues. The first criterion addresses compliance with laws in general and compliance with laws in particular that relate to protection of forest resources, such as the ESA. The second criterion addresses consistency with standards and guidelines for environmental protection in the applicable forest plan. The third criterion deals with allocation of space for administrative use by the Forest Service and for other authorized uses and activities on National Forest System lands. The fourth and fifth criteria address specific concerns of public health and safety. The sixth criterion makes the rule consistent with existing Forest Service policy on military and paramilitary training or exercises on National Forest System lands. The seventh criterion, which requires a representative of the group to sign a special use authorization, allows the Forest Service to administer special use authorizations and enables noncommercial groups to take responsibility for the actions of their members as a whole that relate to the use and occupancy of National Forest System lands. The eighth additional criterion in the final rule on extraordinary circumstances allows the Forest Service to ensure that the most sensitive environmental lands and resources will be protected while expediting the processing of applications as required by the First Amendment.

Whether other laws address the issues dealt with in the evaluation criteria in this rule is immaterial because less restrictive alternatives are not part of the test for constitutionality of time, place, and manner regulations. Even though less restrictive alternatives are not part of the test for constitutionality, the Department believes that the special use authorization requirement is the least restrictive means to achieve the government's interests. Other laws and regulations do not provide the framework necessary for applying standards for resource protection and public health and safety to noncommercial group uses. Special use authorizations are needed to allow the Forest Service to limit or prevent adverse impacts on forest resources from noncommercial group uses, to address concerns of public health and safety associated with noncommercial group uses, and to allocate space for noncommercial group uses and other uses and activities.

Applicants for noncommercial group uses do not have to show cause before a special use authorization is issued. Applicants for noncommercial group uses merely have to provide the information enumerated in §§ 251.54(e)(2)(i) (A)–(E), which the Forest Service needs in order to apply the evaluation criteria in the rule. Section 251.54(h)(1) establishes a presumption in favor of issuance of a special use authorization. The burden is on the authorized officer to establish a factual and legal basis for denial of a special use authorization.

A summary of comments received on each evaluation criterion and the Department's response to them follows.

Comment. Section 251.54(h)(1)(i) of the proposed rule required an authorized officer to determine that a proposed activity was not prohibited by the rules at 36 CFR part 261, subpart A, or by an order issued pursuant to 36 CFR part 261, subpart B, or by federal, state, or local law.

Twenty-one respondents commented on this provision. Six respondents stated that the provision is too vague and broad. These respondents commented that the provision could always provide a basis for denial of a permit; that a permit could be denied if anyone in a group might violate the law or if a state law, such as an anti-mass gathering law, prohibited the activity; that the perceived risk that a law might be broken or a habitat disturbed would suffice for denial of a permit, and that the test is speculative, biased, and arbitrary; and that the evaluation criteria apply a double standard, in that a substantial risk is required to trigger health and safety concerns, but that any risk of a take of an endangered species could result in denial of a permit, that the rule should provide that there must be a substantial probability of causing a take during the proposed activity, that ''substantial probability'' should be defined as 50 percent or greater, and that a permit should not be denied because the proposed activity violates state law, such as a state endangered species act, which could be broader than federal law.

Three respondents believed that it is a general prohibition that has no bearing on time, place, or manner. One of these respondents commented that specific regulations exist for ensuring compliance with the Wilderness Act and the ESA. Another commented that the agency should regulate sensitive areas, not numbers.

Two respondents stated that the legality of proposed activities is addressed by other laws, such as the ESA, that requiring people to apply for permits so that these laws can be upheld is unjustified, and that if someone intended to take an endangered species, these regulations would not stop them.

Another respondent stated that this provision places an undue burden on

the public in that applicants have to apply in advance and worry about whether a permit will be granted or not, that people should decide where they want to go, and that if they choose a place that they should not use, it is the agency's responsibility to inform them of the problem.

Six respondents commented that there is no need to protect the public by closing a site due to bad weather and that individuals or groups can decide for themselves whether to use a particular site at a particular time. One of these respondents wrote that people would not request a site hit by a major flood or a hurricane. One respondent stated that the provision is unjustified because there has never been a problem with extreme fire danger or inclement weather in the history of Rainbow Family Gatherings.

One respondent stated that the rule should be clarified to show that the referenced prohibitions do not include content-based restrictions in state or local laws. Another respondent commented that the Wilderness Act and the ESA are valid restrictions of time, place, and manner.

Response. The Department agrees that this provision should indicate that the referenced prohibitions do not include content-based restrictions in federal, state, or local law. The reference to § 251.54(h)(1)(i) in the preamble to the proposed rule contained this qualification, but it was inadvertently omitted from the proposed rule. Therefore, as intended, the phrase ''unrelated to the content of expressive activity'' has been added to § 251.54(h)(1)(i) of the final rule.

The Department believes that the criterion at § 251.54(h)(1)(i) is narrowly tailored and specific and that it constitutes a valid restriction on time, place, and manner. The Forest Service must comply with applicable federal law and regulations in managing the National Forest System. For example, the Wilderness Act requires the Forest Service to protect and manage wilderness areas so as to preserve their natural condition and to ensure that the imprint of human activity remains substantially unnoticeable (16 U.S.C. 1131(c)). The ESA requires federal agencies to consult with the Fish and Wildlife Service or National Marine Fisheries Service to ensure that any agency action is not likely to jeopardize the continued existence of any threatened or endangered species (16 U.S.C. 1536). In addition, the ESA prohibits a taking of an endangered species and, by discretion of the listing agency, a taking of a threatened species (16 U.S.C. 1538).

For example, if a noncommercial group of 75 or more requested to camp in grizzly bear habitat during early spring, when the grizzly bear, a species listed as threatened and protected under the ESA, comes out of hibernation, an authorized officer could deny the application and offer another site or time pursuant to § 251.54(h)(2). As one respondent noted, statutes like the ESA and the Wilderness Act are valid time, place, and manner restrictions, and this regulation is needed to provide a framework for applying that type of restriction to noncommercial group use of National Forest System lands. The special use authorization process will give the Forest Service notice of potential problems posed by these restrictions, as well as the ability to prevent or mitigate them.

Section 251.54(h)(1)(i) is severely limited. Under this criterion, a special use authorization can be denied only if authorization of the proposed activity is prohibited by Forest Service regulations at 36 CFR part 261, Forest Service orders issued under 36 CFR part 261, or by laws that are unrelated to the content of expressive activity. The standard in this provision is not speculative, biased, or arbitrary. A special use authorization cannot be denied if authorization of the proposed activity might be prohibited by the law; a special use authorization can be denied only if authorization of the proposed activity is prohibited by the law as it is applied to the specific facts of a given application. To clarify this intent, the Department has added ''authorization of'' before ''the proposed activity'' in § 251.54(h)(1)(i) of the final rule.

This regulation is intended to preempt all state and local laws and regulations that conflict with this regulation or that impede its full implementation. As long as state and local laws and regulations are content-neutral and do not conflict with this final rule or impede its implementation, the Department intends to comply fully with them in authorizing noncommercial group uses under this rule.

This criterion also will allow the Forest Service to enforce its prohibitions and orders consistently and fairly as required by law. For example, an authorized officer may deny an application and offer another site if the requested site is closed or restricted due to the outbreak of disease under an order issued under 36 CFR part 261. A site also might be closed due to extreme fire danger or inaccessibility because of flooding or heavy snowfall or to protect critical threatened or endangered species habitat.

Comment. Section 251.54(h)(1)(ii) of the proposed rule required an authorized officer to determine that a proposed activity was consistent or could be made consistent with the applicable forest plan required pursuant to 36 CFR part 219.

Nine respondents commented on this provision. One respondent stated that this provision should be dropped because there is no connection between the applicable forest plan and activities covered by the proposed rule and because forest plans are too inflexible to accommodate short-term uses. Another stated that the provision is vague and has no bearing on time, place, and manner and that when a proposed activity is not compatible with the applicable forest plan, the agency should change the plan. One respondent stated that the Forest Service should not adhere to the applicable forest plan when a group wishes to gather on a logging road or unreclaimed clear-cut to protest the agency's logging practices. One respondent commented that the proposed rule did not mention that the agency is having problems upholding standards and guidelines in forest plans. One respondent stated that this provision would restrict what type of activities could occur at gatherings. Another commented that a group could be denied use of an area because of past abuse by other groups.

One respondent noted that forest plans do not expressly limit or prohibit group uses but merely set overall guidelines for applying specific environmental and performance standards, with which group uses must conform. This respondent stated that it is the agency's duty to inform applicants of all relevant forest plan provisions and to ensure consistency of proposed activities with standards and guidelines in forest plans.

One respondent stated that this provision does not contain specific and objective standards for ensuring consistency with forest plans. Another respondent commented that this provision as written could indirectly allow restrictions on use based on the content of expressive activity. This respondent suggested that the agency clarify the provision to require consistency of the proposed activity with the management restrictions for the proposed area under the applicable forest plan.

Response. The Department agrees that forest plans do not prohibit authorization of noncommercial group uses. Rather, forest plans set standards and guidelines with which all uses of National Forest System lands, including authorization of noncommercial group

uses, must conform. Thus, requiring that authorization of noncommercial group uses be consistent or can be made consistent with the standards and guidelines in forest plans for the national forests is a valid time, place, and manner restriction.

The National Forest Management Act (NFMA) requires that ''permits * * * and other instruments for the use and occupancy of National Forest System lands shall be consistent with the land management plans'' (16 U.S.C. 1604(i)). This provision is content-neutral. A proposed activity is consistent with a forest plan if it adheres to a plan's standards and guidelines that are forest-wide or that are included in management prescriptions for the specific management areas where the activity will occur. Standards and guidelines in forest plans describe any activities that are not permitted to occur in a specified area or prescribe how activities must be implemented for environmental protection or other purposes.

Forest plans are developed in accordance with the rules at 36 CFR part 219 and adopted following extensive public participation and comment. It is not practicable to write a forest plan that can accommodate every conceivable use at every conceivable site at every conceivable time of the year. The standards and guidelines in forest plans apply to all instruments for the use and occupancy of National Forest System lands, from timber sale contracts to grazing permits, regardless of whether the activity involves the expression of views. In reviewing an application for a noncommercial group use, an authorized officer will determine whether authorization of the proposed activity at the time and place requested is consistent or can be made consistent with the applicable forest plan based on the information provided under §§ 251.54(e)(2)(i) (A) through (e)(2)(i)(E).

NFMA requires that permits and other instruments for use and occupancy of National Forest System lands be consistent with the applicable Forest plan (16 U.S.C. 1604(i)). The Department has added ''authorization of'' before ''the proposed activity'' in § 251.54(h)(1)(ii) of the final rule to reflect the requirement in NFMA that authorization of the proposed activity, rather than the authorized activity itself, be consistent with the applicable forest plan.

Comment. Section 251.54(h)(1)(iii) of the proposed rule required an authorized officer to determine that a proposed activity would not delay, halt, or prevent administrative use of an area by the Forest Service or other scheduled or existing uses or activities on National Forest System lands, including but not limited to uses and activities authorized pursuant to parts 222, 223, 228, and 251 of this chapter.

Approximately 35 respondents commented on this provision. Eight respondents commented that this provision is vague generally and gives an authorized officer too much discretion. Specifically, these respondents stated that denying a permit because it conflicts with another use or because it cannot reasonably be accommodated at the time and place requested allows for two much discretion on the part of the authorized officer; that the provision should be dropped because it is no better than a similar criterion that was struck down by the court in the *Rainbow Family* case; that under *United States* v. *Rainbow Family*, 695 F. Supp. at 312 n.6, this provision vests too much discretion in the authorized officer to propose an alternate time or place; that the agency could ensure that administrative uses are always scheduled at the same time as any proposed activity or deem existing or scheduled uses to be incompatible with the proposed activity, even if they are not; that this provision would allow the Forest Service to deny a permit if the agency thinks that a proposed activity, such as a group protest or distribution of literature at or near a recreation, logging, or mining site, might interfere with any other uses or activities; that it is unclear how a determination could be made without regard to the content of expressive activity; that under a worst-case scenario, this provision could induce an authorized officer to deny access to a site; and that the examples given in the preamble of the proposed rule of how this criterion would be applied are insufficient to remove the vagueness in its wording.

One respondent stated that statutes and other regulations exist to deal with conflicts among users, such as 18 U.S.C. 1863, which allows the agency to restrict access to areas of the national forests, 36 CFR part 261, which allows the agency to issue orders restricting certain types of conduct, and 36 CFR 251.54(i)(1), which allows the agency to avoid conflicts among commercial uses and activities.

Six respondents commented that often minor changes can be made to scheduled and existing uses to avoid conflicts with proposed activities. Two respondents commented that minor, temporary arrangements are easily made and have been made many times by prior informal agreement to address the question of allocation of space. One of these respondents stated that forest plans are built on the concept of balancing interests in an ongoing multiple-use scenario, but that the regulations blurs the fundamental difference between permanent or consumptive uses and transitory group uses, which by their nature do not compete with other uses and activities for use of National Forest System lands.

Six respondents commented that the exercise of constitutionally protected rights should have priority over all other uses. One of these respondents felt that the interests of thousands of people should take precedence over the grazing of cattle. Four others stated that gatherings have proceeded after negotiation and development of operating plans, but that if these plans fail, a court order might be appropriate.

Twelve respondents stated that other uses are given priority over the exercise of constitutionally protected rights. One of these respondents stated that a permit for a gathering could be denied if a timber sale or grazing were scheduled for the same time and place. Another noted that cattle were moved to accommodate the 1984 Rainbow Family Gathering.

One respondent commented that this provision is unnecessary because there are no conflicts among Rainbow Family members. Another stated that no group, including the Rainbow Family, would camp in areas where logging activities are in progress. One respondent commented that the rationale of avoiding traffic congestion is inadequate because there are no traffic jams in the national forests.

Three respondents stated that those who gather should be respectful of others.

Response. The Department believes that this criterion is narrowly tailored and specific and that it constitutes a valid restriction on time, place, and manner. In contrast, the rule struck down in *United States* v. *Rainbow Family* provided that an application for a First Amendment activity could be denied if the activity conflicted with a previously approved use or if it would be of such nature or duration that it could not reasonably be accommodated at the place and time requested (49 FR 25449).

To address the court's concern, the Department has abandoned the unconstitutionally vague criterion that allowed an authorized officer to deny an application for a noncommercial group use on the grounds that it cannot reasonably be accommodated in the time and place requested or that the proposed use might interfere or be

incompatible with scheduled or existing uses.

In contrast to the earlier rule, under § 251.54(h)(1)(iv) of the final rule, an application may be denied only if the proposed activity would delay, halt, or prevent administrative use of an area by the Forest Service or other scheduled or existing uses or activities on National Forest System lands. This narrow, specific, content-neutral criterion is intended to allow the Forest Service to allocate space in a manner that is both fair and consistent with the agency's multiple-use mission. The intent is not to prevent demonstrations; the intent is to ensure that demonstrations can coexist with other authorized uses and activities on National Forest System lands, including endangered, threatened, or other plant and animal species.

Moreover, under this rule the Forest Service cannot manipulate administrative use of an area to ensure that this use coincides with a proposed activity to which some might object. Administrative use of an area by the Forest Service is based on actual need.

In the proposed rule, the agency provided specific examples of how a proposed activity could delay, halt, or prevent scheduled or existing uses and activities for purposes of this criterion. Specifically, under § 251.54(h)(1)(iv) of the final rule, an authorized officer might require a large group to alter arrival and departure times or to use an alternative access route to avoid congestion. On the opening day of fishing season, an authorized officer might suggest a site removed from popular fishing areas for the same reason. This criterion also allows the Forest Service to ensure that a group is not authorized to use a site that is already being used as pastureland under a grazing permit or that is currently being logged under a timber sale contract.

The Forest Service has had difficulty in allocating space among noncommercial group uses and other uses and activities on National Forest System lands. While the Forest Service has generally resolved these types of conflicts successfully, the agency has had to expend considerable time and resources in the effort. The Department believes that these types of problems can be solved more efficiently, more effectively, and more fairly through the issuance of special use authorizations for all special uses, including noncommercial group uses.

One example of this type of allocation problem occurred at the 1992 Rainbow Family Gathering. One of the main access roads to the site of the 1992 gathering was scheduled to be used as a timber hauling route during the gathering. Because of the amount of traffic associated with the gathering, the Forest Service believed that the safety hazard was too high to allow logging trucks to use the access road. Consequently, the agency required the timber purchaser to use an alternate haul route, which resulted in higher costs to the timber purchaser and potentially higher costs to the government. As shown by the reports on the 1991 and 1992 Rainbow Family Gatherings, parking and traffic congestion are additional transportation issues associated with large group gatherings at sites with limited access.

At the 1992 Rainbow Family Gathering, the Forest Service specified that parking would not be allowed at a particular site because of safety risks (the site was located on a timber haul route) and prior agency commitments made to other users (livestock was scheduled to use the site). Ample alternative parking closer to the gathering was available. Nevertheless, the Rainbow Family directed gatherers to the site. By the time the Forest Service issued an order closing the site to parking and camping, 91 vehicles were parked at the site. Forest Service officials explained the agency's reasons for issuing the closure order at a council meeting of approximately 50 members of the Rainbow Family. Although more than half the vehicles were removed by the next day, 20 to 30 Rainbow Family members staged a civil disobedience protest of the closure order. Gatherers continued to remove vehicles from the area gradually, but the agency had to tow five vehicles from the site. The Department believes that this type of problem could be prevented or more quickly resolved through the special use authorization process.

In addition to this parking problem, in July 1993, a group called ''We The People'' selected for a gathering a site that had been authorized since 1955 for use by the Mississippi National Guard for military training purposes. Within the permitted area of 45,000 acres were significant amounts of unexploded ordnance. ''We The People'' chose to camp near an area where the National Guard was performing tank maneuvers. The group selected the site in order to protest use of the national forests for military training and exercises. The management challenge faced by the Forest Service was how to allow the group to conduct its protest without sustaining serious injury and without preventing the National Guard from exercising its privileges under its special use authorization. After several days of negotiations and coordination among all concerned parties, the gathering and protest occurred without conflict with the National Guard or injuries to either group.

These examples illustrate the kind of conflicts that can occur among uses and the need for a special use authorization process for noncommercial group uses to resolve those conflicts more quickly and effectively. Making minor changes or entering into informal agreements is an inadequate or inefficient way to resolve issues pertaining to allocation of space for all uses and activities on National Forest System lands. Other laws and regulations, particularly regulations such as 36 CFR 251.54(i)(1), which do not apply to noncommercial activities, do not give the Forest Service notice of the issues addressed in § 251.54(h)(1)(iv) of the final rule and thus do not allow the agency to allocate space fairly among competing uses and activities. A special use authorization process gives the agency a managerial tool to address these problems more expeditiously, more effectively, and more equitably.

Section 251.54(h)(1)(iv) of the final rule does not give the authorized officer too much discretion to propose an alternate time and place. The criterion in the 1984 rule struck down by the court in the *Rainbow Family* case was unconstitutionally vague and overbroad in that it allowed an authorized officer to deny an application if it could not reasonably be accommodated at the time and place requested. In footnote 6 of the opinion, the court's point was that providing for an alternative site or time if an application was denied under this criterion could not cure its constitutional infirmity. 695 F. Supp. at 312 n.6. The court quoted *Schneider* v. *State*, 308 U.S. 147 (1939), for the proposition that ''[o]ne is not to have the exercise of his liberty of expression in *appropriate places* abridged on the plea that it may be exercised in some other place.'' *Id.* at 163 (emphasis added). If the provision in question is, like § 251.54(h)(1)(iv) of the final rule, a valid time, place, and manner restriction and the site requested does not meet that restriction, providing that an alternative site or time will be offered enhances rather than diminishes the constitutionality of the rule. Providing for alternative sites and times ensures that ample alternative channels will be available for communication of information, as required by *Clark* v. *CCNV*.

The Forest Service is charged with managing the resources of the National Forest System for multiple uses. MUSY authorizes the Forest Service to manage

commercial and noncommercial uses of National Forest System lands (16 U.S.C. 528–531). The Department believes that all special uses, commercial and noncommercial, both involving and not involving the expression of views, should be treated consistently and fairly.

The Department does not intend to give priority to any use or activity in processing applications under this rule. Applications for special use authorizations will be processed in order of receipt under § 251.54(f)(5) of the final rule, and the use of a particular area will be allocated in order of receipt of fully executed applications, subject to any relevant limitations in § 251.54.

Comment. Section 251.54(h)(1)(iv) of the proposed rule required an authorized officer to determine that a proposed activity would not pose a substantial danger to public health. Considerations of public health were limited to the following with respect to the proposed site:

(a) The sufficiency of sanitation facilities;

(b) The adequacy of waste-disposal facilities;

(c) The availability of sufficient potable drinking water, in view of the expected number of users and the duration of use;

(d) The risk of disease from the physical characteristics of the proposed site or natural conditions associated with the proposed site;

(e) The risk of contamination of the water supply; and

(f) The sufficiency of a plan for safe handling of food.

Approximately 45 respondents commented on this provision. Seven respondents commented that the public health concerns addressed in this provision are beyond the responsibility or competence of the Forest Service (although one noted that contamination of the water supply is a legitimate agency concern). Another respondent stated that this provision is unnecessary because the local health department handles public health issues.

Eight respondents commented that this provision is too paternalistic, that individuals should be responsible for their own health, and that the agency should leave it up to individuals to decide what kind of health risks they want to take when they use National Forest System lands. One of these respondents commented that forest visitors know what they need to survive and that if a site cannot provide it, they will go elsewhere. Another one of these respondents stated that this provision could be used to deny the application of a group that has different sanitary requirements from what would be considered acceptable in mainstream American society.

One respondent noted that while the public health concerns addressed in this provision are typically under the jurisdiction of local health departments, they are also, depending on the circumstances, under the jurisdiction of local Forest Service personnel. This respondent stated that this provision is directly applicable to the protective mandate of the agency and contains important and legitimate standards of performance.

Another respondent stated that the water supply should not be contaminated by noncommercial group uses and that waste disposal facilities should be adequate for these activities.

One respondent felt that activities that pose a substantial danger to public health are a concern of government, that the risk of disease is an important matter, that contamination of the water supply should be a major focus of government agencies, and that food should be handled in a safe way, but that a permit process is not required to address these concerns. Three respondents commented that other laws, regulations, and standards exist to deal with public health problems, such as 36 CFR 251.54(h)(2) of the current rules, which allows the agency to deny a special use authorization if the proposed activity would present a clear and present danger to public health, 16 U.S.C. 551a, which allows the agency to cooperate with state and local law enforcement authorities, and forest plans and public health codes, which address the risk of disease.

One respondent stated that this criterion is unnecessary because the Forest Service adequately notifies forest visitors of the potability of water in the national forests. Two respondents stated that only minimal assurances are necessary for safe sanitation facilities, availability of safe drinking water, and safe food handling procedures, such as assurances to bury human waste away from the water supply, to truck in water from a nearby town, and to wash hands before eating or preparing meals. One of these respondents stated that satisfaction of these requirements would be so easy that they should be omitted as burdensome and unnecessary. One respondent stated that proper food handling is a matter of common sense.

Sixteen respondents stated that this provision is too vague and leaves too much discretion to the authorized officer. These respondents commented that this provision is no better than a similar provision struck down by the court in the *Rainbow Family* case; that objective standards are not specified, leaving too much room for interpretation, and that it is unclear how a determination could be made without regard to content; that ''substantial danger,'' ''sufficiency of sanitation,'' ''adequacy of waste disposal,'' ''availability of sufficient potable drinking water,'' ''risk of disease,'' ''risk of contamination,'' and ''sufficiency of a plan for safe handling'' are too vague and that the agency should use concrete numerical requirements for facilities based on the size of the group, the length of stay, and the characteristics of the site; that this provision is so broad as to provide a basis for denial of any permit; that this provision could unreasonably require portable toilets for waste disposal, which are more expensive than covered slit-trench latrines and which some groups might not be able to afford; that the risk of disease could be construed unjustifiably to prohibit a large group from using a meadow littered with cow dung from grazing; that a plan for safe handling of food could require unnecessary detail or prohibit individual food preparation; that a group should not need a plan for making peanut butter sandwiches or popcorn; that no church picnic would be authorized if the requirement for a plan for safe handling of food were applied indiscriminately, and that in reality, this provision would be selectively enforced to prevent counterculture groups from distributing food to the needy; and that it is impossible to ensure compliance with these standards prior to a noncommercial group use.

One respondent stated that this provision would require all groups to have an attorney, licensed food handler, trained medical staff, and environmental specialist. One respondent suggested that the agency specify who will review plans for the safe handling of food, who will assess the risk of disease, and who will disseminate assessments of these public health concerns, as well as how the agency's recommendations on these issues will be enforced. This respondent also suggested that the agency specify the ratio of people per latrine required under this provision.

Two respondents suggested that the agency key this provision to specific standards by requiring adherence of the proposed activity with applicable state and local health regulations.

Response. The Department agrees that the public health considerations addressed in § 251.54(h)(1)(v) of the final rule are important and that it is appropriate to address these concerns in this rulemaking. The Forest Service has

a general mandate to address concerns of public health in regulating use and occupancy of National Forest System lands (16 U.S.C. 551; 36 CFR 251.55(d)(3), 251.56(a)(1)(iv), 251.56(a)(2)(iv), 251.56(a)(2)(vii)).

Moreover, as the court held in the *Rainbow Family* case, it is a reasonable time, place, and manner restriction to require that noncommercial group use of the national forests not threaten the public health or welfare. 695 F. Supp. at 329 (citing *Grayned* v. *City of Rockford,* 408 U.S. 104, 113–16 (1972); *Kovacs* v. *Cooper,* 336 U.S. 77, 83, 86–87 (1949); *De Jonge* v. *Oregon,* 299 U.S. 364–65 (1937); *Schenck* v. *United States,* 249 U.S. 47, 52 (1919)). In *United States* v. *Rainbow Family,* the court required compliance with discrete health and sanitation provisions that addressed the same public health concerns enumerated in § 251.54(h)(1)(v) of the final rule. 695 F. Supp. at 330–52.

As shown by the reports on the 1991 and 1992 Rainbow Family Gatherings, the Forest Service works with local health department officials to address concerns of public health that arise in connection with large group gatherings on National Forest System lands. The Department believes that a special use authorization process is needed to handle public health issues associated with large group use of the national forests. Other regulations, particularly 36 CFR 251.54(h)(2) of the current rules, which the court in the *Rainbow Family* case struck down for vagueness, do not provide the framework necessary for applying public health standards to noncommercial group uses.

The shigellosis outbreak at the 1987 Rainbow Family Gathering is one example of the type of problem that could be prevented or more effectively controlled through a special use authorization process. Although the Forest Service posted water sources and bulletin boards at the site with notices to boil water for at least 30 minutes, many people drank the water without boiling it. The Department believes that by allowing the Forest Service to address this type of public health issue before a noncommercial group use takes place, the application and permitting process will enhance the agency's ability to communicate concerns about this type of issue to groups and thus prevent serious health risks.

The 1984 group uses rule allowed an authorized officer to deny an application for a noncommercial group use if it presented a clear and present danger to public health (49 FR 25449). The court in the *Rainbow Family* case struck down this language because it was too vague and allowed for too much discretion on the part of the authorized officer. 695 F. Supp. at 311.

Section 251.54(h)(1)(v) of the final rule corrects this deficiency by restricting the authorized officer's review to concrete, content-neutral considerations of public health associated with the site proposed by the applicant. The Department intends to apply this provision uniformly and fairly as required by law, based on an objective assessment of each application.

The Department agrees that the considerations of public health in this provision should be keyed to specific standards by requiring adherence of the proposed activity with applicable state and local public health laws and regulations. Consequently, the Department has revised this criterion to provide that an authorized officer must determine that the proposed activity does not violate state and local public health laws and regulations as applied to the proposed site. Issues addressed by state and local public health laws and regulations as applied to the proposed site included but are not limited to the specific considerations of public health in § 251.54(h)(1)(v) of the final rule.

Section 251.54(h)(1)(v) of the final rule does not require that applicants retain experts on public health issues or make a determination with respect to the public health considerations listed in that provision. Applicants merely have to submit an application that provides the basic information required in §§ 251.54(e)(2)(i)(A) through (e)(2)(i)(E). An authorized officer will then evaluate whether the proposed activity violates state and local public health laws and regulations as applied to the site identified in the application. To clarify intent, the Department has removed § 251.54(h)(1)(iv)(F) of the proposed rule, which listed the sufficiency of a plan for safe handling of food as one consideration of public health, because it is not clear that an authorized officer could apply state and local law on this subject solely on the basis of the information provided in an application.

The Department has substituted ''sufficiency'' for ''adequacy'' in § 251.54(h)(1)(v)(B) of the final rule to make that provision consistent with the terms used in §§ 251.54(h)(1)(v) (A) and (C). In § 251.54(h)(1)(v)(C) of the final rule, the Department has deleted the phrase ''in view of the expected number of users and duration of use.'' The Department believes that this phrase is redundant because of use of the word ''sufficient'' in § 251.54(h)(1)(v)(C).

Comment. Section 251.54(h)(1)(v) of the proposed rule required an authorized officer to determine that the proposed activity would not pose a substantial danger to public safety. Considerations of public safety did not include concerns about possible reaction to the users' identity or beliefs from non-members of the group that is seeking authorization and were limited to the following:

(a) The potential for physical injury to other forest users from the proposed activity;

(b) The potential for physical injury to users from the physical characteristics of the proposed site or natural conditions associated with the proposed site;

(c) The potential for physical injury to users from scheduled or existing uses or activities on National Forest System lands; and

(d) The adequacy of ingress and egress in case of an emergency.

Approximately 33 respondents commented on this provision. One respondent commented that the agency lacks the ability to make an informed decision on this criterion. Another respondent stated that although the agency may have knowledge of problems pertaining to public safety that applicants do not possess, that knowledge should not be the basis for denying a permit to use the national forests. This respondent added that it is not common sense to plan an activity that is intended to cause physical injury to others or to oneself and that a horse race or water skiing planned for a site selected for a gathering could pose a problem, but that this type of conflict does not occur. One respondent noted that it is appropriate to consider the potential for injury to other forest users from a proposed activity.

Three respondents believe that this provision is too paternalistic. One of these respondents commented that it could be used to deny a permit to a group that has different safety requirements from what would be considered acceptable in mainstream American society, particularly with respect to the potential for injury to forest users from characteristics or conditions of the site. Another one of these respondents commented that some groups want inaccessible, secluded areas. Another stated that people should be able to make their own decisions about safety issues.

Three respondents stated that this provision is unnecessary because the national forests are a known environment. Specifically, these respondents stated that ensuring adequacy of ingress and egress is

unnecessary since individuals participating in group uses are generally aware of the rugged conditions in the national forests and the challenges they present; and that forest users heed safety concerns in selecting sites and planning activities and that forest users have the requisite wilderness experience to know about potential dangers in the national forests.

Seven other respondents believe that this provision is unnecessary. Six of these respondents stated that there have not been any safety problems associated with group uses; that large groups would have a better sense than individuals of safety hazards in the national forests; that the Rainbow Family handles safety issues themselves; that the Rainbow Family Gatherings are safer each year; and that it is unclear why adequacy of ingress and egress is more of an issue with 25 or more people than it is with fewer than 25 people.

One of these six acknowledged that while the agency incurs costs associated with accidents occurring on National Forest System lands, these costs are within the scope of the agency's normal operations, and the threat of an accident on National Forest System lands imposes no legal or financial liability on the Forest Service. Therefore, this respondent concluded that the agency has no need to issue permits based on that threat. This respondent also commented that issuance of a permit would carry an implicit guarantee of health and safety, thereby imposing liability on the agency for any accidents that occur during a group activity and forcing the agency to carry liability insurance at considerable public cost.

Approximately 19 respondents feel that this provision is too vague, broad, and subjective and would give the authorized officer too much discretion in determining the nature of the substantial danger associated with the proposed site. These respondents stated that determinations of the substantial danger to public safety would be completely arbitrary because the criteria are undefined and because there is no indication of the type of site that would be unsafe; that this provision is so broad as to provide a basis for denial of any permit; that this provision fails to take into account the basic attributes of National Forest System lands, which are primarily undeveloped and natural; that virtually every location in the National Forest System could be construed as posing some risk to public safety; that it is unclear how a determination could be made under this provision without regard to content; that the use of the word ''potential'' gives the authorized officer too much discretion; that the broad use of the word ''potential'' allows the agency to use petty discrepancies in activities as a pretext to establish a substantial danger to public safety; that the provision is silent on the degree of potential danger that would warrant denial of a permit; that it is unclear how the potential for physical injury to other users is measured and what that injury might be; that ''potential for physical injury'' and ''adequacy of ingress and egress in case of an emergency'' are too vague and allow for too much discretion; that the provision on adequacy of ingress and egress could be used to bar users from remote sites; that consideration of the potential for injury from the physical characteristics of the proposed site or natural conditions associated with the proposed site could justify denial of a permit if there are cliffs that one person might fall from or a lake that one person might drown in; that consideration of the potential for injury to users from scheduled or existing activities is too vague and not a problem in the case of mining or logging because no one would want to gather where those activities were occurring and if they did, other regulations would address any safety concerns that might arise; that it is unclear how merely regulating where an activity takes place restricts the agency's discretion in reviewing applications; and that a determination of what makes a site dangerous or unsafe for a gathering should be published with the rule.

Response. The Department believes that it is appropriate to address issues of public safety in this rulemaking. The Forest Service has a general mandate to address concerns of public safety in regulating use and occupancy of National Forest System lands (16 U.S.C. 551; 36 CFR 251.55(d)(3), 251.56(a)(1)(iv), 251.56(a)(2)(iv), 251.56(a)(2)(vii)).

Moreover, as the court in the *Rainbow Family* case held, it is a reasonable time, place, and manner restriction to require that noncommercial group use of the national forests not threaten the public welfare. 695 F. Supp. at 329 (citing *Grayned* v. *City of Rockford*, 408 U.S. 104, 113–16 (1972); *Kovacs* v. *Cooper*, 336 U.S. 77, 83, 86–87 (1949); *De Jonge* v. *Oregon*, 299 U.S. 364–65 (1937); *Schenck* v. *United States*, 249 U.S. 47, 52 (1919)).

The Department believes that this public safety provision is needed because proposed activities may pose a substantial danger to public safety, depending on the nature of the activity, its proximity to other uses and activities, the physical characteristics of the proposed site, and natural conditions associated with the proposed site.

For example, the Forest Service might deny an application and suggest another site if a group wanted an authorization to conduct a riflery contest near a heavily used campsite or picnic area. If a group wanted an authorization to ignite a fireworks display, the agency might deny the application because of the risk of a forest fire. These examples illustrate the types of activities that would constitute a substantial danger to public safety based on the likelihood of physical injury to other forest users from these activities.

The Forest Service might deny an application and suggest another site if a group selected an area near a major highway or an area scheduled to be logged under a timber sale contract. The agency might deny an application and suggest another site if a group chose an area accessed only by the same narrow, winding road with blind curves used by trucks hauling timber from a timber sale or talcum from an active mine. This issue, in fact, arose in connection with the 1992 Rainbow Family Gathering, where one of the sites selected was unsafe because it was located on a timber haul route. These examples illustrate the types of activities that would constitute a substantial danger to public safety based on the likelihood of physical injury to users from the physical characteristics of the proposed site or natural conditions associated with the proposed site.

The Forest Service also might deny an application and suggest an alternate site if a group selected an area being used for tank maneuvers or an area riddled with unexploded ordnance. This concern arose in connection with the gathering held by ''We The People'' on National Forest System land in Mississippi in July 1993. These examples illustrate the types of activities that would constitute a substantial danger to public safety based on the potential for physical injury to users from scheduled or existing uses or activities on National Forest System lands.

The agency might deny an application and suggest another site if roads accessing the site were inadequate to evacuate a large group in case of an emergency, such as a forest fire or a flash flood. This example illustrates the type of activity that would constitute a substantial danger to public safety based on the inadequacy of ingress and egress in case of an emergency.

The Department's intent is not to prevent use of remote areas or to prevent gatherings and demonstrations.

Rather, the Department's intent, as specified in the final rule, is to allow noncommercial groups to coexist with other authorized uses and activities on National Forest System lands without posing a substantial danger to public safety.

The Forest Service's handling of the gathering and protest held by ''We The People'' in July 1993 demonstrates the agency's ability to carry out this intent. After several days of negotiations and coordination among all concerned parties, ''We The People'' was able to conduct its gathering and protest without sustaining injury from the unexploded ordnance in the vicinity or from the tank maneuvers being conducted by the National Guard nearby.

Although the Forest System successfully resolved the conflicts among these users, the agency had to expend considerable time and resources in the effort. The Department believes that these types of problems can be solved more efficiently, more effectively, and more fairly through the issuance of special use authorizations for all special uses, including noncommercial group uses.

The Department believes that an application and permitting process will enhance the Forest Service's ability to allow noncommercial groups and other authorized uses on National Forest System lands to coexist without posing a substantial danger to public safety. Other regulations do not provide the framework necessary for applying the specific considerations of public safety contained in this rule to noncommercial group uses. In particular, other regulations do not ensure that the Forest Service will have notice of noncommercial group uses and therefore do not allow the agency to address these considerations as expeditiously, effectively, and equitably.

The Forest Service does not ensure public health and safety on National Forest System lands, either explicitly or implicitly, through issuance of a special use authorization or otherwise. The agency does, however, address public health and safety issues as part of its statutory and regulatory mandate in administering use and occupancy of National Forest System lands. Since the United States is self-insured, the Forest Service's issuance of special use authorizations does not impose additional insurance costs on the agency.

The Department believes that § 251.54(h)(1)(vi) of the final rule is narrowly tailored and specific and that it constitutes a valid restriction on time, place, and manner. In contrast, the 1984 rule struck down in *United States* v. *Rainbow Family* provided that an application for a First Amendment activity could be denied if the activity presented a clear and present danger to the public health or safety (49 FR 25449). To address the court's concern, the Department has abandoned the unconstitutionally vague criterion that allowed an authorized officer to deny an application for a noncommercial group use on the ground that it presented a clear and present danger to the public health or safety. Thus, under § 251.54(h)(1)(vi) of the final rule, an application may not be denied merely because of the possibility of personal injury at a proposed site or in connection with a proposed activity. An application for a company picnic near a lake cannot be denied, for example, merely because an authorized officer thinks that someone at the picnic might drown in the lake.

In contrast to the earlier rule, under § 251.54(h)(1)(vi) of the final rule an application may be denied only if the proposed activity poses a substantial danger to public safety. Considerations of public safety are limited in the final rule to specific, content-neutral criteria concerning the nature of the proposed activity, its proximity to other use and activities, the physical characteristics of the proposed site, and natural conditions associated with the proposed site. Considerations of public safety in the final rule do not include concerns about possible reaction to the users' identity or beliefs from non-members of the group that is seeking an authorization.

The Department believes that it is not practicable to make a determination in this rule as to how these factors would apply to every conceivable noncommercial group uses and every conceivable site suitable for a noncommercial group use at any conceivable time of the year. Instead, the Department has given specific examples of how each of these factors will be applied to applications for noncommercial group uses. The Department believes that the Forest Service's experience in managing the national forests and its knowledge of National Forest System lands enable the agency to apply these specific, content-neutral criteria based on the information submitted in applications for noncommercial group uses.

Having considered the comments received, the Department has retained without substantive change in the final rule § 251.54(h)(1)(v) from the proposed rule.

Comment. Section 251.54(h)(1)(vi) of the proposed rule required an authorized officer to determine that a proposed activity did not involve military or paramilitary training or exercises by private organizations or individuals unless such training or exercises were federally funded.

Eight respondents commented on this provision. One respondent stated that if this type of military or paramilitary activity is already prohibited, then it does not have to be prohibited again. One respondent commented that this provision is a general prohibition with no bearing on the regulation of time, place, or manner.

Two respondents stated that the federal government should not exempt itself from its own regulations. One of these respondents stated that this provision gives official military activities a preemptive or exclusive right of access to the national forests. Three respondents commented that there should be no military or paramilitary training on national forests. One of these respondents stated that this provision authorizes exercises by police S.W.A.T. units and by the Drug Enforcement Administration and training of counterinsurgents for political terrorism. Another stated that the Forest Service could deny a permit for government troops to train in the national forests.

One respondent commented that this provision is too vague and broad and could be used to bar such paramilitary groups as football teams, the Salvation Army, Rainbow Hug Patrols, or the Boy Scouts of America or to bar such activities as aikido, tai chi, or nonviolence training for civil disobedience.

Response. The Forest Service Manual prohibits non-federally funded military or paramilitary training or exercises by private organizations or individuals because this type of use is often potentially damaging to forest resources and may endanger other users of National Forest System lands. The agency authorizes military or paramilitary training or exercises by governmental entities and federally funded military or paramilitary training or exercises by private organizations or individuals because when conducted under such auspices, this type of use is justified for national security purposes and is not as dangerous to other users of National Forest System lands.

Section 251.54(h)(1)(vii) of the final rule incorporates longstanding agency policy and gives it the force and effect of law. Section 251.54(h)(1)(vii) of the final rule provides the framework

necessary for applying this policy to noncommercial group uses.

The rule does not apply to official U.S. military activities, nor does it grant a preemptive or exclusive right of access for paramilitary uses of the national forests. Under § 251.54(f)(5) of the final rule, applications will be processed in order of receipt, and the use of a particular area will be allocated in order of receipt of fully executed applications, subject to any relevant limitations in § 251.54.

The Department believes that this is a narrowly tailored restriction that has no bearing on the content of expressive activity. ''Military'' means ''of, relating to, or typical of soldiers or the armed forces,'' ''performed or supported by the armed forces,'' or ''of or relating to war.'' *Webster's II New Riverside University Dictionary* 752 (1984). ''Paramilitary'' means ''of, pertaining to, or designating forces organized after a military pattern, esp. as a potential auxiliary military force.'' *Id.* at 852. The Department believes that the terms ''military'' and ''paramilitary'' do not apply to groups such as football teams, the Salvation Army, Rainbow Hug Patrols, or the Boy Scouts of America, or to activities such as aikido, tai chi, or nonviolence training for civil disobedience, nor does the Department intend to apply these terms to these types of groups or activities for purposes of § 251.54(h)(1)(vii) of the final rule. Under current policy, for example, adventure games (sometimes called survival or war games) are not considered military or paramilitary activities and may be authorized [FSM 2724.31].

Having considered the comments received, the Department has retained without substantive change in the final rule § 251.54(h)(1)(vi) from the proposed rule.

Comment. Section 251.54(h)(1)(vii) of the proposed rule required an authorized officer to determine that a person or persons 21 years of age or older had been designated to sign and did sign a special use authorization on behalf of the applicant.

Approximately 25 respondents commented on this provision. Seven respondents stated that no individual could sign a permit on behalf of a noncommercial group because each person in a noncommercial group is responsible solely for his or her own actions. These respondents stated that each person should accept responsibility for his or her use of public land; that only commercial activities are organized by an individual or entity that can take responsibility for liability and mitigation of resource impacts; that most noncommercial groups that use the national forests are not structured or legally empowered and that any person in those groups who signs a special use authorization represents only himself or herself; that it is unfair to hold the person who signs a permit accountable for all others in the group and that in the case of demonstrations, no one would sign, and the requirement would have a chilling effect on speech; and that the agency lacks the authority to require that noncommercial groups be constituted as legal entities or internally structured to allow compliance with the agency's rules, and that a group that operates by consensus is not a legal entity, but is merely an assemblage of individuals who are entirely seft-responsible under the law.

Fourteen respondents commented specifically that the Rainbow Family cannot comply with the signature requirement because no individual member speaks for the group and because each person is responsible for his or her own actions. These respondents stated that the signature requirement violates Rainbow Tribal Council traditions; that the signature requirement forces the Rainbow Family to choose between upholding its philosophy or maintaining its existence in that if the group complies with the requirement, it violates its principles, and if the group ignores the requirement, the agency can break up the gathering; that the Forest Service has never had any problem contacting the Rainbow Family; that the Rainbow Family is peaceful and cooperative and poses no threat to the Forest Service; that the Rainbow Family has met with local authorities in advance, helped prepare operating plans, and left sites in a clean and natural state; that the agency has always had reliable contacts at Rainbow Family Gatherings and that questions have been answered, reasonable requests have been met, and problems solved with the cooperation of the Rainbow Family and that the real intent of this provision is to isolate leaders from the consensus, make them culpable for real or imagined actions of the group, and expose them to penalties under the full weight of the law.

One respondent commented that in view of the history of the rule, the agency intends to use this provision to single out individuals for harassment.

One respondent commented that the responsibilities and privileges of citizenship are assumed at the age of 18 in most states. Another respondent commented that requiring those who sign to be 21 years of age or older could prevent persons under the age of 21 from exercising their First Amendment rights and suggested lowering the age limit to 18 or dropping it altogether.

One respondent stated that this provision is a general prohibition with no bearing on time, place, or manner.

Response. The Department believes that the age limitation in § 251.54(h)(1)(viii) of the final rule is a reasonable time, place, and manner restriction. The restriction is necessary to ensure that those who are designated to sign and who do sign a special use authorization on behalf of a group are of the age of legal majority. The signature gives the authorization legal effect. If the person or persons who sign the authorization are not of the age of legal majority, the authorization is not legally enforceable. Since the age of legal majority is not the same in every state but in no state exceeds the age of 21, the final rule requires that the person or persons who are designated to sign and who do sign a special use authorization be at least 21 years of age.

The Department does not believe that this age limitation imposes an undue burden on the exercise of First Amendment rights by those under the age of 21. The final rule does not prohibit groups of 75 or more people under the age of 21 from gathering in the national forests, nor does the final rule require that these groups include a person 21 years of age or older. Rather, the final rule requires that a person or persons 21 years of age or older be designated to sign a special use authorization and that that designated person or persons sign an authorization on behalf of the group.

It is not appropriate or necessary for one member or a few members of a group to assume personal responsibility for the actions of other group members. Individual group members are personally responsible for their own actions. A person who signs a special use authorization for a noncommercial group use acts as an agent for the group, but does not assume personal responsibility for the group's actions.

However, it is appropriate and necessary to ensure that a group will be responsible for the actions of its members as a whole that relate to the use and occupancy of National Forest System lands by requiring a person or persons to sign a special use authorization as an agent or representative of the group. By signing a special use authorization on behalf of the group, the agent or representative gives the authorization legal effect and subjects the group to the authorization's terms and conditions.

The Forest Service needs to have someone to contact for purposes of

special use administration. The authorized officer may have questions about the application or may need to notify the applicant in the event of an emergency. If the application does not identify a contact person, the agency cannot make the appropriate notifications.

As shown by the reports on the 1991 and 1992 Rainbow Family Gatherings, if a group does not designate a representative or representatives, the Forest Service has to deal separately with various individual members and sub-groups. Informal agreements made with one individual member or sub-group are not always respected by other group members which makes it difficult for the agency to obtain commitments concerning an activity from the group as a whole.

All groups, both commercial and noncommercial, can and should be responsible for the actions of their members as a whole that relate to the use and occupancy of National Forest System lands. The Department believes that it is both fair and appropriate to apply this provision to all applicants, including groups like the Rainbow Family that have no leader and that make decisions by consensus. Even if a group has no leader, the group can still designate a representative or representatives who can sign a special use authorization on behalf of the group. (Groups that make decisions by consensus could select a representative through that decisionmaking process.)

As one respondent noted, the court in *United States* v. *Rainbow Family* held that the Rainbow Family is an unincorporated association that can sue and be sued. 695 F. Supp. at 298. The court also held that service of process upon the Rainbow Family was properly effected in that case by service upon several individuals who acted as agents or representatives of the Rainbow Family. *Id.* Moreover, in 1987, representatives of the Rainbow Family signed a consent judgment in a suit brought by the Health Director of the State of North Carolina against the Rainbow Family for failure to obtain a permit under the State's mass gathering statute. It is therefore reasonable to believe that the Rainbow Family could designate a person or persons to sign and that that person or those persons could sign a special use authorization on behalf of the group as provided in § 251.54(h)(1)(viii) of the final rule.

The Department believes that this provision is a narrowly tailored restriction that has no bearing on the content of expressive activity. The Department intends to apply this requirement consistently and fairly as required by law to all applications for noncommercial group uses.

Having considered the comments received, the Department has retained without substantive change in the final rule § 251.54(h)(1)(vii) from the proposed rule.

Comment. Section 251.54(h)(2) of the proposed rule provided that an authorized officer could deny an application if it did not meet the seven evaluation criteria. Under § 251.54(h)(2) of the proposed rule, and authorized officer had to notify an applicant in writing of the reasons for denial of an application, and denial of an application constituted final agency action that was immediately subject to judicial review.

Eight respondents commented on this provision. One respondent stated that the ability to deny an application for a noncommercial group use gives an authorized officer too much discretion.

One respondent commented that a denial of an application is not appealable. Another respondent stated that access to the courts is denied until administrative remedies are exhausted. Two respondents stated that this provision is inadequate because it fails to provide for administrative review. Two respondents stated that judicial review is too expensive for many to pursue. One of these respondents also cited the holding in *United States* v. *Rainbow Family* that the rule must provide for judicial review of the agency's determination. One respondent commented that the agency should consider providing for alternative dispute resolution instead of judicial review.

Three respondents stated that an authorized officer can deny an application without providing for an alternative time, place, or manner. Specifically, these respondents stated that the agency is not required to provide ''ample alternative channels'' for the applicant's use of public land; that this provision gives the agency authority to prevent an activity from taking place; and that ''reasons for the denial'' should be replaced with ''reasons to modify the time, place, or manner'' of the proposed activity.

One respondent approved of requiring an authorized officer to notify an applicant in writing of the reasons for denial of an application.

Response. Section 251.54(h)(2) of the final rule contains the following procedural safeguards:

(1) an authorized officer must notify an applicant in writing of the reasons for denial of an authorization;

(2) if an application is denied and an alternative time, place, or manner will allow the applicant to meet the evaluation criteria, an authorized officer must offer that alternative;

(3) if an application is denied solely because extraordinary circumstances do not permit the categorical exclusion to apply to the proposed activity and the alternatives suggested are unacceptable, an authorized officer must offer to have the requisite environmental analysis (EA or EIS) conducted for the activity; if an EA or EIS is prepared, the analysis will not be subject to the 48-hour timeframe for reviewing applications for noncommercial group uses that do not require preparation of an EA or EIS; if an EA or EIS is prepared, the decision to grant or deny the application will be subject to the administrative appeal process for planning and project decisions at 36 CFR 215 and will be made within 48 hours after the decision becomes final under that appeal process; and

(4) a decision to deny an authorization for a noncommercial group use is immediately subject to judicial review.

The Forest Service's ability to deny applications for noncommercial group uses is strictly constrained by the narrow, specific, content-neutral evaluation criteria in §§ 251.54(h)(1)(i) through (h)(1)(viii) and by the limitations in § 251.54(h)(2) of the final rule. Under § 251.54(h)(2) of the final rule, if an application is denied and an alternative time, place, or manner will allow the applicant to meet the evaluation criteria, an authorized officer must offer that alternative. Moreover, if an application is denied solely because extraordinary circumstances do not permit the categorical exclusion to apply to the proposed activity and the alternatives suggested are unacceptable to the applicant, an authorized officer must offer to have the requisite environmental analysis completed for the site. Thus, the final rule leaves open ample alternative channels for communication of information.

The Department does not believe that ''reasons for denial'' should be replaced with ''reasons to modify the time, place, or manner'' of the proposed activity because it is conceivable that for some proposed activities, such as igniting a fireworks display in a national forest, an alternative time, place, or manner will not allow the applicant to meet the evaluation criteria in the final rule.

The court in the *Rainbow Family* case held that the regulation must provide for expeditious judicial review of the agency's decision to deny an application. 695 F. Supp. at 311. This rule meets that requirement by providing that denial of an application

under § 251.54(h)(1) constitutes final agency action that is immediately subject to judicial review. Exhaustion of administrative remedies is not required before seeking redress in the courts.

Section 251.56—Terms and Conditions

Section 251.56(e) of the proposed rule provided that no bond was required for activities subject to the rule.

Comment. One respondent stated that those who use the national forests should be required to furnish a copy of their insurance policies. Another respondent stated that a performance bond should be required when necessary to ensure compliance with the terms and conditions of special use authorizations, regardless of whether the holder is exercising a constitutional right.

Several respondents objected generally to requiring insurance and bonding for activities subject to the proposed rule. Ten specifically objected to requiring a bond on the ground that it is unnecessary and discriminates against those who do not have a lot of money. One objected that requiring a bond discriminates against those who do not share the majority viewpoint of the Forest Service. Three respondents stated that bonding should not be required for noncommercial uses. One respondent stated that bonding could still be required for noncommercial uses, given the vagueness of the definition of ''commercial use or activity'' and probably would be required given the history and apparent intent of the regulation.

Response. The special use regulations do not contain any provisions on insurance (*see* 36 CFR part 251, subpart B), and the Department as a matter of policy will not require insurance for activities subject to the final rule. This policy demonstrates the Department's intent to ensure that no undue burdens are imposed on the exercise of First Amendment rights.

Under the final rule, an authorized officer may not require bonding for activities subject to the rule. As discussed in response to comments on § 251.51, the Department has clarified and narrowed the definition of ''commercial use or activity'' so that it cannot be construed to include noncommercial activities. It is not the Department's intent to require bonding for noncommercial group uses. The Department's intent is to ensure that no undue burdens are imposed on the exercise of First Amendment rights.

Having considered the comments received, the Department has retained without change § 251.56(e) in the final rule.

Section 251.57—Rental Fees

Section 251.57(d) of the proposed rule provided that no permit fees would be charged for activities subject to the rule.

Comment. Two respondents stated that all persons or organizations subject to the requirement for a special use authorization should be required to pay reasonable application, processing, and land use fees.

Several respondents objected generally to charging permit fees for activities subject to the proposed rule. Three respondents stated that permit fees should not be charged for noncommercial uses. One respondent stated that authorized officers might start charging ever-increasing permit fees. One respondent stated that permit fees could still be charged for noncommercial uses, given the vagueness of the definition of ''commercial use or activity'' and probably would be charged, given the history and apparent intent of the regulation.

Response. Under the final rule, an authorized officer may not charge a permit fee for activities subject to the rule. As discussed in response to comments on § 251.51, the Department has clarified and narrowed the definition of ''commercial use or activity'' so that it cannot be construed to include noncommercial activities. It is not the Department's intent to charge permit fees for noncommercial group uses. As stated above, the Department's intent is to ensure that no undue burdens are imposed on the exercise of First Amendment rights.

Having considered the comments received, the Department has retained without change § 251.57(d) in the final rule.

Section 251.60—Termination, Revocation, and Suspension

Under the proposed rule, special use authorizations for activities subject to the rule were exempted from 36 CFR 251.60(b), which provides that a special use authorization may be suspended, revoked or terminated at the discretion of an authorized officer for ''reasons in the public interest.'' This proposed exemption made clear the agency's intent to ensure that an authorized officer does not have unbridled discretion with respect to administration of activities subject to the rule.

Under the proposed rule, an authorized officer could still terminate, revoke, or suspend an authorization for these activities for noncompliance with applicable statutes, regulations, or terms and conditions of the authorization; for failure of the holder to exercise the rights and privileges granted; with the consent of the holder; or when, by its terms, a fixed or agreed-upon condition, event, or time occurs.

Comment. Nine respondents commented on this provision. Seven respondents commented that this provision gives the authorized officer too much discretion. These respondents stated that the agency could revoke a permit in the middle of a gathering; that the agency could make revocation of a permit likely by requiring strict compliance with a condition that would be difficult to meet or that would inevitably occur; that actions of one person could put everyone at legal risk; that the agency could arbitrarily change a prior determination, for example, a designation of noncommercial to commercial, in order to revoke a permit; and that it is good that one basis for termination, revocation, and suspension was removed, but that reasons to stop an activity will still be determined by the Forest Service, and that there is no reason to stop a gathering unless people do something wrong, such as dumping tons of garbage or burning trees.

Two respondents objected to allowing an authorized officer to revoke a special use authorization if the holder fails to exercise the privileges granted by the authorization. One of these respondents commented that this basis for revocation is unclear and duplicates the basis for revocation for noncompliance with the terms and conditions of the authorization.

Another respondent objected to allowing an authorized officer to terminate a special use authorization with the consent of the holder on the ground that an individual could relinquish privileges on behalf of the group.

One respondent stated that the same criteria for termination, revocation, and suspension should apply to all permit holders, regardless of whether the holder is exercising constitutional rights.

One respondent commented that the rule should require an authorized officer to go before a judge and produce evidence before a permit is revoked.

Response. The Department disagrees that the same criteria for termination, revocation, and suspension should apply to both commercial and noncommercial special use authorizations. Different standards apply to categories of activities like noncommercial group uses, which may include activities involving noncommercial speech.

The courts have held that this regulation cannot single out

noncommercial expression and treat it differently from other similar types of activities. *Israel,* No. CR–86–027–TUC–RMB (D. Ariz. May 10, 1986); *Rainbow Family,* 695 F. Supp. at 309, 312. The courts have also held that the administrative standards that govern special use authorizations for noncommercial expression must be specific and objective and must not leave too much discretion to the authorized officer. *Shuttlesworth,* 394 U.S. at 150–51, 153; *Rainbow Family,* 695 F. Supp. at 309–12.

Therefore, the Department must ensure that the same criteria for termination, revocation, and suspension of special use authorizations for noncommercial group uses apply to all authorizations in that category, regardless of whether they involve the expression of views. The Department also must ensure that these criteria are specific and objective and do not leave unbridled discretion to the authorized officer.

The Department agrees that allowing an authorized officer to terminate, revoke, or suspend a special use authorization for a noncommercial group use when, by its terms, a fixed or agreed upon condition, event, or time occurs could undercut the Department's intent to ensure that the authorized officer does not have unbridled discretion in administering noncommercial group uses. Consequently, § 251.60(a)(1)(i) in the final rule limits the grounds for revocation or suspension of a special use authorization for a noncommercial group use to (a) the criteria under which the authorization may be denied under § 251.54(h)(1) of the final rule, (b) noncompliance with applicable statutes, regulations, or the terms and conditions of the authorization, (c) failure of the holder to exercise the privileges granted by the authorization, and (d) with the holder's consent.

In keeping with the courts' requirement for expeditious review of decisions affecting authorization of expressive activities, decisions to revoke or suspend a special use authorization for noncommercial group uses are immediately subject to judicial review under § 251.60(a)(1)(ii) of the final rule. Thus, § 251.101, which requires exhaustion of administrative remedies under the agency's administrative appeals process for special uses, does not apply.

Section 251.60(a)(1)(iii) of the final rule clarifies that a special use authorization for a noncommercial group use terminates when it expires by its own terms. No agency action is involved. Consequently, § 251.60(a)(1)(iii) of the final rule makes clear that termination of a special use authorization for a noncommercial group use does not constitute agency action that is subject to administrative or judicial review.

Section 251.60(b) of the final rule exempts special use authorizations for noncommercial group uses from the authority to suspend, revoke, or terminate, at the discretion of an authorized officer, for reasons in the public interest.

Revocation will not be more likely for special use authorizations for noncommercial group uses than for other types of uses. The Forest Service endeavors and will continue to endeavor to help all holders comply with applicable statutes, regulations, and the terms and conditions of their special use authorizations and will endeavor to ensure compliance with the new evaluation criteria in § 251.54(h)(1) of the final rule. Under this rule, individual group members will be personally responsible for their own actions, while the group will be responsible for the actions of its members as a whole that have a bearing on compliance with the special use authorization and applicable law.

Revocation or suspension on the basis of the holder's failure to exercise the privileges granted by the authorization allows an authorized officer to give the site authorized for use by the holder to another applicant if the holder decides not to use the site. The Department believes that this basis for revocation or suspension is clear and distinguishable from revocation or suspension on the basis of the holder's noncompliance with the terms and conditions of the authorization.

In the case of a special use authorization for a noncommercial group use, the person or persons who have been designated to sign and have signed the authorization on behalf of the group under §§ 251.54(e)(2)(i)(E) and 251.54(h)(1)(viii) of the final rule would be expected to have the authority to consent to revocation or suspension of the authorization for purposes of § 251.60(a)(1)(i)(D) of the final rule.

Amendments to Part 261

In addition to the changes to 36 CFR part 251, subpart B, the proposed rule incorporated corollary changes to the rules at 36 CFR part 261, subpart A, which contain general prohibitions in effect for the National Forest System.

The proposed rule changed the authority citation for part 261 to consolidate the references. The proposed rule also changed the definitions and prohibitions in part 261, subpart A, governing occupancy and use to make them consistent with the provisions in part 251, subpart B, that require a special use authorization for commercial, but not noncommercial, distribution of printed material.

Comments on these provisions of the proposed rule and the Department's response to them follow.

Section 261.2—Definitions

The proposed rule added definitions for ''Distribution of printed material'' and ''Printed material.'' Since the Department has limited the prohibitions in §§ 261.10 (g) and (h) and 261.14 to commercial distribution of printed material, the Department has added to § 261.2 the same definition for ''Commercial use or activity'' as has been added to § 251.51 of the final rule.

Section 261.10—Occupancy and Use

Comment. Section 261.10(g) of the proposed rule prohibited distribution of any printed material without a special use authorization.

Five respondents commented on this provision. Three respondents commented hat the reasons cited for this provision are inadequate. One of these respondents stated that posting, affixing, or erecting printed material does not have the same significant impact on forest resources as clear-cutting. Another stated that there have not been any traffic jams from Rainbow Family members distributing leaflets, that the amount of printed material posted on trees would undoubtedly be small, and that these concerns can be addressed in a rule regulating traffic and posting, affixing, or erecting written materials on trees. One respondent stated that affixing printed material in the national forests might cause resource damage, but that this concern is addressed by existing laws, as are the concerns about traffic and danger to the person distributing the material.

Two respondents advised the agency to remove this provision and address resource damage as it occurs.

One respondent advised that this prohibition should apply only to commercial distribution of printed material.

Response. The Department has carefully examined the special use authorization requirement for noncommercial distribution of printed material. Based on the comments received on resource impacts and on the Department's review of resource impacts associated with noncommercial distribution of printed material, the Department has determined that these impacts are not significant enough to warrant regulation at this time.

Therefore, the Department has limited the prohibition in § 261.10(g) of the final rule to commercial distribution of printed material without a special use authorization.

Comment. Section 261.10(h) of the proposed rule prohibited certain conduct when distributing printed material, including delaying, halting, or preventing administrative use of an area by the Forest Service or other scheduled or existing uses or activities on National Forest System lands, misrepresenting the purposes or affiliations of those selling or distributing the material, and misrepresenting the availability of the material without cost or donation.

Eleven respondents commented on this provision. One respondent objected generally to this provision as a violation of First Amendment rights. Another commented that this provision prohibits distribution of printed material and solicitation of donations for printed material.

One respondent stated that distrubtion of printed material could not significantly delay, halt, or prevent administrative use of an area by the Forest Service or other scheduled or existing uses or activities.

Two respondents stated that there is no need for this provision because the agency's concerns about fraud and conflicts with other uses are addressed by other laws.

Five respondents commented that this provision gives the agency too much discretion. One of these respondents commented that the phrase, ''administrative use of an area by the Forest Service or other scheduled or existing uses for activities on National Forest System land,'' is too vague. Another stated that virtually any human presence on National Forest System lands could be determined to impede other uses or to conflict with the forest plan. One respondent commented that an applicant's omission of a purpose or affiliation in applying for a permit could be construed as a misrepresentation that would justify denial of a permit and thereby have a chilling effect on speech. One respondent stated that under this provision, distribution of printed material for no charge while requesting donations could be considered a prohibited misrepresentation, that this provision would prohibit distribution of printed material in exchange for purely voluntary contributions, and that no such rule applies to commercial distribution of printed material.

One respondent stated that no individual at a consensual gathering can assume liability for the proposes or affiliations of other members and that the intent of the prohibition on misrepresentation is to impose liability and to provide a pretext for enforcement action.

One respondent commented that prohibiting misrepresentation when distributing printed material constitutes regulation of the content of speech. Another respondent advised deleting ''misrepresenting the purposes or affiliations of those selling or distributing the material,'' because although commercial speech may be regulated for truthfulness, political speech may not be.

Response. The Department has carefully examined the special use authorization requirement for noncommercial distribution of printed material. Based on the comments received on resource impacts and on the Department's review of resource impacts associated with noncommercial distribution of printed material, the Department has determined that these impacts are not significant enough to warrant regulation at this time. Therefore, the Department has limited the prohibition contained in § 261.10(h) to commercial distribution of printed material. In so doing, the Department has removed the reference to donations in § 261.10(h) of the final rule, as donations generally do not occur in connection with commercial activities.

Section 261.10(h) of the final rule does prohibit and is not intended to prohibit commercial distribution of printed material. Rather, this provision is intended to ensure that commercial distribution of printed material does not delay, halt, or prevent other authorized uses and activities on National Forest System lands. Section 261.10(h) of the final rule is also intended to protect the public from fraud by prohibiting specific types of misrepresentation in the context of commercial distribution of printed material. Thus, this provision of the final rule regulates the time, place, and manner of commercial distribution of printed material, rather than the content of the commercial printed material.

As discussed in response to comments on § 251.54(h)(1)(iii) of the proposed rule, the Forest Service has had difficulty allocating space among uses and activities, both commercial and noncommercial, on National Forest System lands. Section 261.10(h) of the final rule provides the framework necessary for ensuring that authorized uses and activities can coexist in the national forests and for ensuring that certain specific types of misrepresentation do not occur in the context of commercial distribution of printed material.

Section 261.14—Developed Recreation Sites

Comment. The proposed rule removed § 261.14(p) of the current rule, which prohibited distribution of printed material without a special use authorization at developed recreation sites. This prohibition was subsumed in the prohibition of distribution of printed material without a special use authorization contained in § 261.10(g) of the proposed rule, which applied throughout the National Forest System.

Two respondents commented on this provision. One respondent stated that this prohibition should apply only to commercial distribution of printed material. The other stated that it is unclear what the removal of this provision from the rule means that it is acceptable if it means that there is no longer a permit requirement for distribution of printed material at developed recreation sites.

Response. The Department has removed § 261.14(p) of the current rule, which prohibits distribution of printed material without a special use authorization at developed recreation sites, because it is redundant. Section 261.10(g) of the current rule prohibits distribution of printed material without a special use authorization throughout the National Forest System, including at developed recreation sites.

In addition, the prohibition contained in § 261.14(p) of the current rule is too broad. The Department has carefully examined the special use authorization requirement for noncommercial distribution of printed material. Based on the comments received on resource impacts and on the Department's review of resource impacts associated with noncommercial distribution of printed material, the Department has determined that these impacts are not significant enough to warrant regulation at this time. Therefore, in § 261.10(g) of the final rule, the Department has limited the prohibition currently found at § 261.14(p) to commercial distribution of printed material without a special use authorization.

Procedural Comments

A number of comments were received on various procedural aspects of this rulemaking. These comments and the Department's response to them follow.

Comment: Requests for Administrative Hearing. Approximately 79 respondents requested an administrative hearing on the proposed rule. Specifically, one respondent commented that the average person who might be affected by the rulemaking might not otherwise know about it or

feel comfortable commenting. Another respondent cited *Hagar v. Reclamation Dist. No. 108*, 111 U.S. 701 (1884), for the proposition that due process requires a judicial proceeding when life, liberty, or property are at stake.

One respondent stated that the agency had failed to give timely notice of the proposed rule to those who had notified the agency of their interest. Another respondent stated that Forest Service correspondence about the status of the proposed rule sent before it was published constitutes an *ad hoc*, unpublished decision issued at the same time as the proposed rule in violation of the APA.

Response. When a rule is promulgated under the notice and comment provisions of the APA at 5 U.S.C. 553(c), an administrative hearing is not required and is seldom provided. By publishing the proposed rule in the **Federal Register**, by accepting comments on the proposed rule for 90 days, and by analyzing and addressing the comments received during that period in the preamble to this final rule, the Department has fully complied with the notice and comment provisions of 5 U.S.C. 553(c).

For informal rulemaking, an agency satisfies the APA's notice requirement by publishing in the **Federal Register**. The Forest Service published the proposed rule in the **Federal Register** on May 6, 1993. In addition, the agency gave direct notice to numerous interested parties and invited their comments. The timeliness of the agency's notice is in fact supported by the actions of the respondent who stated that the agency had failed to give timely notice. That respondent submitted a comment on the proposed rule dated June 24, 1993, which was received on July 7, 1993, nearly a month before the end of the comment period. Correspondence sent by the agency concerning the status of the proposed rule before it was published has no legal bearing on this rulemaking and does not violate the APA.

Comment: Requests for Extension of the Comment Period. Fifteen respondents requested that the comment period be extended. One of these respondents requested an extension to 100 days after publication of the proposed rule, until August 14, to allow the Rainbow Family Council, which meets July 1, through 7, to submit a comment.

Response. The APA does not specify the number of days for a comment period for informal rulemaking (5 U.S.C. 553(c)). The comment period for a proposed rule is often 60 days. The comment period for this rulemaking was 90 days and closed August 4, 1993, nearly a month after the time identified for the meeting of the Rainbow Family Council. The Forest Service received 603 comments on the proposed rule, including 12 petitions with 20,451 signatures. The Department believes that the 90-day comment period was sufficient to give all members of the public an opportunity to comment on the proposed rule.

Comment: Compliance With the Paperwork Reduction Act. Five respondents commented that the proposed rule violates the Paperwork Reduction Act on the grounds that an application for noncommercial group uses would take more than one to four hours to complete; that preparation time of up to four hours for applications governed by the rule indicates that these applications unreasonably restrict recreational use of national forests; that it is unreasonable to spend an hour or more on something that currently does not have to be done; and that the proposed rule would generate paperwork through litigation.

Response. The Department disagrees with these comments, which are irrelevant to compliance with the Paperwork Reduction Act. The Paperwork Reduction Act requires approval by the Office of Management and Budget (OMB) of any collection of information required by an agency that affects ten or more persons (44 U.S.C. 3502(4)(A), 3507(a)). ''Collection of information'' includes obtaining information through the use of application forms (44 U.S.C. 3502(4)(A)). An agency must estimate the time needed to comply with the collection of information requirement (44 U.S.C. 3507(a)).

The Department has fully complied with the Paperwork Reduction Act. The information that an applicant must provide the Forest Service in an application for a noncommercial group use constitutes a collection of information requirement under the Paperwork Reduction Act. The Department has obtained approval from OMB of a standard application form that can be used for all special uses. Because of the very limited information required in applications subject to this rule, however, the Department has developed a special application form for noncommercial group uses. The Department has submitted a request for approval of this form to OMB and will obtain approval of this form from OMB before using it in conjunction with this rule.

Since this rule applies to all noncommercial group uses on National Forest System lands, the Department has estimated the average amount of time an applicant will spend to prepare an application. The amount of time will vary depending on the scope and complexity of the proposed activity.

The Department believes that it has not underestimated the preparation time for an application. Under §§ 251.54(e)(2)(i)(A) through (e)(2)(i)(E) of the final rule, information required from applicants for noncommercial group uses is limited to five very basic elements; (1) A description of the proposed activity; (2) a description of the National Forest System lands and any facilities the applicant would like to use; (3) the estimated number of participants and spectators; (4) the date and time of the proposed activity; and (5) the name of the person or persons who will sign a special use authorization on behalf of the applicant. Moreover, the application requirement is an essential component of the special use authorization process, which in turn furthers several significant governmental interests.

Comment. Compliance with Executive Order 12291. Five respondents commented that the proposed rule violates or triggers additional analysis under Executive Order 12291. Specifically, these respondents stated that the regulation is a major rule; that any rule that violates rights is a major rule; that in these economically difficult times, the regulatory impact could exceed $100 million, and that interested parties might incur more court costs as a result of promulgation of the rule; that the proposed rule would have an effect of more than $100 million on the economy, given that the agency spent almost $400,000 at the 1992 Rainbow Family Gathering, and that if the agency made similar expenditures on noncommercial group uses throughout the year, the agency would be spending more than $20 million a year, and that if five activities occurred continuously, the agency would be spending $100 million a year; that the proposed rule would increase costs for state and local governments; that it is unclear where the agency derives the unilateral authority to make a determination on the issues covered by the Order; that the standard cited in the proposed rule is purely economic and fails to acknowledge other standards required by law, which would easily be met; that the proposed rule violates section 2(a) of the Order, which requires that agency decisions be based on adequate information concerning the need for and consequences of the proposed rule, given that other regulations address the agency's concerns in promulgating the rule; that the benefits to society from the

proposed rule do not outweigh the costs as required by section 2(b) of the Order, given that the rule is unconstitutional and that the agency's concerns in promulgating the rule are addressed by other regulations; and that being set apart from a totalitarian regime and the value of freedom as contemplated in *Terminiello* v. *Chicago*, 337 U.S. 4 (1948), should be considered ''beneficial effects that cannot be quantified in monetary terms'' under section 3(d) of the Order.

One respondent commented that the proposed regulation would have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the proposed rule would impose additional recordkeeping requirements on them.

Response. Executive Order 12291 was revoked on September 30, 1993, by section 11 of Executive Order 12866. Thus, Executive Order 12291 does not apply to the final rule. Nevertheless, as Executive Order 12291 was in effect when the proposed rule was published, the Department will address comments pertaining to that Order.

Section 1(b) of Executive Order 12291 required agencies to determine whether each regulation they promulgated qualified as a major rule. Under section 1(b), a regulation was deemed a major rule if it was likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Department determined that the proposed regulation was not a major rule because it would have little or no impact on the national economy. The proposed rule required a special use authorization for noncommercial group uses on National Forest System lands. The proposed rule consisted primarily of technical and administrative changes for authorization and use of National Forest System lands.

The fact that interested parties could incur court costs in challenging the rule and that the Forest Service and state and local governments incur costs in hosting noncommercial group uses does not affect the determination that the proposed regulation was not a major rule. The Forest Service and state and local governments have incurred costs in connection with noncommercial group uses without the special use authorization requirement and would continue to incur certain costs, such as personnel costs, after the proposed rule became effective. The Department believes that costs associated with noncommercial group uses would decrease, not increase, after the proposed rule went into effect because the rule would enhance the Forest Service's ability to manage these uses and minimize adverse impacts.

The proposed rule did not violate sections 2(a) and 2(b) of Executive Order 12291. The proposed rule was based on adequate information concerning the need for and consequences of the regulation, and the benefits outweighed any costs of the rulemaking. The Department articulated several significant interests in promulgating the proposed rule and determined that requiring a special use authorization for noncommercial group uses does not impose a substantial burden on the public. Other regulations do not adequately address the Department's concerns associated with managing noncommercial group uses of National Forest System lands. The Department believes that the proposed rule is constitutional. Section 3(d) of Executive Order 12291 applied only to major rules. Section 3(d) did not apply to the proposed regulation because it was not a major rule.

The final rule will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act in part because the rule will not impose additional recordkeeping requirements on them.

Comment: Environmental Documentation Required for Rulemaking. Three respondents commented that the proposed rule requires documentation in an environmental assessment or environmental impact statement. These respondents stated that the rule has environmental impacts from anticipated litigation with large groups like the Rainbow Family; that the rule must affect the environment because otherwise the agency would not have issued it; and that the rule might keep people out of the national forests and thereby have a significant effect on the human environment.

Response. Section 31.1b of Forest Service Handbook 1909.15 categorically excludes from documentation in an EA or an EIS ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes or instructions.'' This regulation falls into this category of actions because the rule establishes agency-wide administrative procedures for authorization and use of National Forest System lands and because no extraordinary circumstances exist which would require preparation of an EA or an EIS.

Summary

Having fully considered the comments on the proposed rule received during the comment period, the Department is adopting this final rule with the modifications previously described in response to comments received. This rule is effective 30 days after the date of publication in the **Federal Register**.

Regulatory Impact

This final rule was received under USDA procedures and determined to be a significant rule under Executive Order 12866 on Regulatory Planning and Review because of the strong public interest expressed in the proposed rule. Accordingly, this final rule was subject to OMB review.

Moreover, this final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It has been determined that this action will not have a significant economic impact on a substantial number of small entities because it will not impose recordkeeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity, or ability to remain in the market.

This rule has been reviewed for its impact on private property rights under Executive Order 12630 of March 15, 1988, as implemented by the United States Attorney General's Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings. Executive Order 12630 does not apply to this rule because it consists primarily of technical and administrative changes governing application procedures for authorization of occupancy and use of National Forest System lands. Application for a special use authorization does not grant any right, title, or interest in or to lands or resources held by the United States.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. After adoption of this final rule, (1) all state and local laws and regulations that conflict with this rule or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this final rule; and (3) it will not require administrative proceedings before parties may file suite in court challenging its provisions.

Paperwork Reduction Act

The information an applicant must provide the Forest Service under §§ 251.54 (e)(2)(i)(A) through (e)(2)(i)(E) to obtain an authorization for a noncommercial group use constitutes an information requirement as defined by the Paperwork Reduction Act and OMB implementing rules at 5 CFR part 1320 and thus requires OMB approval before adoption of the final rule. The Department has developed an application form for noncommercial group uses and is in the process of obtaining approval of this form from OMB. The Department will obtain approval of this form before using it in conjunction with this rule. The Department estimates that each applicant would spend an average of one to four hours preparing an application, depending on the scope and complexity of the proposed activity.

Environmental Impact

Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180, September 18, 1992) categorically excludes from documentation in an EA or an EIS ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes or instructions.'' Based on consideration of the comments received and the nature and scope of this rulemaking, the Department has determined that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an EA or an EIS.

List of Subjects

36 CFR Part 251

Electric power, Mineral resources, National forests, Rights-of-way, Water resources.

36 CFR Part 261

Law enforcement, National forests.

Therefore, for the reasons set forth in the preamble, part 251, subpart B, and part 261, subpart A, of Chapter II of Title 36 of the Code of Federal Regulations are hereby amended as follows:

PART 251—LAND USES [AMENDED]

Subpart B—Special Uses

1. The authority citation for subpart B continues to read:

Authority: 16 U.S.C. 472, 551, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1771.

2. Amend § 251.50 by revising the section heading, paragraph (a), the introductory text for paragraph (c), and paragraph (c)(3) to read as follows:

§ 251.50 Scope.

(a) All uses of National Forest System lands, improvements, and resources, except those provided for in the regulations governing the disposal of timber (part 223) and minerals (part 228) and the grazing of livestock (part 222), are designated ''special uses.'' Before engaging in a special use, persons or entities must submit an application to an authorized officer and must obtain a special use authorization from the authorized officer unless that requirement is waived by paragraph (c) of this section.

* * * * *

(c) A special use authorization is not required for noncommercial recreational activities such as camping, picnicking, hiking, fishing, hunting, horseback riding, and boating, as well as noncommercial activities involving the expression of views such as assemblies, meetings, demonstrations, and parades, except for:

(1) * * *

(2) * * *

(3) Noncommercial group uses as defined in § 251.51 of this subpart.

* * * * *

3. Amend § 251.51 by removing the terms and definitions for ''Group event,'' ''Distributing noncommercial printed material,'' and ''Noncommercial printed material,'' and adding the following new terms and definitions in alphabetical order to read as follows:

§ 251.51 Definitions.

* * * * *

Commercial use of activity—any use or activity on National Forest System lands (a) where an entry or participation fee is charged, or (b) where the primary purpose is the sale of a good or service, and in either case, regardless of whether the use or activity is intended to produce a profit.

Group use—an activity conducted on National Forest System lands that involves a group of 75 or more people, either as participants or spectators.

Noncommercial use or activity—any use or activity that does not involve a commercial use or activity as defined in this section.

* * * * *

4. Amend § 251.54 by revising the introductory text for paragraph (a); removing the introductory text for paragraph (e); revising paragraph (e)(1); redesignating paragraphs (e)(2) through (e)(5) as paragraphs (e)(3) through (e)(6); adding a new paragraph (e)(2); redesignating paragraphs (f)(1) and (f)(2) as (f)(2) and (f)(3) and designating the first sentence of paragraph (f) introductory text, as paragraph (f)(1); adding new paragraphs (f)(4) and (f)(5); and revising paragraph (h) to read as follows:

§ 251.54 Special use applications.

(a) *Preapplication activity.* When occupancy or use of National Forest System lands is desired, a proponent is encouraged to contact the Forest Service office(s) responsible for management of the affected land as early as possible so that potential constraints may be identified, the proposal can be considered in forest land and resource management plans if necessary, and processing of an application can be tentatively scheduled. To the extent applicable to the proposed use and occupancy, the proponent will be given guidance and information about:

* * * * *

(e) *Application content*—(1) *Applicant identification.* Any applicant for a special use authorization shall provide the applicant's name and mailing address, and, if the applicant is not an individual, the name and address of the applicant's agent who is authorized to receive notice of actions pertaining to the application.

(2) *Required Information*—(i) *Noncommercial group uses.* An applicant for noncommercial group uses shall provide the following:

(A) A description of the proposed activity;

(B) The location and a description of the National Forest System lands and facilities the applicant would like to use;

(C) The estimated number of participants and spectators;

(D) The starting and ending time and date of the proposed activity; and

(E) The name of the person or persons 21 years of age or older who will sign a special use authorization on behalf of the applicant. Paragraphs (e)(3) through (e)(6) of this section shall not apply to applications for noncommercial group uses.

(ii) *All other special uses.* At a minimum, applications for special uses other than noncommercial group uses shall include the information contained in paragraphs (e)(3) through (e)(6) of this section. In addition, if requested by an authorized officer, an applicant in one of the following categories shall furnish the information specified for that category:

(A) A State and local government agency: a copy of the authorization under which the application is made;

(B) A public corporation: the statute or other authority under which it was organized;

(C) A federal government agency: the title of the agency official delegated the authority to file the application;

(D) A private corporation:

(*1*) Evidence of incorporation and its current good standing;

(*2*) if reasonably obtainable by the applicant, the name and address of each shareholder owning three percent or more of the shares. Together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote;

(*3*) the name and address of each affiliate of the entity;

(*4*) in the case of an affiliate which is controlled by the entity, the number of shares and the percentage of any class of voting stock of the affiliate that the entity owns either directly or indirectly; or

(*5*) in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, either directly or indirectly by the affiliate; or

(E) A partnership, association or other unincorporated entity: a certified copy of the partnership agreement or other similar document, if any, creating the entity, or a certificate of good standing under the laws of the State.

* * * * *

(f) *Processing applications.* (1) * * *

(4) The authorized officer shall give due deference to the findings of another agency such as the Public Utility Commission, the Federal Energy Regulatory Commission, or the Interstate Commerce Commission in lieu of another detailed finding. If this information is already on file with the Forest Service, it need not be refiled if reference is made to the previous filing date, place, and case number.

(5) Applications for noncommercial group uses must be received at least 72 hours in advance of the proposed activity. Applications for noncommercial group uses shall be processed in order of receipt, and the use of a particular area shall be allocated in order of receipt of fully executed applications, subject to any relevant limitations set forth in this section. All applications for noncommercial group uses shall be deemed granted and an authorization shall be issued for those uses unless the applications are denied within 48 hours of receipt. Where an application for a noncommercial group use has been granted or is deemed to have been granted and an authorization has been issued under this paragraph, an authorized officer may revoke that authorization only as provided under § 251.60(a)(1)(i).

* * * * *

(h) *Response to applications for noncommercial group uses.* (1) An authorized officer shall grant an application for a special use authorization for a noncommercial group use upon a determination that:

(i) Authorization of the proposed activity is not prohibited by the rules at 36 CFR part 261, subpart A, or by orders issued under 36 CFR part 261, subpart B, or by Federal, State, or local law unrelated to the content of expressive activity;

(ii) Authorization of the proposed activity is consistent or can be made consistent with standards and guidelines in the applicable forest land and resource management plan required under the National Forest Management Act and 36 CFR part 219;

(iii) The proposed activity does not materially impact the characteristics or functions of the environmentally sensitive resources or lands identified in Forest Service Handbook 1909.15, chapter 30.

(iv) The proposed activity will not delay, halt, or prevent administrative use of an area by the Forest Service or other scheduled or existing uses or activities on National Forest System lands, including but not limited to uses and activities authorized under parts 222, 223, 228, and 251 of this chapter;

(v) The proposed activity does not violate state and local public health laws and regulations as applied to the proposed site. Issues addressed by state and local public health laws and regulations as applied to the proposed site include but are not limited to:

(A) The sufficiency of sanitation facilities;

(B) The sufficiency of waste-disposal facilities;

(C) The availability of sufficient potable drinking water;

(D) The risk of disease from the physical characteristics of the proposed site or natural conditions associated with the proposed site; and

(E) The risk of contamination of the water supply;

(vi) The proposed activity will not pose a substantial danger to public safety. Considerations of public safety shall not include concerns about possible reaction to the users' identity or beliefs from non-members of the group that is seeking an authorization and shall be limited to the following;

(A) The potential for physical injury to other forest users from the proposed activity;

(B) The potential for physical injury to users from the physical characteristics of the proposed site or natural conditions associated with the proposed site;

(C) The potential for physical injury to users from scheduled or existing uses or activities on National Forest System lands; and

(D) The adequacy of ingress and egress in case of an emergency;

(vii) The proposed activity does not involve military or paramilitary training or exercises by private organizations or individuals, unless such training or exercises are federally funded; and

(viii) A person or persons 21 years of age or older have been designated to sign and do sign a special use authorization on behalf of the applicant.

(2) If an authorized officer denies an application because it does not meet the criteria in paragraphs (h)(1)(i) through (h)(1)(viii) of this section, the authorized officer shall notify the applicant in writing of the reasons for the denial. If an alternative time, place, or manner will allow the applicant to meet the eight evaluation criteria, an authorized officer shall offer that alternative. If an application is denied solely under paragraph (h)(1)(iii) of this section and all alternatives suggested are unacceptable to the applicant, the authorized officer shall offer to have completed the requisite environmental and other analysis for the requested site. A decision to grant or deny the application for which an environmental assessment or an environmental impact statement is prepared shall be subject to the notice and appeal procedures at 36 CFR part 215 and shall be made within 48 hours after the decision becomes final under that appeal process. A denial of an application under paragraphs (h)(1)(i) through (h)(1)(viii) of this section constitutes final agency action and is immediately subject to judicial review.

5. Amend § 251.56 by revising paragraph (e) to read as follows:

§ 251.56 Terms and conditions.

* * * * *

(e) *Bonding.* An authorized officer may require the holder of a special use authorization for other than a noncommercial group use to furnish a bond or other security to secure all or any of the obligations imposed by the terms of the authorization or by any applicable law, regulation or order.

* * * * *

6. Amend § 251.57 by redesignating paragraphs (d) through (h) as (e) through (i) and adding a new paragraph (d) to read as follows:

§ 251.57 Rental fees.

* * * * *

(d) No fee shall be charged when the authorization is for a noncommercial group use as defined in § 251.51 of this subpart.

* * * * *

7. Amend § 251.60 by revising paragraphs (a) and (b) to read as follows:

§ 251.60 Termination, revocation, and suspension.

(a) *Grounds for termination, revocation, and suspension.* (1) *Noncommercial group uses.*

(i) *Revocation or suspension.* An authorized officer may revoke or suspend a special use authorization for a noncommercial group use only under one of the following circumstances:

(A) Under the criteria for which an application for a special use authorization may be denied under § 251.54(h)(1);

(B) for noncompliance with applicable statutes or regulations or the terms and conditions of the authorization;

(C) for failure of the holder to exercise the rights or privileges granted; or

(D) with the consent of the holder.

(ii) *Administrative or judicial review.* Revocation or suspension of a special use authorization under this paragraph constitutes final agency action and is immediately subject to judicial review.

(iii) *Termination.* A special use authorization for a noncommercial group use terminates when it expires by its own terms. Termination of a special use authorization under this paragraph does not involve agency action and is not subject to administrative or judicial review.

(2) *All other special uses.* An authorized officer may terminate, suspend, or revoke a special use authorization for all other special uses except an easement issued pursuant to § 251.53(e) and (l):

(i) For noncompliance with applicable statutes, regulations, or the terms and conditions of the authorization;

(ii) for failure of the holder to exercise the rights or privileges granted;

(iii) with the consent of the holder; or

(iv) when, by its terms, a fixed or agreed upon condition, event, or time occurs. Termination, revocation, or suspension of a special use authorization under this paragraph is subject to administrative and judicial review in accordance with 36 CFR part 251, subpart C.

(b) A special use authorization may be suspended, revoked, or terminated at the discretion of the authorized officer for reasons in the public interest, except that this provision shall not apply to a special use authorization for a noncommercial group use.

* * * * *

PART 261—PROHIBITIONS

8. Revise the authority citation for part 261 to read as follows:

Authority: 7 U.S.C. 1011(f); 16 U.S.C. 472, 551, 1133(c)–(d)(1), 1246(i).

Subpart A—General Prohibitions

9. Amend § 261.2 by adding the following new terms and definitions in alphabetical order to read as follows:

§ 261.2 Definitions.

* * * * *

Commercial use or activity—any use or activity on National Forest System lands (a) where an entry or participation fee is charged, or (b) where the primary purpose is the sale of a good or service, and in either case, regardless of whether the use or activity is intended to produce a profit.

Distribution of printed material—disseminating, posting, affixing, or erecting printed material as defined in this section.

Printed material—any written and/or graphic material including but not limited to pamphlets, brochures, photographs, graphics, signs, and posters.

* * * * *

10. Amend § 261.10 by redesignating paragraphs (h) through (n) as paragraphs (i) through (o), revising paragraph (g), and adding a new paragraph (h) to read as follows:

§ 261.10 Occupancy and use.

* * * * *

(g) Commercial distribution of printed material without a special use authorization.

(h) When commercially distributing printed material, delaying, halting, or preventing administrative use of an area by the Forest Service or other scheduled or existing uses or activities on National Forest System lands; misrepresenting the purposes or affiliations of those selling or distributing the material; or misrepresenting the availability of the material without cost.

* * * * *

§ 261.14 Developed recreation sites.

11. Amend § 261.14 by removing paragraph (p) and redesignating paragraph (q) as paragraph (p).

Dated: August 14, 1995.

Mark Gaede,

Acting Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 95–21225 Filed 8–29–95; 8:45 am]

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Federal Register

Wednesday
August 30, 1995

Part IV

Postal Service

39 CFR Part 111

Classification Reform; Implementation Standards; Proposed Rule

POSTAL SERVICE

39 CFR Part 111

Classification Reform; Implementation Standards

AGENCY: Postal Service.

ACTION: Second advance notice of proposed rulemaking.

SUMMARY: This notice provides updated information on the rulemaking process that the Postal Service is following to implement pending classification reform proposals, and to obtain comments and proposals on currently suggested implementing standards.

DATES: Comments on the implementation process or proposed standards must be received on or before September 29, 1995.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, USPS Headquarters, 475 L'Enfant Plaza SW., Room 6800, Washington, DC 20260–2419. Copies of all written comments will be available at the above address for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Leo F. Raymond, (202) 268–5199.

SUPPLEMENTARY INFORMATION: On March 24, 1995, pursuant to its authority under 39.U.S.C. 3621, et. seq., the Postal Service filed with the Postal Rate Commission (PRC) a request for a recommended decision on a number of mail classification reform proposals. The PRC designated the filing as Docket No. MC95–1, and proceedings are currently under way before the PRC in accordance with 39 U.S.C. 3624 and the PRC's rules of practice under 39 CFR 3001. A notice of the filing, with a description of the Postal Service's proposals, was published on April 3, 1995, in the **Federal Register** by the PRC (60 FR 16888–16893).

On June 29, 1995, the Postal Service published for public comment in the **Federal Register** an advance notice of proposed rulemaking (60 FR 34056–34069). That notice included an overview of the Postal Service's proposals in MC95–1, the process that was used in developing them, and the instant process being used to prepare for implementation of classification reform and to begin development of the standards to be used eventually in the Domestic Mail Manual (DMM). The notice also contained detailed information about issues that had been developed for consideration as part of the implementation process, prepared in a format that paralleled the listing of requirements in the Domestic Mail Classification Schedule (DMCS) portion of the MC95–1 filing. Among the purposes for publishing the advance notice was the elicitation of comments on the proposed criteria under consideration for inclusion in DMM implementing standards, many of which had been developed with the advice of four Classification Reform Implementation Advisory Groups (IAGs), composed of appropriate Postal Service personnel and Representatives of the mailing community, convened as part of the process described in the notice. Readers who are unfamiliar with the content of the Postal Service's MC95–1 filing, or the process under way for implementation of MC95–1, are asked to review the June 29 notice for more details.

This second notice serves both to report a summary of the comments received from the earlier notice and to invite further comment from interested parties, both on the proposals shown below (that have been updated based on comments on the first notice and recent IAG discussions) and on the implementation process generally.

However, readers are reminded that this implementation rulemaking process is not a forum for dialogue about the contents of the Postal Service's filing; the merits of testimony, data, or evidence it has submitted in that case; or philosophical or public policy issues related to universal postal service, rate design, or the role of second-class mail. Those are among the issues being considered in the classification reform case pending before the PRC. As such, comments in those areas are beyond the scope of this rulemaking and will not be discussed if submitted.

Following receipt and review of comments on this second notice, the Postal Service will revise its proposed implementation criteria as appropriate and use them as the basis for developing the specific DMM standards that will be proposed for adoption if the changes proposed MC95–1 are adopted. The Postal Service plans to publish these DMM provisions as a proposed rule for notice and comment in the **Federal Register** in November.

Pursuant to 39 U.S.C. 3624, the PRC issues a recommended decision on the Postal Service's Request; this recommended decision is expected in January 1996. The PRC's decision is sent to the Governors of the Postal Service who, pursuant to 39 U.S.C. 3625, issue a final decision on the PRC's recommendations. The Board of Governors then will set an implementation date. Publication of a notice announcing the Governors' decision and the issuance of final Domestic Mail Classification Schedule and Rate Schedule changes will be made immediately after the Governors act. After reviewing the comments received on the proposed rule published in the November notice in light of the PRC's recommendation and the Governors' decision, a final rule will be published adopting the appropriate DMM implementing standards. Publication of this notice will be either concurrent with publication of the Governors' decision or as soon thereafter as possible.

The succeeding section of the notice summarizes comment received on the first notice and discussions from recent IAG meetings. This material is organized by the subject areas represented by the IAGs letters, flats, addressing, and publications. Miscellaneous issues are reported thereafter.

Finally, the remainder of this notice presents the proposed implementation criteria in revised form to reflect changes that have been made based on the comments as well as new material. For ease of review, as in the first notice, this information is organized by the classes, subclasses, and rate categories proposed by the Postal Service in its MC95–1 filing. Each heading is followed by one or more statements of the pertinent classification language proposed by the Postal Service for inclusion or retention in the DMCS. A DMCS section reference is included in parentheses at the end of each statement for identification and reference purposes. (Readers are reminded that, because these proposed DMCS provisions are under review before the PRC as prescribed by 39 U.S.C. 3623, they are not subject to comment in this rulemaking process.) Where appropriate, following each DMCS statement, and indented under it, are statements of the mailing standards that the Postal Service currently plans to implement through DMM changes if the pending classification changes are adopted. As in the earlier notice, the Postal Service has also included statements of pending issues related to these proposals. Readers are invited to comment on the proposed DMM provisions and the related issues that are shown, and to identify any additional proposals or issues that warrant inclusion in these classification reform implementation plans.

Summary of Comments From First Notice

The Postal Service received 89 pieces of correspondence offering a total of 538 comments on the June 29 notice.

Respondents included most major mailer associations, some individual publishers, printers, presort bureaus, mailers, and one private citizen. The comments do not lend themselves to easy categorization or direct association with specific provisions of the first notice's content. Rather, commenters tended to speak to general areas of concern, such as automation issues, or to common aspects of several proposed criteria, such as tray volumes for several different presort levels. Although the proposals were set forth in the first notice by class of mail or rate to which they pertained, comments tended to aggregate these into a single response.

The largest single area to which comments were generally directed was the preparation of automation subclass mail (First-Class and Standard); approximately 175 comments discussed issues in that area. Addressing issues were the focus of 88 comments, although most commenters mentioned addressing issues to some degree. Publications Service was the subject of 67 comments, with 7 other speaking about regular Periodicals as well. Nonautomation First-Class (Retail subclass) and Standard Mail (Regular and Enhanced Carrier Route subclasses) received a total of 25 and 87 comments, respectively. Another 89 comments discussed general issues, including some (like the role of second-class mail or the wisdom of classification reform) that are beyond the scope of this rulemaking. The specific points raised in the comments are presented below and, to the extent that changes have been made based on the comments, are reflected in the amended proposals that follow.

Comments Regarding Letter Mail

General

Five comments were received that suggested changes to the minimum volume required for mailing at presort rates. Presort minimums are a matter before the PRC and are beyond the scope of this rulemaking.

Four comments were received concerning preparation of letter mail on pallets. Palletization issues (including the preparation of bundles and trays on pallets) are being considered as part of a separate rulemaking.

Automation Subclasses

100% Barcoding. Twenty-seven commenters responded to the proposal for 100% delivery point barcoded pieces within the Automation subclasses for First-Class and Standard letters. Two commenters supported this requirement. Seven commenters indicated that splitting their mail lists into two separate mailstreams, one with delivery point barcodes and one without, will increase their mail preparation expenses and may result in more residual mail. One commenter was concerned that this could be a bigger problem for multiline optical character reader (MLOCR) combination/value added mailers. Three commenters were concerned about the need to re-meter pieces that could not be barcoded in an MLOCR environment; one indicated that the need to remeter could result in a 1-day delay of the mail. Two commenters indicated that this requirement would result in more single-piece rate mail, with one further stating that this was because smaller mailers may not have enough nonbarcoded pieces remaining after preparing the automation mailing to meet the separate 500- or 200-piece minimum quantity required for a separate mailing. Three commenters requested that single-piece rate mail be allowed to be included as ''residual'' to an Automation subclass mailing, thereby eliminating the need to re-meter and submit separate mailings with separate statements. Three commenters indicated that their organizations could not meet this requirement. Six commenters believed that this requirement should be phased in. One commenter recommended that the 100% requirement be revised to 95%. Two commenters wanted an explanation of what tolerance for error would be permitted. One commenter wanted an explanation of why this is needed because they believe that it will be more costly to the Postal Service to run nonbarcoded pieces through OCR equipment at origin to apply barcodes that it would be to sort nonbarcoded mail in with barcoded mail in destination trays and apply barcodes to nonbarcoded pieces at destination.

Seven commenters indicated the requirement for 100% barcoding for Automation subclass rate qualification should be deleted because the Postal Service cannot provide tools for customers to reach 100% barcoding. These commenters indicated that the postal databases do not contain information for new homes, rural addresses converted to street-style addressing, and some rural route post office boxes; and that the database contains uncodable addresses. One commenter was concemed that addressing conventions in Puerto Rico do not lend themselves to delivery point coding. The Postal Service developed and promoted the use of Address Element Correction service for the purpose of assisting mailers to improve uncodable addresses. The Postal Service is currently exploring broader access to the service by licensing the address-matching software it has developed to commercial service providers. Recent meetings with representatives of the government of Puerto Rico are allowing the Postal Service to develop software that deals more easily with the unique addressing challenges found on the islands.

When mailers mix delivery point barcoded mail and non-delivery point barcoded mail within 3-digit and residual portions of their barcoded rate mailings, as is currently permitted, the non-delivery point barcoded mail is rejected from barcode sorters and must be rerun on MLOCRs or multiposition letter sorting machines (MPLSMs). Requiring mailers to prepare two separate mailstreams before presenting mail to the Postal Service eliminates these extra steps in handling non-delivery point barcoded mail and allows it to be directed properly from the start, resulting in more efficient Postal Service processing. If these requirements result in more nonbarcoded mail presented for OCR processing at the origin post office, the Postal Service believes that it has the operational capacity to process this mail. The processing efficiencies the Postal Service will gain from a 100% barcoded mailstream are reflected in the lower rates proposed for the Automation subclasses. In return for these larger discounts, mailers might have to perform the additional work of separating noncompatible mail. The Postal Service has noted the problems indicated by the commenters such as remetering the pieces and will work toward resolving these issues with mailers prior to implementation of classification reform.

''Heavy Letter Mail.'' Two commenters raised questions as to whether the maximum weight limit for automation letters would be increased to the ''break point'' for third-class bulk mail under classification reform. The maximum weight for automation-compatible letters is being studied as part of a separate program already under way using the ''break point'' for special third-class bulk mail. The results of this program will be announced separately and reflected in the implementing standards for MC95–1 as appropriate.

Carrier Route Rates. Nine comments were received regarding the carrier route barcoded rate. Two commenters indicated that limiting carrier route rates to areas where mail will be sequenced either manually or by carrier sequence barcode sorter (CSBCS) equipment allows some mailers an

unfair rate advantage over others based on geography rather than mail quality. One commenter mistakenly believed that carrier route rates would be unavailable to routes where the Postal Service did not have barcode sorters. Three commenters indicated that they needed to see the list before they could assess its impact on their operations. One commenter indicated that requiring mail to be matched against a list to split off pieces that cannot qualify for the carrier route rates will increase mailer processing costs. Two commenters indicated that monthly updates are not feasible, and that bimonthly update time frames could be met. One commenter indicated that the 5-digit carrier routes tray should be required to be full to limit the number of ''air trays.''

This requirement limits mailer preparation of carrier route packages of letter-size mail to those ZIP Codes where carrier route packages still provide some benefit to the Postal Service. For an increasing number of 5-digit ZIP Code areas, the Postal Service sorts mail for the entire 5-digit area to carrier routes and, within carrier routes, to the sequence that carriers use when delivering the mail, using two passes on delivery barcode sorters. Where this takes place, the carrier does not have to manually sort this mail into delivery or ''walk'' sequence. Accordingly, for these 5-digit ZIP Code areas, it does not make sense for the Postal Service to give mailers a discount for preparing carrier route packages that might have to be manually sorted to the carrier, and would always have to be manually cased by the carrier into delivery sequence. CSBCSs sort mail to delivery sequence, but the mail must already be sorted to the carrier route level before it can be processed on the CSBCS. Therefore it will still make sense for the Postal Service to offer carrier route discounts for mail that it sorts on CSBCSs and for mail on those routes that are sequenced manually. Over the next 2 years, the Postal Service will be deploying both delivery barcode sorter (DBCS) and CSBCS barcode equipment and implementing delivery point sequence (DPS) processing. This will result in frequent changes to the ZIP Codes that are processed by the different types of equipment. In some cases, 5-digit ZIP Codes may change from being DPS processed on DBCSs to being DPS processed on CSBCSs. Accordingly, during this period, frequent updating of the areas where carrier route sortation is permissible will be crucial to efficient postal processing of mail. However, the Postal Service will be mindful of the constraints that frequent updates represent for its customers, as noted in the comments. The Postal Service can provide a list of the current 5-digit ZIP Codes where carrier route sortation will not be permitted for planning purposes. Due to its length, the list will not be published as part of this notice. However, mailers may request a copy by writing to the address at the beginning of this notice. Mailers should keep in mind that, for the reasons explained above, this list is likely to change by the time classification reform is implemented.

The Postal Service limited the traying requirements for the carrier route rate to carrier route and 5-digit carrier route trays to eliminate sortation of carrier route packages at the mail processing plant level. In the interest of mailer qualification levels, the Postal Service planned to allow the 5-digit trays to be less-than-full trays. However, the Postal Service will revisit this issue in light of the comment concerning the number of ''air trays'' that could result.

Scheme Sortation. Eight comments were received concerning scheme sortation of Automation Subclass First-Class and Standard letters. Two commenters requested clarification as to whether 150 pieces would be needed for each 3-digit ZIP Code area combined in the scheme, or only in total to all the 3-digit areas combined, in order to qualify for 3-digit Automation (barcoded) rates. Two commenters indicated that the proposed 5-digit and 3-digit schemes should be published for review by mailers. Two commenters stated that 5-digit scheme sort should be done promptly. Two commenters stated that the schemes should be available to mailers both in hard copy and electronic form. Three commenters believed that scheme sort should be optional; one stated that scheme sort could not be performed for his mailings because they could contain up to seven different thicknesses of pieces. Three commenters requested clarification as to whether 3-digit scheme sort is optional and, if optional, whether mailers can choose just to do scheme sort to certain ZIP Code combinations but not all. One commenter suggested that the 3-digit scheme sort list be the current labeling list in DMM L803.

Although the Postal Service is beginning work on a 5-digit scheme list for Automation subclass letters, it is not available at this time; a preliminary 3-digit scheme list for Automation subclass letters is provided in this notice for mailers' planning purposes. Upon implementation of classification reform, finalized listings of 5-digit and/or 3-digit schemes for Automation subclass letters will be available to mailers in both electronic and hard copy form. Mailers should note that, because the 3-digit scheme list represents 3-digit ZIP Codes ranges that are processed simultaneously on the same incoming primary *barcode* sort scheme, it does not apply to upgradable mail in the Retail subclass, which will be initially processed on OCR equipment rather than barcode sorting equipment. For the same reason, the current DMM L803 AADC labeling list for ZIP+4 rate mail prepared under the automated site option (which is also processed initially through OCR equipment) is not appropriate as a 3-digit scheme list for the Automation (Barcoded) subclass. Regarding the volume needed per scheme group, because the 3-digit scheme list indicates 3-digit ZIP Code ranges that are processed at the same time, the proposed 150-piece tray standard for the 3-digit Automation subclass rate will be based on the total number of pieces destined for the combined ZIP Code range rather than on the volume to any individual 3-digit ZIP Code area.

Because the 3-digit scheme list represents instances in which the Postal Service always sorts a particular combination of 3-digit ZIP Codes at the same time on an incoming primary barcode sorter, the Postal Service prefers to require that Automation subclass letters be sorted according to the 3-digit scheme matrix. Discussion of this issue with the Letters IAG resulted in the interim position reflected in the implementation provisions in the latter half of this notice, i.e., that 3-digit scheme sort would be optional, but that if mailers choose to use it they would have to use it for all ZIP Codes. In view of the comments received requesting that 5-digit and 3-digit scheme sort be optional, the Postal Service hereby requests further comments from mailers, particularly explaining why making scheme sort a requirement would be burdensome.

Piece Sequencing. One commenter requested clarification as to what the sequencing requirements for pieces within mixed-AADC trays will be. The Postal Service has published an explanation of these requirements in the latter part of this notice, basically stating that the pieces must be grouped by AADC, and within the AADC groups by 3-digit ZIP Code or 3-digit scheme. In addition, a requirement to group mail in AADC trays by 3-digit ZIP Code or 3-digit scheme has been added for mailer comment. The required groupings within the trays do not have to be in any required sequence, i.e., although all the pieces for the same 3-digit ZIP Code would have to be grouped together in an

AADC tray, it is not required that these 3-digit groups be placed in the trays in ascending numerical order. These grouping requirements are for verifying that mail was presorted to the finest extent required.

Banding Packages. One commenter asked whether the banding of packages was being reconsidered and indicated a belief that moving away from banding of packages is in the best interest of both the Postal Service and mailers. For automation subclass letter mail, banding of packages will be required only when less-than-full trays are prepared in order to keep the pieces in the tray faced during transit. A less-than-full tray could result when 150 or more pieces physically fill less than three-fourths of a 1-foot tray, or when there is overflow from a physically full tray. However, because the banded groups in the tray will all be for the sortation level of the tray, the Postal Service will not need to sort the packages, just break the bands prior to processing the pieces on automated equipment.

Full Trays. Twenty-two comments were received concerning the full tray requirement of 150 or more pieces to obtain 5-digit and 3-digit Automation letter rates. Fourteen commenters indicated that the 150-piece quantity was too high; six of them indicated that this requirement will all but eliminate any postal discount for small mailers. One large mailer indicated that it will hurt qualification levels of off-cycle bills that form smaller mailings. Eleven commenters believed that this requirement will result in mail that is less finely presorted, thereby increasing the workload of the Postal Service. Two commenters requested a return to package-based presort, one suggesting uniform 50-piece package requirements for both 5-digit and 3-digit mail. One commenter stated that the 150-piece rule seemed arbitrary. Nine commenters indicated that the requirement should be 150 pieces or a physically full tray. Three of these commenters indicated that if the intent of the rule is to give discounts only for full trays of mail, that a physically full tray of mail that contains fewer than 150 pieces should still qualify for the rate. Four commenters indicated that mailers should have a choice of using either 150 pieces or a physically full tray similar to the current 125-piece/15-pound sacking rules for third-class mail. One commenter requested clarification that even if 150 pieces of mail do not fill a tray the pieces still qualify for the rate.

The Postal Service believes that the 150-piece minimum full tray requirement to qualify for Automation 5-digit and 3-digit letter discounts will have a beneficial impact on its operations. Currently, there are three separate methods for presorting barcoded letter mail. When all the tray types for each of the three basic preparation methods are taken into account, there are currently 17 different tray configurations for barcoded letter mail. Sometimes these trays contain a mix of 5-digit and 3-digit packages; sometimes they contain only one or the other type of package; and sometimes they contain unpackaged pieces. Having a single method of preparing barcoded letter mail that requires only four tray levels for the non-carrier route portion will simplify postal operations as well as mailer preparation requirements. Having that method involve only handling trays of mail as a unit will further simplify and streamline postal operations. A study shows that currently for trays that contain packages, the packages are often not sorted by postal personnel because it is deemed more efficient simply to remove the packaging material and run the pieces in the tray through the appropriate barcode sorting operation. The Postal Service estimates that, overall, 44% of the packages in First-Class barcoded mailings are not used. Under current rules, if mailers do not have enough mail to fill a 2-foot tray to a particular 3-digit ZIP Code destination, the mail is prepared in 5-digit and/or 3-digit packages and placed in an AADC tray. A study shows that packages in First-Class AADC trays are not used 42.2% of the time. The Postal Service believes that any loss of presort that might result from the proposed full tray requirements will be offset by the permitted use of 1-foot trays and by the elimination of package sorting operations for this mail.

The Postal Service also believes that the Automation letter discount levels and preparation requirements will result in lower postage bills for barcoded mailings for most mailers. A study shows that under current Barcoded rate mailing rules, a large portion of mail qualifying for 5-digit and 3-digit rates is already prepared in full trays without packages. Specifically, it shows that 71.5% of First-Class pieces sorted to 3-digit destinations are placed in 3-digit trays that contain no packages, and 44.3% of First-Class barcoded letter mail sorted to 5-digit destinations is currently contained in 5-digit trays without packages. These figures are for 2-foot trays. Even more mail should be able to be placed in full 5-digit and 3-digit trays when preparation in 1-foot trays is allowed. Although several commenters indicated that even with the use of 1-foot trays their 5-digit and 3-digit qualification levels will drop, they should consider that, if recommended by the PRC and adopted by the Governors of the Postal Service, they will still receive a 5-cent discount for mail sorted to AADC or mixed-AADC trays. This is only 6/10ths of a cent less than what they currently receive for 50-piece 3-digit packages. Furthermore, barcoded pieces in the residual portion of their current mailings that are receiving only a 1.5-cent discount will also receive a 5-cent discount under classification reform.

The number 150 represents the average number of pieces that fills three-fourths of a 1-foot tray. A number was chosen rather than use a standard requiring the actual physical filling of trays to make it easier for mailers using MLOCRs to process pieces of varying thicknesses to determine how many pieces were sorted to particular tray levels when filling out mailing statements. This method also eases qualification problems for mailers of postcards and other thin pieces. Under the proposal, the 150-piece average is applied uniformly both for rate qualification purposes for the 5-digit and 3-digit Automation letter rates, and to determine when to prepare a particular sortation level of tray for presort purposes. The Postal Service is currently considering the comments requesting that this requirement be revised to either 150 pieces or a physically full tray. The result of that deliberation will be addressed in a subsequent proposed rule.

Use of 1- and 2-Foot Trays. Fifteen comments were received concerning the required use of both 1-foot and 2-foot trays. The commenters all indicated that using two different size containers in the same mailing will cause stocking and production problems. Six commenters requested that the rule be modified to allow use of all one size tray or both at the mailer's discretion. One commenter asked whether there will be a 1-foot extended managed mail (EMM) tray. One commenter asked what the procedures would be if the appropriate size trays are not available. Four commenters indicated that current presort software does not offer the option of using two different size trays. One commenter requested clarification that both sizes must be used in the same mailing where appropriate. Another commenter asked whether overflow from a 2-foot tray would be required to be placed in a 1-foot tray to the same tray level. Another commenter requested clarification as to which subclasses this requirement pertained.

The Postal Service plans to allow the rate qualification levels of Automation letters to be based on a 1-foot tray in order to make it easier for mailers to qualify for rates and to lessen any loss of presort. However, the Postal Service does not want to double its number of tray handlings by allowing a mailing to be prepared entirely in 1-foot trays. Furthermore, the Postal Service does not want to increase transportation costs by shipping an increased number of nearly empty 2-foot trays. Accordingly, the requirement to use both 1-foot and 2-foot trays where appropriate is considered necessary by the Postal Service. For example, when there is enough mail to fill a 2-foot tray, a 2-foot must be used. Overflow from that 2-foot tray that is not sufficient to fill another 2-foot tray must be placed in a 1-foot tray. The Postal Service expects that software developers will be able to take this into account when developing software for the new rules prior to implementation. It is planned that this requirement will pertain to all letter mail prepared in trays in all subclasses under classification reform. Currently, it is not projected that a 1-foot EMM tray will be available when classification reform is implemented. Accordingly, mail prepared in EMM trays will be prepared exclusively in 2-foot trays. Procedures will be developed at a time closer to implementation to deal with instances in which appropriate tray sizes are not available will be developed at a time closer to implementation. However, it is anticipated that there will be adequate supplies of both 1-foot and 2-foot trays at that time.

Tray Sortation Levels. Several comments were received concerning the tray level requirements. Two commenters suggested that the 3-digit tray level be made optional to allow mailers to make up just basic rate trays. Two commenters indicated that traying to AADCs is difficult. One commenter indicated that there should be a limit on the amount of mixed-AADC mail submitted in a mailing. A basic premise of the classification reform proposal is to encourage mailer use of technology and bulk bypass of postal operations. Accordingly, the Postal Service believes that requiring 3-digit tray preparation is necessary. Preparation of AADC trays requires sorting to a list that contains groups of 3-digit ZIP Codes served by the same AADC. (AADC sortation is an element of existing preparation standards.) Although this may be difficult for some mailers, this level of tray is necessary to facilitate consolidation of mail to points closer to destination and to limit the number of pieces in mixed-AADC trays that must be sorted at origin. The Postal Service does not believe that any other limits on the number of pieces sorted to the mixed-AADC level is necessary.

Tray Sleeving an Strapping. One commenter asked whether sleeving and strapping will be required for all mailings, and another indicated that he believed this should be required for all nonlocal mail. Another commenter indicated a belief that First-Class mailers should also be required to place air contract transportation (ACT) tags on trays of mail. However, two commenters indicated that they are opposed to such a requirement. Sleeving, strapping, and ACT-tagging trays have been discussed during Letter IAG meetings, but proposed requirements were inadvertently omitted from the June 29 notice. The Postal Service is adding proposed requirements for sleeving of all trayed letter mail, for both sleeving and strapping all Automation subclass letters, and for ACt-tagging of First-Class Automation subclass letters. Comments on these sleeving, banding, and ACT-tagging proposals are encouraged.

Barcoded Tray and Sack Labels. Ten comments were received concerning the planned requirement to use barcoded tray and sack labels within the Automation subclass. Two commenters agreed with this requirement, three encouraged phasing it in, and two disagreed with it, indicating that it would require additional equipment purchases. One commenter indicated he did not believe the current Postal Service system could keep up with customer demand for barcoded labels. One commenter requested clarification as to whether this requirement applied to all classes of mail and wondered whether it applied to pallets as well as to trays and sacks. The requirement applies only to First-Class and Standard Automation subclass mail and Periodicals Publications Service mail. It applies only to trays of letters, and sacks of flats, not to pallets. The physical requirements for the barcoded tray and sack labels will be those contained in current DMM M032. The Postal Service plans to make this requirement effective at the time when classification reform is implemented, and to specify inclusion of the correct content identifier number (CIN) in the barcode. Additional comment is welcome on the basic requirement for a barcoded label, and, separately, on the inclusion of CIN information.

Reply Envelopes. Nine comments were received concerning the proposed requirement that courtesy and business reply mailpieces included within pieces in a First-Class or Standard Automation subclass mailing be physically automation compatible, bear a facing identification mark (FIM), and bear the correct barcode for the preprinted address. Two commenters stated that they agreed with this proposed requirement; four commenters disagreed. One commenter indicated that the requirement was confusing, particularly in regard to what is a correct barcode. Two commenters indicated that this requirement must be phased in to allow time for mailers to deplete existing stocks of reply mailpieces. Two commenters requested that the requirement be clarified to make it clear that the barcodes could be printed on inserts that appear through windows. The requirement will be clarified in this proposed rule to indicate that barcodes that appear through inserts will qualify. The Postal Service also plans to phase-in this requirement.

Retail and Regular Subclasses

Upgradable Mail. Nine comments were received concerning various requirements for Retail and Regular subclass letter mail preparation, including the preparation option for upgradable mail. All but one of the comments seemed to revolve around a lack of understanding about upgradable mail and the difference between normal and optional preparation for upgradable mail. One commenter disliked the requirement for an AADC tray level in upgradable mail.

A 30-cent rate is proposed for presorted mail in the First-Class Retail subclass. This rate is the same whether mail is prepared according to the normal preparation that involves packaging and traying or whether the mail is prepared under the upgradable preparation option. A 21.9 cent rate for mail trayed to 5-digit and 3-digit trays and a 26.1-cent rate for mail trayed to other destinations is proposed for mail in the Standard Regular subclass. Again, the rates are the same for both normal and upgradable preparation.

Upgradable mail is mail that meets both the current physical preparation requirements in DMM C810 for automation compatibility and the current requirements in DMM C830 for an OCR clear zone, a barcode clear zone, for reflectance requirements, and for paper that will accept water-based ink. The detailed type font requirements in DMM C830.2 will not be required; however, the pieces must have a machine-printed address in a nonscrip font. A ZIP+4 code is not required on an upgradable mailpiece. In Summary, upgradable mail is mail that can be processed on MLOCRs and that is likely

to be upgraded during this processing to mail that bears a delivery point barcode. In return for preparing a piece that can be processed on MLOCR equipment, mailers will be allowed to use a simpler method of mail preparation—the upgradable preparation option. The upgradable preparation option does not require presort to the 5-digit level and does not require packaging. Because this mail will flow through an automated mailstream, it is trayed to AADCs, not to ADCs.

Use of Trays. Three comments were received concerning the use of trays for Standard mail. One commenter was in favor of it, and two commenters were against it, particularly for non-upgradable mail. In the near future, the Postal Service will be using only trays for letter mail in its internal operations. Accordingly, mailer preparation of letter mail in trays will be needed at the time when classification reform is implemented for smooth operations within postal facilities.

Comments Regarding Flat Mail

General

Of the 89 commenters, 25 commented on issues pertaining to flats. Comments covered such areas as copalletization of pieces in different rate levels, the rates available for ''fletters,'' traying requirements, package sizes, and 3-digit and 5-digit ZIP Code schemes. These topics are discussed in more detail below.

Copalletization and Commingling

Nine commenters expressed their support for copalletization of separately prepared packages of delivery point barcoded, 5-digit barcoded, nonbarcoded, and carrier route presort pieces. One commenter expressed a desire to have options on how to segregate packages of flats on pallets, reacting to earlier proposals in that regard. Questions have arisen in IAG sessions as to the combination of packages in sacks as well as on pallets. The Postal Service is agreeable to both pallets and sacks containing separate packages of the types described, and that physical separation of packages by rate level would not be required. These mixed pallets and sacks would be acceptable if prepared to other than 5-digit destinations because their processing needs make combination counter-productive. The proposed criteria presented later in this notice reflect these positions.

One commenter wanted to include trays as well as packages on pallets. This comment is not within the scope of this rulemaking. However, as information, the Postal Service is conducting a separate rulemaking related to palletization, and commenters and other interested parties are asked to review that notice as appropriate (see 60 FR 39080–39088).

''Fletters''

''Fletters'' were discussed in many comments. (''Fletters'' are mailpieces that are within the size range for both automated letter processing and automated flats processing. The mailer must choose at the time of mail preparation the processing category for which the pieces will be prepared; rate eligibility is determined accordingly. The Postal Service has generally held that the mailer's letter-or-flat choice must be uniform for all mailings of the same piece from the same job or list.)

The Postal Service has previously determined that ''fletters'' could be prepared on pallets if the mailer had chosen to qualify for the Barcoded rates for flats because palletization is appropriate for flats but not for letter-size mail. (The above discussion of comments on mixing packagings of different rate levels on pallets applies to ''fletter'' mailings as well.)

One commenter proposed that for mailpieces in the ''fletter'' range, the mailer be given the option to produce the mailing job as flats or to produce the different subclasses as flats or letters to obtain the lowest overall postage rates. One commenter suggested that the Postal Service extend coverage of the palletization option to all ''fletters,'' whether prepared to qualify for a flats rate or not. Another commenter wants the option to palletize both automation and nonautomation ''fletters.'' Several commenters want the Postal Service to allow ''fletters'' to be claimed as flats in all three subclasses (Regular, Automation, and Enhanced Carrier Route). Preparation of ''fletters'' for flats-based rates (i.e., the Barcoded rates for flats or the Enhanced Carrier Route subclass rates) would entitle them to palletization, but that such an option would not be available for ''fletters'' prepared to qualify for letter-based rates. Preparation of letters, flats, and ''fletters'' remains linked to the most efficient methods of production and processing that will yield the lowest combined cost of mailing. Currently, the Postal Service does not find significant benefit or an opportunity for general benefit for mailers in allowing letter mail (or ''fletters'' prepared at letter-based rates) to be packaged and palletized. Preparation of letter mail in trays on pallets is being considered as part of the palletization rulemaking mentioned earlier. The proposed criteria below reflect these positions.

Definition of Flats

One commenter stated that the Postal Service should provide a definition of flats will allow letter-shaped catalogs that can be processed on new flat sorting equipment (e.g., the FSM 1000) to be eligible for the flats Automation rates, thus offering an option that would avoid the tabbing requirement for the letter Automation rates. A second commenter projects that catalog in the popular 6⅛ inch by 10½ inch size will be entered at the Automation nonletter (flat) rate in order to avoid letter requirements and urges the Postal Service to restudy the rules and their impact on these catalogs. The physical mailpiece standards for Automation rates are based on the capabilities of Postal Service automated processing equipment now in use. The possible amendment of those standards, as new equipment is developed or deployed, is not an issue germane to this rulemaking. The proposed criteria presented below remain predicated on current equipment abilities and limitations.

Preparation Questions

It was believed by one commenter that further clarification is needed in several areas, such as the need to better define the size or thickness of packages, citing as an example uncertainty on the handling of 19 flat-size pieces, each /¾ inch thick, for the same ZIP Code. A second question concerned the handling of remaining pieces if all required packages of 10 or more pieces have been prepared to 5-digit, 3-digit, and ADC destinations. Should a mixed-ADC package be prepared, a 5-digit package, or, if the latter, should this 5-digit package be placed in mixed-ADC container? A third question had to do with Enhanced Carrier Route presort and whether it is required to be packaged in full, direct trays. The Postal Service is not attempting to address every ''what-if'' scenario at this point in the rulemaking and believes that many hypothetical situations will be clarified as this process continues. Regardless, it is the Postal Service's intention to develop simple implementation standards that, by design, will not seek to evaluate all conceivable applications. Accordingly, commenters are asked to help craft basic standards that can be easily applied rather than detailed rules tailored for a succession of specialized situations.

Two commenters pointed out a discrepancy between the text and exhibit for the proposed standards for the Standard Regular subclass Basic rate

category for flats. The text indicated that at least 10 pieces were required to prepare a mixed-ADC package; the exhibit showed no minimum. There is no minimum for mixed-ADC packages. This has been corrected in the material below.

One commenter questioned the rationale for the requirement that First-Class flats must be prepared in flat trays while Standard Mail flats must be prepared in sacks, asking whether this approach is being adopted to differentiate between the mail classes. Another commenter said that Standard Mail should have the option of using trays or sacks. Packaging of fletters on pallets and within sacks should be allowed; traying should not be required. Another commenter favored the option of traying flats as well as letters, specifically referring to Enhanced Carrier Route letters and flats. The Postal Service has attempted to standardize equipment use in this rulemaking as much as practicable, given current and expected equipment availability. Whether Standard Mail flats will eventually be allowed use of flat trays cannot be determined at this time. This rulemaking will continue to specify sacks for Standard Mail flats not prepared on pallets. Pieces prepared for Enhanced Carrier Route subclass rates are presumed to be flats, and those rates reflect the costs for handling such pieces. Mailers who prepare letter-size pieces or fletters for the Enhanced Carrier Route subclass rates will not be entitled to tray such mail, notwithstanding the availability of trays for such pieces if prepared at letter-based rates. The proposed standards shown below reflect these positions.

One commenter believed that the sorting requirement for flats to 5-digit destinations is very restrictive, saying that it will be difficult to meet the required densities to qualify for the rate and that this should be optional for the presort or automation rates. Without addressing the merits of the comment, the rates offered for flats do not include separate 5- and 3-digit rates as would be necessary to permit an optional 5-digit sortation. Because this circumstance is part of the rate design of the Postal Service's filing now being considered by the PRC, it is beyond the scope of this rulemaking.

Several commenters expressed the opinion that the Postal Service should consider extending the option of presorting to 3-digit and 5-digit ZIP Code schemes to flats as well as letters. The Postal Service is currently developing a 3-digit ''scheme sort'' matrix for letter mail. A 5-digit matrix is being developed as well and will be announced at a later date. Scheme sorts are possible for barcoded letter mail because of how such mail is processed: on sorters each having more than of 100 separations (bins). When two or more 3-digit ZIP Code ranges have a total number of possible 5-digit ZIP Code separations that is less than the maximum number of available bins on the sorter, a combined or scheme sort preparation is possible. Flat sorting equipment is different and does not have the number of bins necessary to allow 3-digit scheme sorts for flats. The Postal Service would be amenable to reconsidering the restriction of scheme sorts to letter mail as the evolution of its flat sorting equipment makes that reasonable.

One comment was received concerning the 100% ZIP+4 or delivery point barcode requirement for flats. This commenter wanted clarification that a 5-digit barcode would count toward the 100% barcoding requirement in those areas where only a 5-digit barcode could be obtained. For purposes of this rulemaking, the Postal Service will propose that only a ZIP+4 or delivery point barcode will be acceptable toward fulfilling the barcode requirement.

Comments Regarding Addressing

Carrier Route Updates

Twelve mailers responded to the proposal that carrier route information be updated within 90 days of the mailing date. Mailers expressed both support and opposition to the proposal. Three commenters believed that the 90-day limit should not be relaxed, whereas seven others questioned the need to update more frequently and cited mailpiece production difficulties that would preclude them from meeting a 90-day coding window. Three mailers suggested that the product cycle for the Carrier Route Information System (CRIS) (and all other AIS products) move from a fulfillment of four times a year to six times a year; the Postal Service is exploring this option. Five others suggested that coding should occur within 120 days of the date of mailing.

Representatives in the Addressing IAG acknowledged that the current cycle allows route data to be up to 8-½ months old at the date of mailing and that this can require the Postal Service to rework significant portions of a carrier route presorted mailing. More route adjustment activity is expected to occur from route inspection and the required route adjustments associated with the implementation of delivery point sequencing. Three mailers asked whether the National ZIP+4 file could be used to apply carrier route codes instead of the CRIS product. The National ZIP+4 or Line-of-Travel (LOT) products may be used to update carrier route codes.

CARRIER ROUTE UPDATE PROPOSAL

File release date	Beginning use date	Last coding date	Last mailing date
February 15	April 1	May 31	August 31.
April 15	June 1	July 31	October 31.
June 15	August 1	September 30	December 31.
August 15	October 1	November 30	February 28.
October 15	December 1	January 31	April 30.
December 15	February 1	March 31	June 30.

Mailings must be coded using CASS-certified software within 90 days of the mailing date. For example, if addresses are coded with carrier route information on May 15, the mailing must be entered by August 15.

Line of Travel Requirement

The primary reaction of mailers to the line-of-travel requirement for Enhanced Carrier Route subclass basic carrier route rate mail concerned the product releases. The LOT product will be released in the same schedule as the current AIS products, e.g., ZIP+4 and CRIS. Two mailers also favored the use of LOT as a sequencing option for the High Density rate category in the Enhanced Carrier Route subclass. Others commenters questioned whether true walk-sequence would meet the sequencing requirement; the Postal

Service never meant to imply that it did not.

Four commenters asked about the need for certification of software and about documentation that might be required. The software vendor community has several options on where the LOT information can be placed, wrapping it into presort software or into ZIP+4 products. Final documentation requirements will be finalized once commercial product issues have been resolved.

Move Updates

Thirty-five comments were received on the move-update proposal. Overall the commenters felt the proposal would be difficult to implement or too costly. Questions were raised over the legally of changing address information without input from the customer (addressee). The Postal Service has suggested that mailers could use the update notice from the Postal Service as a mechanism to trigger a contact with the customer for updated information; such as request could accompany a regular mailing to the customer.

The move-update requirement can be met now through several established methods. These include the ''Address Correction Requested'' (ACR) endorsement, where the mailpiece is returned to the mailer with the new address included; participation in Address Change Service (ACS), which provides an electronic notice containing the new address; and processing the addresses from a list using the National Change of Address (NCOA) service of a Postal Service-authorized vendor. Another solution for some federal agencies may be the Federal Address Correction Service, currently being tested, providing acceptable response levels are achieved.

Because the addresses are what must be verified, mailers who choose to employ one of these methods may do so on a mailing in another class of mail (e.g., using ACS on a Periodicals class or Standard class mailing). The updated process would then qualify the addresses for use on pieces mailed at First-Class rates.

The ACR endorsement can be added to envelopes in a number of ways: it can be preprinted on the envelopes, added to existing envelope stock through the application of labels or use of a rubber stamp, or printed on the envelope using other printers such as those found in MLOCRs and encoding stations. Some mailers raised questions about the need for this requirement in ''non-list'' mailings because the addresses would be more current. The Postal Service believes that there is benefit in these cases as well and notes that the use of the ACR endorsement in these cases would cost a mailer very little because the number of returns should be minimal. The ACR fee is charged only on pieces that bear addresses that must be corrected.

Five mailers commented that they have established internal address correction centers because of the nature of their business. They inquired whether the Postal Service could ''certify'' their internal operations every 6 months instead of their adding an endorsement to their mailpieces. Fourteen others felt that the move-update requirement would be too costly to meet and might offset any postage savings from qualifying for a lower rate. Another suggested that the Postal Service cease forwarding mail and return anything that did not have the correct address because mailers obtaining lists from outside sources should ensure that the list has already been processed to meet this standard.

5-Digit Verification

There were few comments on this proposed requirement. One commenter asked whether the preparer or presenter of the mail would be held responsible for verifying 5-digit ZIP Codes. The Postal Service would ask the preparer of the mail to verify the accuracy of 5-digit barcodes unless a presenter, such as a presort service bureau, chose to verify the ZIP Codes for a client by adding the correct 5-digit barcode to the mailpiece.

Two others commented that the Postal Service should not allow noncomputerized methods of verification because inexpensive technology is readily available in the commercial marketplace. It was also suggested that mailers obtaining lists from outside sources should ensure that these lists have already been processed to meet this standard.

Uniform Address Placement

This proposed quality standard relates specifically to the bottom two lines of the address block. It specifies that the elements in those lines appear in a regular order. Four mailers described antiquated internal systems and the need for expensive programming changes that would make compliance with this standard difficult to achieve. The Postal Service believes that there are ways to hold address information and print routines that might prove less costly than some believe. For example, mailers can use software print routines to identify particular elements or fields and the order in which they should be printed. In addition, mailers can maintain addresses in separate files from their base customer records and extract that information at the time of printing.

Six commenters were concerned about the recipient's reaction to receiving mail with an address unlike that which was supplied. The Postal Service believes that consumers are not the sole source of problem addresses. List compilation and data entry systems are also sources of addressing deficiencies. Mailers obtaining lists from outside sources should ensure that these lists have already been processed to meet the uniform address placement standard.

Several mailers commented that this requirement should not apply to Standard Regular subclass mail. The Postal Service is still evaluating this issue and will reflect its decision in a future rulemaking.

Update Barcodes Every 6 Months

Only one mailer presented arguments against this requirement. Two others suggested that the matching requirements be made more stringent and coincide with the 90-day requirement that is proposed for carrier route updates.

For mailers with large lists, the use of Z4Change could provide a solution. By using the Z4Change process, mailers can limit the number of addresses that need to be reprocessed. Once a mailer has matched all addresses in a list using currently certified software, and meets other operational criteria to participate in the program, only new addresses and those addresses where changes have occurred need to be rematched to the National ZIP+4 product. More specific details on the program are available by calling the National Customer Support Center at 1–800–238–3150.

Comments Regarding Periodicals

General

A total of 23 comments were received concerning the proposed implementation procedures for Periodicals. Of that number, 12 commenters expressed disapproval of the classification reform proposal before the Postal Rate Commission as it relates to Periodicals; those comments are beyond the scope of this rulemaking and will not be addressed. One commenter favored the entire proposal as written. The comments of 10 additional parties concerned specific parts of the proposals in the first notice.

Presort Standards

For commenters were in favor of the proposal to align the sortation rules for Regular Periodicals with those proposed

for Publications Service. Conversely, one publisher commented that the sortation scheme proposed for Publications Service is very complicated and should not be used for Regular Periodicals. The Postal Service has determined that it will propose aligned sortation of Regular Periodicals and Publications Service mail when it publishes DMM standards for comment later this year.

In regard to the preparation rules proposed for /3⁄5 rate category mail, one commenter stated that the Postal Service should put mail processing equipment in place as soon as possible to handle flats not currently automatable (e.g., tabloids, newspapers, and heavyweight magazines). With the exception of the requirements governing polybags, the Postal Service is not anticipating that the regulations for machinables will change in the near future. Although 100 new FSM 1000 machines have been purchased by the Postal Service, this is not a sufficient quantity to cause machinability requirements to be altered. Automation equipment is being evaluated on a site-by-site basis. Although the Postal Service would like to be able to process all types of flats on automated equipment, new machines will not be purchased until the current ones have been properly positioned for optimum utilization.

Commenting generally, one commenter considered the requirements for Regular Periodicals to be more stringent in certain instances that those proposed for Publications Service. Another commenter believed that the auditing requirements for the industry, and substantiating compliance with the 85% barcoding and 90% presort density requirements, will be burdensome and add increased administrative costs.

Circulation Criterion for Publications Service

Regarding the proposed 75% circulation criterion, one commenter believed that it would be appropriate to demand that publishers provides certification of a publication's compliance with the 75% paid/requested circulation on a per-issue basis. It was suggested that this could be accomplished by the submission of a report of the number paid/requested on file at the time of each issue's file maintenance update or label run as part of required Centralized Postage Payment (CPP) System documentation, and by adding a certification block for the publisher's signature on each mailing statement. The Postal Service will evaluate the documentation, including a publisher's certification on mailing statements; verification could be performed on the same frequency as circulation is verified today.

Another commenter requested that the Postal Service stipulate that all mailed newsstand copies (regardless of the number returned or destroyed) be considered paid circulation for the purpose of meeting the 75% paid requirement. The Postal Service will consider this proposal and address it in a future rulemaking.

30% Nonadvertising Criterion

In regard to the proposed 30% nonadvertising content requirement, particularly if it were not met by only a minor portion of copies of an issue, one commenter expressed the opinion that the proposed 40% penalty should be assessed only on those copies that do not meet the 30% requirement instead of on the entire issue. The Postal Service has concluded that such an application of the penalty would significantly reduced its effectiveness in ensuring compliance; the proposed rule will retain the original provision that it would apply to the entire issue.

One commenter expressed concern that his publication could erroneously be assessed the 40% postage penalty because of a miscalculation in the advertising/editorial percentage by an outside auditor. The Postal Service is proposing that this audit be used only to validate compliance with the proposed 75% paid/requested circulation requirement. To ensure compliance with the proposed 30% nonadvertising content requirement, the Postal Service is considering including on the mailing statement a certification block for signature by the publisher, certifying that the minimum has been met. The outside auditor will not be responsible for confirming the advertising/editorial ratio. In the event that the Postal Service determines that an issue is in excess of 70% advertising, the publisher will be given ample opportunity to demonstrate compliance with the requirement before any penalty is assessed. The same commenter suggested that the Postal Service allow copies with advertising in excess of 70%, such as a regional edition, to be mailed at the higher third-class or fourth-class bound printed matter rates as an alternative to the entire issue being assessed a 40% penalty. The current mail classification schedule restricts publications from being mailed at third- or fourth-class rates except under limited conditions. As a result, the Postal Service is not able to consider such an alternative in this rulemaking.

90% Density Criterion

Regarding the 90% density criterion, one commenter specifically welcomed and endorsed the definition presented in the proposal. Although supporting the proposed 90% criterion in general, another commenter suggested that the wording be changed to allow different treatment ''when the main file of an issue meets the 90% presortation requirement but supplemental mailings result in the issue falling below the 90% requirement, but not below 85%.'' This proposal relates to classification proposals under consideration in the case pending before the PRC and, as such, is beyond the scope of this rulemaking.

Three commenters favored the proposal's treatment of copies in firm packages. Four commenters expressed the view that interpretation of an ''issue window'' for administering the 90% criterion would be difficult and costly for both the Postal Service and the publisher. A second commenter supported this view, believing that the window requires publishers to main two different sets of data. This commenter suggested that the same set of data should be used to determine eligibility for all three primary criteria for Publications Service. Another commenter suggested that the Postal Service consider only a publication's ''main run'' for the purposes of the 90% criterion. Finally, an association commented that the proposed definition is too restrictive and suggested that the exact dates of the mailing window should be negotiated between a publisher and the Postal Service at the time of the publication's application for Publications Service. The Postal Service intends to ask publishers who apply for Publications Service to describe the window that makes sense for each respective publication. The Postal Service will be flexible in working with publishers in a reasonable manner to ensure that all publications have windows that are appropriately relevant to their frequencies of issuance (e.g., monthlies would each have 12 approximately equal windows).

Responding to a Postal Service proposal, one commenter specifically endorsed the provision that Publications Service preparation rules would apply if Publications Service and Regular preparation rules are not aligned and Regular and Publications Service publications were comailed.

Concerning the application of penalties to a comailed publication, one commenter observed that, because publications unable to meet the 90% density requirement on their own may

be comailed with other periodicals, publishers, together with their printers and/or fulfillment houses, will need to evaluate each publication individually, based on frequency, address list, etc., to determine whether comailing is a viable option. Two commenters mentioned that comailing can be difficult to achieve because publishers do not know from issue to issue which titles can be prepared in this manner because of magazine makeup. A concern was also raised that comailing might cause delays in serving subscription orders and thus violate Federal Trade Commission requirements.

100% Barcoding of Machinable Pieces

Regarding the issue of barcoding machinable mailpieces, one commenter observed that, because a machinable Publications Service publication must have a barcode unless it is a flat that is sorted to carrier route, and because carrier route mail is highly efficient, it would be counter-productive for mailers to choose to prepare this mail as barcoded mail just to achieve the 85% barcoding level. In response, the Postal Service will amend its proposal to allow the flat-size carrier route portion of Publications Service mail to qualify toward the 85% criterion, whether nonbarcoded or delivery point or ZIP+4 barcoded.

One commenter fully endorsed the 85% requirement but requested that the wording be adjusted to say ''85% of the copies must be [ZIP+4] or delivery point barcoded'' to ensure that the individual pieces in firm packages will be counted toward the 90% presortation requirement. Another commenter proposed that the Postal Service allow copies in firm bundles of flats to count toward the 85% barcoding requirement. The objective of the 85% criterion is to optimize the proportion of pieces that can be given automated processing. To the extent firm packages are amenable to such handling, it would not be relevant to the objectives of the 85% criterion if the component copies inside the firm package were barcoded. Therefore, the 85% criterion will be applied to consider the number of addressed pieces in the mailing, not the total number of copies.

One other commenter suggested that the 85% minimum be based on the entire mailed volume of an issue as opposed to only the carrier route portion of the mail. Still another commenter asked whether the barcoding requirement applies to nonautomation rate mailings. The Postal Service would like to clarify that the requirement pertains only to machinable mail, i.e., mail that meets all the standards in DMM C810 and C820. Nonmachinable and carrier route flat mail does not have to bear a barcode.

Another commenter mentioned that it will be difficult to determine qualification with the 85% requirement because the mailing of an entire issue of many publications will be split between vendors (e.g., printers, fulfillment houses, publishers). Providing and consolidating documentation to support accumulation of barcode counts for these multiple mailings could prove to be a hardship. Clarification was requested on how this requirement will be measured, i.e., will the Postal Service review a single mailing or determine qualification based on the entire mailed volume of an issue or per edition? Compliance with the 85% criterion will be based on the entire mailed volume of the issue, encompassing all editions from all sources. Publishers will be responsible for having the supporting information available if requested by the Postal Service.

Other Issues

Regarding the proposal that ''deposit times [for Publication Service mailings] must be scheduled,'' one commenter asked whether actual appointments will be required. The Postal Service has not determined that a formal appointment process is necessary at this time.

Concerning the required use of Presort Accuracy Verification and Evaluation (PAVE) software, one commenter suggested that presort software be required to produce a qualification report for multiple jobs (included in the mailing of an issue) as part of PAVE-certified output. The Postal Service will not consider this suggestion because it goes beyond the scope of this rulemaking.

On the proposal that computer-based postage payment systems must be used as they are developed, a commenter inquired whether this electronic payment system will use Graphic Communication Association's Publisher's Electronic Payment System (PEPS) file format. That determination cannot be made at this time.

Regarding the Publications Service pound-rate category, one commenter mentioned that zoning the full weight of a publication will prompt mailers to open more sectional center facility (SCF) entry points, thus creating a logistics problem by building ADC or AADC pallets/sacks destined to an SCF level. To overcome this, it was suggested that ''residual'' pallets be allowed at SCF entries. Pallet preparation is being discussed in a separate rulemaking and will be resolved accordingly.

Concerning the requirement that Publications Service carrier route mail be prepared in line-of-travel sequence, one commenter suggested that examples are needed showing what ''line-of-travel'' means so that mailers can better understand this proposal. The Postal Service's proposal regarding Publications Service carrier route rate mail preparation is similar to that for Standard Mail Enhanced Carrier Route subclass basic carrier route rate mail. Pieces are arranged by the mailer in the approximate order that they are delivered by the carrier. This format is essentially identical to walk-sequence in most cases, differing for instance in how apartments and separately ZIP+4 coded buildings are treated.

A commenter also asked about mixed classes and attachments or enclosures. Currently, second-class publications that include attachments or enclosures not eligible for mailing at second-class rates must be paid as a combination rate piece, i.e., second-class rates on the periodical and the applicable First- or third-class rates for the attachment(s) or enclosure(s). If a host piece qualifies for an automation rate, a First- or third-class enclosure or attachment is eligible for the comparable First- or third-class rate; the attachment or enclosure need not meet the volume standards that would apply if mailed separately. An automation rate may not be claimed for an enclosure or attachment, unless a similar automation rate is claimed for the host piece. One commenter inquired about how this rule would apply to enclosures and attachments paid at First-Class or Standard Mail rates in periodicals mailed at Publications Service rates. The Postal Service proposes no changes for rate eligibility in this regard. Publications Service rates are considered to be automation rates; therefore, even if a nonmachinable piece is enclosed in a Publications Service periodical (and claimed at either First-Class or Standard Mail rates), the enclosure or attachment will be charged the automation rate equivalent to the host piece.

Commenters also asked about commingling packages on pallets and in sacks. Currently, packages of carrier route, nonbarcoded, and barcoded mail may be mixed on the same pallet. Packages must contain all the same type of pieces, i.e., all barcoded or carrier route mail. One commenter asked whether mailers will be required to physically separate such packages under classification reform implementation, whether regular rate and Publications Service periodicals could be copalletized and, if so, would separations be required. The Postal

Service has generally decided to allow commingling on pallets and in sacks to other than 5-digit destinations; see the discussion under Flats. Two commenters asked whether 5-digit barcoded pieces and ZIP+4 barcoded pieces will be allowed to be sorted within the same package. The Postal Service would prefer to have 5-digit barcoded and ZIP+4 barcoded mail separately packaged because the 5-digit barcoded mail requires more handling. However, the Postal Service is currently studying this issue to determine how much mail is involved. If it is determined that only a small amount of mail is at issue, the Postal Service will consider allowing mailers to package 5-digit barcoded and ZIP+4 barcoded mail in the same package.

Regarding subclass identification, one commenter suggested that, if a feasible method could be found, the Postal Service should require Publications Service mailpieces to carry such information. This commenter further suggested that this type of identification may lead the Postal Service to consider permitting Publications Service mailers to elect to mail supplemental mailings at Regular Periodicals rates rather than risk a penalty on the entire Publications Service issue. The Postal Service appreciates the suggestion regarding subclass identification but has not found such an endorsement to be useful or necessary at this time. The question of allowing periodicals to mail at both Publications Service and Regular rates is beyond the scope of this filing.

Two Postal Service and industry committees have been formed: one to detail circulation audit procedures for Publications Service by outside auditors and the other to develop specific application procedures for obtaining authorization to mail at Publications Service rates. The results of these groups' work will be considered in future rulemaking notices.

Comments Regarding Other Topics

Destination Entry

Seven commenters spoke to issues concerning destination entry and destination entry discounts. (Although it has been proposed that the value of these discounts be reduced as part of MC95–1, no change in their eligibility standards has been proposed.)

One commenter noted that differences exist in presort requirements for different rate categories and urged that these do not carry over into inconsistency in destination entry rules.

Another commenter noted that language in the June 29 notice implied that destination entry would be required for the basic carrier route rate. This language has been reworded below to make it clear that destination entry is not required for any rate.

Citing a belief that trailers can hold more bedloaded mail than palletized mail, one commenter questioned the cost-effectiveness of destination entry if bedloaded sacks are not allowed. The commenter stated that the destination entry discount would not cover the cost of dropshipping palletized loads in some cases. Therefore, to discourage origin entry of this mail (at greater cost to the Postal Service), the commenter urged that different destination entry rates be allowed for palletized and bedloaded shipments. Another commenter questioned whether lowering the value of destination entry discounts made sense, given the record in Docket R90–1. A third commenter believed that the 100% barcoding criterion, 150-piece tray minimums, and required uses of 1- and 2-foot trays being proposed for some rate categories will drain mail away from destination entry by making it less cost-effective for customers. The proposed rule does not seek to disallow bedloaded shipments; palletization (including palletization of trays) is being discussed in a separate rulemaking. The design of discounts (including their relative values) is being reviewed by the PRC as part of MC95–1 and is beyond the scope of this rulemaking.

Another commenter offered support for redefining the quantity of pieces that represents a mailing for purposes of destination entry, especially when deposits are made at low-volume destinations. The Postal Service is reviewing this matter administratively (not as part of this rulemaking) and will announce its decision accordingly.

Designated Points of Entry

Four comments were received concerning the proposed requirement in First-Class and Standard Mail that mail ''must be deposited at places and times designated by the Postal Service.'' That language reflects existing standards based on existing authority (e.g., DMM D300.2.0 and D400.2.0, based on DMCS 300.050 and 400.051, respectively). By repeating similar provisions in the June 29 notice, the Postal Service is not signaling an intent to propose significantly different standards for mail deposit in implementing MC95–1.

PAVE

Twenty-two comments were received concerning the requirement for Presort Accuracy Verification and Evaluation (PAVE) or standardized documentation. Three commenters expressed support for this proposed requirement; one thought that it should be implemented only after a 6-month deferral; two thought that it should be imposed only on Automation subclass mail; six thought that it should be eliminated; and 10 others stated a need to know what was meant by ''standardized documentation'' before they could submit adequate comments.

One commenter indicated that the Postal Service should provide only broad guidelines concerning documentation format. Another commenter thought that tray labels should be required to be numbered and supported by an accompanying manifest. A third commenter requested clarification as to whether the proposed requirement would apply to small hand-sorted mailings that currently are weight-verified and do not require documentation. The Postal Service currently is not proposing significant new informational content in mailing documentation nor is it proposing documentation requirements for mailings that can be weight-verified (e.g., mailings of identical-weight pieces each bearing the full correct postage).

Of those who objected to the proposed requirement, four felt mandating use of PAVE-certified software would be an obstacle for small mailers. Another argued that the PAVE proposal should be dropped because it did not eliminate the need to verify mailings. A third commenter believed that PAVE would duplicate what CASS and move-updates would provide. The Postal Service's proposal is predicated on the belief that using consistent forms of mailing documentation will ease burdens on mailers and facilitate (without seeking to eliminate) postal verification and acceptance processes. As mail preparation becomes more automated and mailings become more complex, the need for documentation is expected to remain and the need to make its production simple will increase. At this point in the rulemaking, the Postal Service's proposal for PAVE remains focused on its ability to generate standardized documentation, while affording customers the choice of generating that documentation otherwise if possible.

Machinable Parcels

Seven comments were received concerning Standard Regular machinable parcel preparation requirements. Five commenters indicated that machinable parcels should have the option of being palletized in addition to being sacked. Five commenters requested that rates for machinable parcels be extended to

preparation in ''gaylords'' or other containers. Generally, machinable parcel preparation is not being affected by this rulemaking; palletization (and the use of equivalent containers) is being discussed in a separate rulemaking. The current provisions for palletizing third-class machinable parcels will be applied to Standard Regular machinable parcels at the time when classification reform is implemented. Exceptions to substitute one container type for another are administrative matters not germane to this rulemaking.

Stanley F. Mires,

Chief Counsel, Legislative.

I. First-Class Mail

A. General

• Any matter eligible for mailing (6000) may, at the mailer's option, be mailed as First-Class Mail (210).

• First-Class Mail may not exceed 70 pounds or 108 inches in length and girth combined (231).

• Certain matter must be sent as First-Class Mail (210).

• Postage for First-Class Mail must be paid in accordance with 240 (240).

• First-Class Mail must be deposited at places and times designated by the Postal Service (251).

B. Retail Subclass (221)

1. General

• Each piece must weigh 11 ounces or less (221.1).

2. Single-Piece Rate Category

• All mailable matter may be mailed at the single-piece rates (210, 221.2).

3. Presort Rate Category

• Must be prepared in a mailing of at least 500 pieces (221.3a).

• Must be presorted, marked, and presented as prescribed by the Postal Service (221.3b).

—Letters not prepared under the ungraded option, and all flats and parcels, must be packaged if there are 10 or more pieces to a 5-digit area, to a 3-digit area, or to an ADC; all remaining mail must be in mixed-ADC packages. Packages must be placed in 5-digit, 3-digit, ADC, and mixed-ADC trays (letters and flats) or sacks (parcels). All possible finer presort packages must be prepared before packages to the next level are prepared.

—Optional preparation for upgradable letters is full trays (minimum 150 pieces) to 5-digit (optional), 3-digit, AADC, and mixed-AADC (no minimum) destinations. All possible finer presort packages must be prepared where required before packages to the next level are prepared. Pieces in AADC trays must be grouped by 3-digit ZIP Code; overflow trays are not permitted. Pieces within mixed-AADC trays must be grouped by AADC and, within each, by 3-digit ZIP Code.

—Letter mail must be prepared in letter trays. Both 1- and 2-foot trays must be used within a single mailing, as appropriate, to generate the fewest trays and to ensure optimum tray utilization. Trays must be sleeved by the mailer.

—Flats must be prepared in flat trays. A full tray is defined as one that contains at least a single stack of pieces lying flat that reaches the bottom of the hand-holds, but no more than can be contained in the tray with the cover secured in place. Trays of flats must be secured with two straps.

—Parcels must be prepared in sacks.

—Presort Accuracy Verification and Evaluation (PAVE) software must be used or standardized documentation must be provided. Unresolved issues include whether PAVE will be mandatory for those categories where it is available, whether standardized documentation may be used instead, and what time period will be allowed for compliance when PAVE does become available.

—Mailing must be entered at an acceptance point designated by the Postal Service.

—Presort rates applies to all pieces in the mailing.

• Must meet the machinability, addressing, and other preparation requirements prescribed by the Postal Service (221.3c).

—Upgraded letters must be letter-size and meet both the current physical preparation requirements in DMM C810 for automation compatibility and the current requirements in DMM C830 for an OCR clear zone and a barcode clear zone, for reflectance, and for paper that will accept water-based ink. The detailed type font requirements in DMM C830.2 are not required; however, the pieces must have a machine-printed address in a nonscript font. A ZIP+4 code is not required to be considered an upgradable mailpiece.

—Customer moves must be updated at least every 6 months (permissible methods are expected to include National Change of Address (NCOA) verification, Address Correction Service, and Address Change Service). The vendor community has developed several other ideas that could be used to meet this requirement. The Postal Service anticipates that formal proposals will be offered soon for evaluation.

—A certified process must be used at least once a year to ensure the accuracy of 5-digit ZIP Codes.

—A recommended checklist of possible ZIP Code verification options for address lists that are not computerized could be signed as a part of the verification process. Items to appear on the checklist might include manual verification using the most recent ZIP Code directory, a survey of the addressees currently in the address list to inquire about changes to ZIP Code information, participation in the current manual list correction service, turning the list over to someone else to verify, and use of approved software.

—Uniform address element placement must be used. Uniform address element placement does not refer to guidelines in USPS Publication 28, Postal Addressing Standards. Rather, uniform address element placement means that the city name, state name, and ZIP Code or ZIP+4 are each elements of an address and must appear as the bottom line in the address block, in that order. The delivery address line must appear on the line immediately above the city, state, and ZIP Code line. For city-style addresses, the order of elements should be street number, predirectional (e.g., N, S, SW), street name, suffix (e.g., ST, AVE, RD), postdirectional (e.g., W, S, NE), and any necessary secondary unit designator (e.g., APT, STE, RM, UNIT) and number. For rural route or highway contract routes with box numbers in the address, the delivery address must contain the route number and box number in that order. With post office box addresses, the box number must follow the designation ''PO BOX'' or ''POST OFFICE BOX.'' When any delivery address line information exceeds the space allowed, secondary information must be placed on the line above. This overflow information may not be placed on the line below the delivery address line. Uniform address element placement also means that the delivery address line elements should appear in the correct order. These conditions also apply to use of uniform address element placement.

—''Prestigious'' city names and may be used if associated with the correct ZIP Code.

—A state name may be fully spelled out or abbreviated according to the

abbreviations in the USPS City State File.
—A city name must be spelled correctly enough not to create a duplicate within the state.
—Missing elements (e.g., directional or suffix) are not required if their omission does not create an ambiguous match.
—Street names must be spelled correctly enough not to create an ambiguous match.
—Abbreviations of words in street names may be used. (For recommended abbreviations, see USPS Publication 28, Postal Addressing Standards.)

4. Retail Discounts and Surcharges

a. Postal Card and Postcard Discount

• Matter must be a postal card or postcard (221.4) (232).
• Postal card or postcard must be of uniform thickness and must not exceed any of these dimensions: 6 inches long; 4.250 inches wide; 0.016 inch thick (232.1).

b. Nonstandard-Size Surcharge (221.5)

• If the mailpiece weighs 1 ounce or less and its aspect ratio (length of the mailpiece divided by its height) is less than 1.3 or more than 2.5; or if the mailpiece exceeds any of these dimensions: 11.500 inches long; 6.125 inches wide; or 0.250 inch thick (233).

c. Additional Presort Discount

• Applies to each piece weighing more than 2 ounces (221.6).

C. Automation Subclass (222)

1. General

• Must be prepared in a mailing of at least 500 pieces (222.01).
• Each piece must weigh 11 ounces or less (222.1).
• Must be presorted, marked, and presented as specified by the Postal Service (222.1).
—All mailings must be presorted and presented in trays as described under the appropriate rate categories.
—Sleeving, strapping, and ACT-tagging are required for all letter trays and flat trays.
—Presort Accuracy Verification and Evaluation (PAVE) software must be used or standardized documentation provided.
—Mailings must be entered at an acceptance point designated by the Postal Service.
—For flats, a full tray is defined as one that contains at least a single stack of pieces lying flat that reaches the bottom of the hand-holds, but no more than can be contained in the tray with the cover secured in place. Trays of flats must be secured with two straps.
• Must bear a barcode representing no more than 11 digits (not including correction digits) as prescribed by the Postal Service (222.1).
—For letters, the mailing must be 100% delivery point barcoded. Production of 100% delivery point barcode (DPBC) mailstream requires resolving such issues as preprinted envelopes with less than a DPBC and the coding of destinations assigned a unique 5-digit ZIP Code or ZIP+4. A pure DPBC mailstream is needed to eliminate costly backflow of uncoded or non-DPBC pieces.
—For flats, the mailing must be 100% ZIP+4 or delivery point barcoded. For flats, the delivery point barcode will be optional; the ZIP+4 barcode, required. 100% barcoding for flats requires that each piece in a mailing (or segment or other subunit of a job) bear a ZIP+4 or DPBC.
• Must meet the machinability, addressing, barcoding, and other preparation requirements prescribed by the Postal Service (222.1).
—The current machinability requirements in DMM C810 must be met for letters, and those in DMM C820 must be met for flats. The Postal Service may consider amending its standards for physical automation compatibility for flats when appropriate, based on changes in sortation equipment.
—Coding Accuracy Support System (CASS)-certified software must be used within 6 months of the mailing date or Multiline Accuracy Support System (MASS)-certified equipment must be used to apply the barcode. This simply changes the current requirement for use of such software from within 1 year of mailing to within 6 months of mailing.
—Certified software used must match addresses to current CRIS file within 90 days of mailing date for letter-size carrier route rate mail. The ''within 90 days of mailing'' standard may require some mailers to update the carrier route codes in their address lists more frequently than every 90 days. This condition is influenced by the mailers' production schedule and when, during that cycle, they would normally update carrier route codes.
—Customer moves must be updated at least every 6 months (permissible methods are expected to include National Change of Address (NCOA) verification, Address Correction Service, and Address Change Service). The vendor community has developed several other ideas that could meet this requirement. The Postal Service anticipates that formal proposals will be offered soon for evaluation.
—Barcoded tray or sack labels (as specified in DMM M032) must be used. The Postal Service plans to make this requirement effective at the time when classification reform is implemented.
—Barcoding must meet the current requirements in DMM C840.
—Courtesy or business reply envelope or card included in an Automation subclass mailing must be automation-compatible and bear a facing identification mark and a correct barcode for the return address. The barcode may appear on an insert that appears through a window. This will be phased in, in the future.

2. Basic Rate Category (Letters) (222.2)

• Must be letter-size mail (222.2).
—Must be presorted first to all possible full and overflow AADC trays, then to mixed-AADC in trays. For purposes of presort verification, pieces in AADC trays must be grouped by 3-digit ZIP Code or 3-digit scheme; pieces in mixed-AADC trays must be grouped by AADC and, within each, by 3-digit ZIP Code or 3-digit scheme.

3. Three-Digit Rate Category (Letters) (222.3)

• Must be letter-size mail (222.3).
• Must be presorted to single or multiple 3-digit ZIP Code destinations as prescribed by the Postal Service (222.3).
—The Postal Service will allow 3-digit scheme sortation (i.e., combined preparation of two or more 3-digit ZIP Code areas processed together in Postal Service schemes). A preliminary 3-digit scheme list appears at the end of this document. This list is subject to further revision but is provided as a guide to assist mailers in assessing the impact of this manner of preparation on their mailings. The Postal Service proposes to make sortation to the 3-digit scheme list mandatory to parallel internal postal processing schemes. Such sortation could also result in greater discount qualification for mailers because the 150-piece minimum for the 3-digit Automation rate would apply to the combination of 3-digit ZIP Codes shown on the scheme list rather than to each 3-digit ZIP Code.
—Preparation of full trays (minimum 150 pieces) is required to 3-digit ZIP Code or, where applicable, 3-digit

scheme destinations. Overflow trays are permitted when a full tray for the same destination is already prepared.

4. Five-Digit Rate Category (Letters) (222.4)

- Must be letter-size mail (222.4).
- Must be presorted to single or multiple 5-digit ZIP Code destinations as prescribed by the Postal Service (222.4).

—Minimum of 150 pieces is required per 5-digit destination.
—Overflow trays are permitted when a full tray for the same destination is already prepared.
—A 5-digit scheme sort might be developed at a later date.
—A 5-digit make-up is optional.

5. Carrier Route Rate Category (Letters) (222.5)

- Must be letter-size mail (222.5).
- Must be presorted to carrier routes prescribed by the Postal Service (222.5).

—Preparation of carrier route rate mail is optional.
—At least 10 pieces are required per route within 5-digit ZIP Code areas that are manually sorted to walk sequence by letter carrier or are processed on CSBCS equipment to delivery point sequence.
—A system is being developed to allow mailers access to the list of ZIP Codes for which carrier route presort will be allowed; monthly updates are proposed.
—The Postal Service will examine the number of routes that have fewer than 10 possible deliveries and determine whether to allow carrier route rates when pieces are prepared for all stops on such routes.
—Preparation in carrier route and 5-digit carrier routes trays is required.
—Carrier route mail must be prepared in line-of-travel sequence. This is not exact walk-sequence arrangement of the mailpieces. For line-of-travel sequence, the mailpieces are first sorted into the sequence in which the ZIP+4 codes are delivered by the carrier. They are further sorted into ascending or descending numerical sequence within the number range associated with the ZIP+4 code.

6. Basic Flats Rate Category (222.6)

- Must be flat-size mail (222.6).

—Mail must be presorted to ADC and mixed-ADC destinations.
—At least 10 pieces per ADC destination must be prepared in packages; all remaining pieces must be placed in mixed-ADC packages.
—Flats trays must be used. For flats, a full tray is defined as one that contains at least a single stack of pieces lying flat that reaches the bottom of the hand-holds, but no more than can be contained in the tray with the cover secured in place. Trays of flats must be secured with two straps.

7. /3⁄5-Digit Flats Rate Category (222.7)

- Must be flat-size mail (222.7).
- Must be presorted to single or multiple 3- and 5-digit ZIP Code destinations as specified by the Postal Service (222.7).

—At least 10 pieces per destination must be prepared in packages, first to all possible 5-digit destinations, then to all possible 3-digit destinations. A 3-digit ''scheme sort'' will not be offered for flats at this time.
—Flats trays must be used. For flats, a full tray is defined as one that contains at least a single stack of pieces lying flat that reaches the bottom of the hand-holds, but no more than can be contained in the tray with the cover secured in place. Trays of flats must be secured with two straps.

8. Automation Discounts

a. Postal Card and Postcard Discount

- Must be a postal card or postcard (222.8).
- Must be of uniform thickness and must not exceed any of these dimensions: 6 inches long; 4.250 inches wide; 0.016 inch thick (232).

b. Additional Presort Discount

- Applies to each piece weighing more than 2 ounces (222.9).

I–1.—First-Class Mail Automation Subclass—Letters and Cards

Sort level	Optional/required	Rate qualification minimum	Tray level	Rate[1] letter (cents)	Rate card (cents)
Carrier Route[2]	Optional	10 pieces per route	Carrier Route (full, no overflow)	23.2	13.7
Carrier Route[2]	Optional	10 pieces per route	5-Digit Carrier Routes (no minimum)	23.2	13.7
5-Digit	Optional	150 pieces	5-Digit (full, overflow allowed)	23.5	14.0
3-Digit/Scheme	Required	150 pieces	3-Digit/Scheme (full, overflow allowed).	25.0	15.5
AADC	Required	N/A	AADC (full, overflow allowed, grouped by 3-digit/scheme).	27.0	17.5
Mixed AADC	Required	N/A	Mixed AADC (no minimum, grouped by AADC and, within each, by 3-digit/scheme).	27.0	17.5

[1] First-ounce rate. Each additional ounce is 23 cents. An additional presort discount of 4.6 cents applies to each piece weighing more than 2 ounces.
[2] Carrier route sortation and rates limited to nonautomated and CSBCS-sorted ZIP Codes.

I–2.—First-Class Mail Automation Subclass—Flats

Sort level	Optional/required	Package/rate qualification minimum[1]	Tray level	Rate[2] (cents)
5-Digit	Required	10 pieces	5-Digit (full, no overflow)	27.0
3-Digit	Required	10 pieces	3-Digit (full, no overflow)	27.0
ADC	Required	10 pieces	ADC (full, no overflow)	29.0
Mixed ADC	Required	No minimum	Mixed ADC (no minimum)	29.0

[1] Rate based on package without regard to the tray in which it is placed.

[2] First-ounce rate. An additional 5-cent surcharge for nonstandard-size mail applies to each piece weighing 1 ounce or less that falls outside the standard letter dimensions. Each additional ounce is 23 cents. An additional presort discount of 4.6 cents applies to each piece weighing more than 2 ounces.

I–3.—FIRST-CLASS MAIL RETAIL SUBCLASS—PRESORT LETTERS AND CARDS

Sort level	Optional/required	Package minimum	Tray level	Rate [1] letter (cents)	Rate card (cents)
5-Digit	Required	10 pieces	5-Digit (full, no overflow)	30.0	19.0
3-Digit	Required	10 pieces	3-Digit (full, no overflow)	30.0	19.0
ADC	Required	10 pieces	ADC (full, no overflow)	30.0	19.0
Mixed ADC	Required	No minimum	Mixed ADC (no minimum)	30.0	19.0

[1] First-ounce rate. Each additional ounce is 23 cents. An additional presort discount of 4.6 cents applies to each piece weighing more than 2 ounces.

OPTIONAL PREPARATION FOR UPGRADABLE LETTERS AND CARDS

Sort level	Optional/required	Package minimum	Tray level	Rate [1] letter (cents)	Rate card (cents)
5-Digit	Optional	N/A	5-Digit (full, no overflow)	30.0	19.0
3-Digit	Required	N/A	3-Digit (full, no overflow)	30.0	19.0
AADC	Required	N/A	AADC (full, grouped by 3-digit ZIP Code; no overflow).	30.0	19.0
Mixed AADC	Required	N/A	Mixed AADC (no minimum, grouped by AADC and, within each, by 3-digit ZIP Code).	30.0	19.0

[1] First-ounce rate. Each additional ounce is 23 cents. An additional presort discount of 4.6 cents applies to each piece weighing more than 2 ounces.
Single-Piece Rates: No presort or minimum.

I–4.—FIRST-CLASS MAIL RETAIL SUBCLASS—PRESORT FLATS AND PARCELS UNDER 11 OUNCES

Presort Rate

Sort level	Optional/required	Package minimum	Tray level (sack level for parcels)	Rate [1] (cents)
5-Digit	Required	10 pieces	5-Digit (full, no overflow)	30.0
3-Digit	Required	10 pieces	3-Digit (full, no overflow)	30.0
ADC	Required	10 pieces	ADC (full, overflow allowed)	30.0
Mixed ADC	Required	No minimum	Mixed ADC (no minimum, grouped by 3-digit ZIP Code).	30.0

[1] First-ounce rate. An additional 5-cent surcharge for nonstandard-size mail applies to each piece weighing 1 ounce or less that falls outside the standard letter dimensions. Each additional ounce is 23 cents. An additional presort discount of 4.6 cents applies to each piece weighing more than 2 ounces.
Single-Piece Rates: No presort or minimum.

II. Standard Mail

A. General

• Any matter eligible for mailing (6000) may, at the mailer's option, be mailed as Standard Mail except certain matter required to be sent First-Class Mail or Periodicals class (311).

• May include printed matter not having the character of actual or personal correspondence (312).

• May have certain written additions (313).

• May not exceed 70 pounds (332).

• Postage must be paid in accordance with 340 (340).

• Must be deposited at places and times designated by the Postal Service (351).

B. Regular Subclass

1. General

• Each piece must weigh less than 16 ounces (321.31).

• Must be prepared in a mailing of at least 200 addressed pieces or 50 pounds of addressed pieces (321.31a).

• Must be presorted, marked, and presented as prescribed by the Postal Service (321.31b).

—Letters not prepared under the upgradable option, and all flats and irregular parcels, must be packaged if there are 10 or more pieces to a 5-digit area, to a 3-digit area, or to an ADC, in that order, all remaining mail must be in mixed-ADC packages. Packages must be placed in 5-digit, 3-digit, ADC, and mixed-ADC trays (letters) or sacks (flats and irregular parcels). All possible finer presort packages must be prepared before packages to the next level are prepared. Current exceptions to packaging of irregular parcels in DMM M306.2a and M306.2b apply.

—Optional preparation for upgradable letters is full trays (minimum 150 pieces) to 5-digit (optional), 3-digit, AADC, and mixed-AADC (no minimum) destinations. All possible finer presort packages must be prepared where required before packages to the next level are prepared. Pieces in AADC trays must be grouped by 3-digit ZIP Code; overflow trays are not permitted. Pieces within mixed-AADC trays must be grouped by AADC and, within each, by 3-digit ZIP Code.

—Letter mail must be prepared in letter trays. Both 1- and 2-foot trays must be used within a single mailing, as appropriate, to generate the fewest trays and to ensure optimum tray utilization. Trays must be sleeved by the mailer.
—Flats and parcels must be prepared in sacks (unless palletized).
—Machinable parcels must be sacked to 5-digit destinations (optional if 3/5 rates are not claimed) and destination BMCs when there are 10 or more pounds of mail for a sack destination, with remaining parcels sacked to the origin BMC. This does not represent a change in the current preparation standards for machinable third-class parcels.
—Palletization of flats and machinable parcels is permitted and preferred.
—Commingled packages of carrier route, 5-digit barcoded, and ZIP+4/delivery point barcoded flats will be permitted to all sack/pallet destinations except to 5-digit destinations. Physical separation of packages at different presort or rate levels is not required within a pallet or sack. The Postal Service will develop optional endorsements to provide the necessary identification of rate categories. Commingled packages may be reported together on mailing statements and supporting documentation.
—''Fletters'' (larger letter-size pieces that are barcoded and claimed at the Barcoded rates for flats or at the Enhanced Carrier Route rates) may be prepared in packages on pallets. To qualify for palletization, the ''fletter'' must be prepared to qualify for a flats-based rate (e.g., Barcoded rates for flats or Enhanced Carrier Route rates). The same mailpiece must be prepared uniformly as a letter or flat for the same job.
—Presort Accuracy Verification and Evaluation (PAVE) software must be used or standardized documentation must be provided. Unresolved issues include whether PAVE will be mandatory for those categories where it is available, whether standardized documentation may be used instead, and what time period will be allowed for compliance when PAVE does become available.
—Mailings must be entered at an acceptance point designated by the Postal Service.

• Must meet machinability, addressing, and other preparation requirements prescribed by the Postal Service (321.31c).

—Upgradable letters must be letter-size and meet both the current physical preparation requirements in DMM C810 for automation compatibility and the current requirements in DMM C830 for an OCR clear zone and a barcode clear zone, for reflectance, and for paper that will accept water-based ink. The detailed type front requirements in DMM C830.2 are not required; however, the pieces must have a machine-printed address in a nonscript font. A ZIP+4 code is not required to be considered an ungradable mailpiece.
—A certified process must be used to ensure the accuracy of 5-digit ZIP Codes at least once a year.
—A recommended checklist of possible ZIP Code verification options for address lists that are not computerized could be a signed as a part of the verification process. Items to appear on the checklist might include manual verification using the most recent ZIP Code directory, a survey of the addressees currently in the address list to inquire about changes to ZIP Code information, participation in the current manual list correction service, and turning the list over to someone else to verify use of approved software.
—Uniform address element placement must be used. Uniform address element placement does not refer to guidelines in USPS Publication, Postal Addressing Standards. Rather, uniform address element placement means that the city name, state name, and ZIP Code or ZIP+4 are each elements of an address and must appear as the bottom line in the address block, in that order. The delivery address line must appear on the line immediately above the city, state, and ZIP Code line. For city-style addresses, the order of elements should be street number, predirectional (e.g., N, S, SW), street name, suffix (e.g., ST, AVE, RD), postdirectional (e.g., W, S, NE), and any necessary secondary unit designator (e.g, APT, STE, RM, UNIT) and number. For rural route or highway contract routes with box numbers in the address, the delivery address must contain the route number and box number in that order. With post office box addresses, the box number must follow the designation ''PO BOX'' or ''POST OFFICE BOX.'' When any delivery address line information exceeds the space allowed, secondary information must be placed on the line above. This overflow information may not be placed on the line below the delivery address line. Uniform address element placement also means that the delivery address line elements should appear in the correct order. These conditions also apply to use of uniform address element placement:
—''Prestigious'' city names may be used if associated with the correct ZIP Code.
—A state name may be fully spelled out or abbreviated according to the abbreviations in the USPS City State File.
—A city name must be spelled correctly enough not to create a duplicate within the state.
—Missing elements (e.g., directional or suffix) are not required if their omission does not create an ambiguous match.
—Street names must be spelled correctly enough not to create an ambiguous match.
—Abbreviations of words in street names may be used. (For recommended abbreviations, see USPS Publication 28, Postal Addressing Standards.)

2. Basic Rate Category (321.22)

• Must be presorted to ADC or mixed-ADC trays (letters) or sacks (flats and irregular parcels), except that, under the optional sortation for upgradable letters, letters must be presorted to AADC and mixed-AADC trays. No change in the current preparation or eligibility standards for machinable parcels.

3. 3/5-Digit Rate Category (321.23)

• Must be presorted to single or multiple 3- and 5-digit ZIP Code destinations, as prescribed by the Postal Service (321.23).

—Must be presorted to 5-digit and 3-digit trays (letters) or sacks (flats and irregular parcels) and to 5-digit and destination BMC sacks (machinable parcels). No change in the current preparation or eligibility standards for machinable parcels.
—For palletized mail, flats must be in a 5-digit or 3-digit package correctly sorted to the appropriate pallet destination. No change in the current preparation or eligibility standards for machinable parcels.

4. Destination Entry Discounts (321.24)

• Applies to mail prepared as prescribed by the Postal Service and entered at the destinating BMC or SCF (321.24).

C. Automation Subclass (321.3)

1. General

• Each piece must weigh less than 16 ounces (321.3).
• Must be prepared in a mailing of at least 200 addressed pieces or 50 pounds of addressed pieces (321.3a).

• Must be presorted, marked, and presented as prescribed by the Postal Service (321.3b).

—Presort must conform to that specified under rate categories.
—Sleeving and strapping is required for all letter trays.
—Presort Accuracy Verification and Evaluation (PAVE) software must be used or standardized documentation must be provided.
—Mailings must be entered at an acceptance point designated by the Postal Service.
—Separately prepared packages of ZIP+4/delivery point barcoded, 5-digit/nonbarcoded, and carrier route presort flats may be sacked or palletized together and reported together on mailing statements and supporting documentation. Commingling will be permitted to all sack/pallet destinations except to 5-digit destinations. Physical separation of packages at different presort or rate levels is not required within a pallet or sack. The Postal Service will develop optional endorsements to provide the necessary identification of rate categories. The pieces in all commingled packages will count toward a single container minimum (e.g., 125 pieces or 15 pounds per sack).

• Must bear a barcode representing no more than 11 digits (not including correction digits) as prescribed by the Postal Service (321.3c).

—For letters, mail must be 100% delivery point barcoded.
—For flats, mail must be 100% ZIP+4 or delivery point barcoded. The delivery point barcode will be optional, but the ZIP+4 barcode will be required. This standard requires that each piece in a mailing (or segment or other subunit of a job) bear a ZIP+4 or delivery point barcode.

• Must be letter-size or flat-size as defined by the Postal Service and must meet the machinability, addressing, barcoding, and other preparation requirements prescribed by the Postal Service (321.3d) and 321.3e).

—The current machinability requirements in DMM C810 must be met for letters, and those in DMM C820 must be met for flats. The Postal Service may consider amending its standards for physical automation compatibility for flats when appropriate, based on changes in sortation equipment.
—Barcoded tray or sack labels (as specified in DMM M032) must be used. The Postal Service plans to make this requirement effective at the time classification reform is implemented.
—Barcoding must meet the current requirements in DMM C840.
—Courtesy or business reply envelope or card included in an Automation subclass mailing must be automation-compatible and bear a facing identification mark and a correct barcode for the return address. The barcode may appear on an insert that appears through a window. This will be phased in, in the future.
—Coding Accuracy Support System (CASS)-Certified software must be used within 6 months of the mailing date or Multiline Accuracy Support System (MASS)-certified equipment must be used to apply the barcode. (This simply changes the current requirement for use of such software from within 1 year of mailing to within 6 months of mailing.)
—Certified software used must match addresses to current CRIS file within 90 days of the mailing date for letter-size carrier route rate mail. Updating carrier route information within 90 days of the mailing date may require some mailers to update carrier route codes monthly because of the length of their mail production cycles.

2. Basic Rate Category (Letters)

• Must be letter-size mail (321.32).

—Must be presorted first to all possible full and overflow AADC trays, then to mixed-AADC in trays. For purposes of presort verification, pieces in AADC trays must be grouped by 3-digit ZIP Code or 3-digit scheme; pieces in mixed-AADC trays must be grouped by AADC and, within each, by 3-digit ZIP Code or 3-digit scheme.

3. Three-Digit Rate Category (Letters)

• Must be letter-size mail (321.33).
• Must be presorted to single or multiple 3-digit ZIP Code destinations as prescribed by the Postal Service (321.33).

—The Postal Service will allow 3-digit scheme sortation (i.e., combined preparation of two or more 3-digit ZIP Code areas processed together in Postal Service schemes). A preliminary 3-digit scheme list appears at the end of this document. This list is subject to further revision but is provided as a guide to assist mailers in assessing the impact of this manner of preparation on their mailings. The Postal Service proposes to make sortation to the 3-digit scheme list mandatory to parallel internal postal processing schemes. Such sortation could also result in greater discount qualification for mailers because the 150-piece minimum for the 3-digit Automation rate would apply to the combination of 3-digit ZIP Codes shown on the scheme list rather than to each 3-digit ZIP Code.
—Preparation of full trays (minimum 150 pieces) is required to 3-digit ZIP Code or, where applicable, 3-digit scheme destinations. Overflow trays are allowed when a full tray for the same destination is already prepared.

4. Five-Digit Rate Category (Letters)

• Must be letter-size mail (321.34).
• Must be presorted to single or multiple 5-digit ZIP Code destinations as prescribed by the Postal Service (321.34).

—A minimum of 150 pieces is required per 5-digit destination.
—Overflow trays will be allowed when a full tray for the same destination is already prepared.
—A 5-digit scheme sort may be developed at a later date.
—A 5-digit make-up is optional.

5. Carrier Route Rate Category (Letters)

• Must be letter-size mail (321.35).
• Must be presorted to carrier routes prescribed by the Postal Service (321.35).

—Preparation of carrier route rate mail is optional.
—Must have at least 10 pieces per route within 5-digit ZIP Code areas that are manually sorted to walk sequence or are processed on CSBCS equipment to delivery point sequence.
—A system is being developed to allow mailers access to the list of ZIP Codes for which carrier route presort is allowed; monthly updates are proposed.
—The Postal Service will examine the number of routes that have fewer than 10 possible deliveries and determine whether to allow carrier route rates when pieces are prepared for all stops on such routes.
—Mail must be prepared in carrier route and 5-digit carrier route trays.
—Carrier route mail must be prepared in line-of-travel sequence. This is not exact walk-sequence arrangement of the mailpieces. For line-of-travel sequence, the mailpieces are first sorted into the sequence in which the ZIP+4 codes are delivered by the carrier. They are further sorted into ascending or descending numerical sequence within the number range associated with the ZIP+4 code.

6. Basic Flats Rate Category

• Must be flat-size mail (321.36).

—Mail must be presorted to ADC and mixed-ADC destinations. At least 10

pieces per package for each ADC destination must be prepared; all remaining pieces must be placed in mixed-ADC packages.

7. 3/5-Digit Flats Rate Category

• Must be flat-size mail (321.37).

• Must be presorted to single or multiple 3- and 5-digit ZIP Code destinations as specified by the Postal Service (321.37).

—At least 10 pieces per destination must be prepared in packages.

8. Destination Entry Discounts

• Applies to mail prepared as prescribed by the Postal Service and addressed for delivery within the service area of the destination BMC (or ASF), SCF, or DDU. The DDU discount applies only to Carrier Route rate category mail (321.28).

D. Enhanced Carrier Route Subclass

1. General

• Each piece must weigh less than 16 ounces (321.3).

• Must be prepared in a mailing of at least 200 addressed pieces or 50 pounds of addressed pieces (321.3a).

• Must be prepared, marked, and presented as prescribed by the Postal Service (321.3b).

—Mailing must be entered at an acceptance point designated by the Postal Service.

• Must be presorted to carrier routes as prescribed by the Postal Service (321.3c).

—Mail must be packaged if there are 10 or more pieces to a carrier route.

—Enhanced Carrier Route rates are allowed for routes having fewer than 10 possible deliveries only as described under the saturation rate category.

—Packages of flat-size pieces must be placed in carrier route sacks when 125-piece or 15-pound minimum per carrier route is met; remaining packages must be placed in 5-digit carrier routes sacks. Palletization of flats is preferred.

—Separately prepared packages of ZIP+4/delivery point barcoded, 5-digit/nonbarcoded, and carrier route presort flats may be sacked or palletized together and reported together on mailing statements and supporting documentation. Commingling will be permitted to all sack/pallet destinations except to 5-digit destinations. Physical separation of packages at different presort or rate levels is not required within a pallet or sack. The Postal Service will develop optional endorsements to provide the necessary identification of rate categories. The pieces in all commingled packages will count toward a single container minimum (e.g., 125 pieces of 15 pounds per sack).

—The Postal Service will carry forward the current provisions applicable to 125-piece walk-sequence rates and allow the high-density rates when pieces are prepared for all possible deliveries on those routes that have fewer than 125 stops.

—Presort Accuracy Verification and Evaluation (PAVE) software must be used or standardized documentation must be provided.

• Must be sequenced as prescribed by the Postal Service (321.3d).

• Must meet the machinability, addressing, and other preparation requirements prescribed by the Postal Service (321.3e).

—Certified software used must match addresses to current CRIS file within 90 days of the mailing date for carrier route rate mail. Updating carrier route information within 90 days of the mailing date may require some mailers to update carrier route codes monthly due to the lengths of their mail production cycles.

—Uniform address element placement must be used. Uniform address element placement does not refer to guidelines in USPS Publication 28, Postal Addressing Standards. Rather, uniform address element placement means that the city name, state name, and ZIP Code or ZIP+4 are each elements of an address and must appear as the bottom line in the address block, in that order. The delivery address line must appear on the line immediately above the city, state, and ZIP Code line. For city-style addresses, the order of elements should be street number, predirectional (e.g., N, S, SW), street name, suffix (e.g., ST, AVE, RD), postdirectional (e.g., W, S, NE), and any necessary secondary unit designator (e.g., APT, STE, RM, UNIT) and number. For rural route or highway contract routes with box numbers in the address, the delivery address must contain the route number and box number in that order. With post office box addresses, the box number must follow the designation ''PO BOX'' or ''POST OFFICE BOX.'' When any delivery address line information exceeds the space allowed, secondary information must be placed on the line above. This overflow information may not be placed on the line below the delivery address line. Uniform address element placement also means that the delivery address line elements should appear in the correct order. These conditions also apply to use of uniform address element placement:

—''Prestigious'' city names may be used if associated with the correct ZIP Code.

—A state name may be fully spelled out or abbreviated according to the abbreviations in the USPS City State File.

—A city name must be spelled correctly enough not to create a duplicate within the state.

—Missing elements (e.g., directional or suffix) are not required if their omission does not create an ambiguous match.

—Street names must be spelled correctly enough not to create an ambiguous match.

—Abbreviations of words in street names may be used. (For recommended abbreviations, see USPS Publication 28, Postal Addressing Standards.)

2. Basic Rate Category

—Mailings must be in line-of-travel sequence.

—This is not exact walk-sequence arrangement of the mailpieces. For line-of-travel sequence, the mailpieces are first sorted into the sequence in which the ZIP+4s are delivered by the carrier. The mailpieces are further sorted into ascending or descending numerical sequence within the number range associated with the ZIP+4.

3. High-Density Rate Category

• Applies to mail presented in walk-sequence order and meeting high-density requirements prescribed by the Postal Service (321.43).

—Mail must be at least 125 pieces per carrier route sorted to carrier walk-sequence.

—The current methods for walk-sequencing address lists in DMM M304.5 may be used.

—It has been suggested that the Postal Service use line-of-travel sequence as an alternative to exact walk-sequence.

4. Saturation Rate Category

• Applies to mail presented in walk-sequence order and meeting the saturation requirements prescribed by the Postal Service (321.44).

—There must be addressed pieces for at least 90% of the total active residential deliveries per route, or for at least 75% of the total active deliveries per route. 100% saturation is required for simplified address mailings, as required by current standards. The Postal Service

proposes allowing saturation rates when the quantity of pieces per route reaches the applicable 75/90/100% threshold, regardless of the actual number of stops.

—The current methods for walk-sequencing address lists in DMM M304.5 must be used.

—Further instructions will be developed for the preparation of letter-size pieces in this rate category (for example, use of sacks or trays).

5. Destination Entry Discounts

• Applies to mail prepared as prescribed by the Postal Service and addressed for delivery within service area of destination BMC (or ASF), SCF, or DDU (321.45).

—The Postal Service is working to align SCF, ADC, and BMC service area boundaries.

—Destination entry will not be required to mail at high-density or saturation walk-sequence rates.

II–1.—STANDARD MAIL (THIRD-CLASS) AUTOMATION SUBCLASS—LETTERS

Sort level	Optional/required	Rate qualification minimum	Tray level	Rate [1] (cents)
Carrier Route [2]	Optional	10 pieces per route	Carrier Route (full, no overflow)	14.1
Carrier Route [2]	Optional	10 pieces per route	5-Digit Carrier Routes (no minimum)	14.1
5-Digit	Optional	150 pieces	5-Digit (full, overflow allowed)	15.0
3-Digit/Scheme	Required	150 pieces	3-Digit/Scheme (full, overflow allowed)	16.8
AADC	Required	N/A	AADC (full, overflow allowed, grouped by 3-digit/scheme).	17.5
Mixed AADC	Required	N/A	Mixed AADC (no minimum, grouped by AADC and, within each, by 3-digit/scheme).	17.5

[1] Destination discounts also available.
[2] Carrier route sortation and rates limited to nonautomated and CSBCS-sorted ZIP Codes.

II–2.—STANDARD MAIL (THIRD-CLASS) AUTOMATION SUBCLASS—FLATS

Sort level	Optional/required	Package minimum	Sack level [1]	Rate [2] (cents)
5-Digit	Required	10 pieces	5-Digit (minimum 125 pieces or 15 pounds)	19.0
3-Digit	Required	10 pieces	3-Digit (minimum 125 pieces or 15 pounds)	19.0
ADC	Required	10 pieces	ADC (minimum 125 pieces or 15 pounds)	23.7
Mixed ADC	Required	No minimum	Mixed ADC (no minimum)	23.7

[1] Palletization preferred. Pallet destinations might not be same as sack levels shown.
[2] Rate based on type of package, regardless of sack in which, or pallet on which, placed. Destination discounts also available.

II–3.—STANDARD MAIL (THIRD-CLASS) REGULAR SUBCLASS—LETTERS

Sort level	Optional/required	Package minimum	Tray level	Rate [1 2] (cents)
5-Digit	Required	10 pieces	5-Digit (full, no overflow)	21.9
3-Digit	Required	10 pieces	3-Digit (full, overflow allowed)	21.9
ADC	Required	10 pieces	ADC (full, no overflow)	26.1
Mixed ADC	Required	No minimum	Mixed ADC (no minimum)	26.1

[1] Rates based on tray preparation in which package placed.
[2] Destination discounts also available.

OPTIONAL PREPARATION FOR UPGRADABLE PIECES

Sort level	Optional/required	Package minimum	Tray level	Rate [1] (cents)
5-Digit	Optional	N/A	5-Digit (full, no overflow)	21.9
3-Digit	Required	N/A	3-Digit (full, overflow allowed)	21.9
AADC	Required	N/A	AADC (full, no overflow, grouped by 3-digit ZIP Code).	26.1
Mixed AADC	Required	N/A	Mixed AADC (no minimum, grouped by AADC and, within each, by 3-digit ZIP Code).	26.1

[1] Destination discounts also available.

II–4.—STANDARD MAIL (THIRD-CLASS) REGULAR SUBCLASS—FLATS AND IRREGULAR PARCELS

Sort level	Optional/required	Package minimum [1]	Sack level [1 2]	Minimum piece rate [3 4] (cents)
5-Digit	Required	10 pieces	5-Digit (minimum 125 pieces or 15 pounds)	23.7
3-Digit	Required	10 pieces	3-Digit (minimum 125 pieces or 15 pounds)	23.7
ADC	Required	10 pieces	ADC (minimum 125 pieces or 15 pounds)	30.5

II–4.—STANDARD MAIL (THIRD-CLASS) REGULAR SUBCLASS—FLATS AND IRREGULAR PARCELS—Continued

Sort level	Optional/required	Package minimum [1]	Sack level [1 2]	Minimum piece rate [3 4] (cents)
Mixed ADC	Required	No minimum	Mixed ADC (no minimum)	30.5

[1] No packaging required for machinable parcels. Standards for machinable parcel preparation and rate eligibility not covered by this rulemaking.
[2] Palletization permitted and preferred. Pallet destinations different from sack destinations shown.
[3] Rate based on sack level for sacked mail. For packages on pallets, rate based on package level.
[4] Destination discounts also available.

II–5.—Standard Mail (Third-Class) Enhanced Carrier Route Subclass

Sort level	Optional/required	Package minimum	Sack level [1]	Minimum per-piece rate (cents)
Saturation				
Carrier Route	Required	90% total active residential deliveries or 75% total active deliveries possible per route (100% if simplified address).	Carrier Route (minimum 125 pieces or 15 pounds.	13.5
			5-Digit Carrier Routes (no minimum).	13.5
High Density				
Carrier Route	Required	125 pieces per route	Carrier Route (minimum 125 pieces or 15 pounds.	14.8
			5-Digit Carrier Routes (no minimum).	14.8
Basic				
Carrier Route	Required	10 pieces per route	Carrier Route (minimum 125 pieces or 15 pounds).	15.5
			5-Digit Carrier Routes (no minimum).	15.5

[1] Trays preferred for letters. Palletization preferred for flats. No residual.

PROPOSED 3 DIGIT ''SCHEME SORT'' COMBINATIONS

Area	Plant name	Proposed 3-digit Zip code	3-digit Zip codes served
Great Lakes	Rockford, IL	610–611	610–611
	Peoria, IL	615–616	615–616
	Champaign, IL	618–619	618–619
	Royal Oak, MI	480,483	480,483
	Kalamazoo, MI	490–491	490–491
	Flint, MI	484–485	484–485
	Saginaw, MI	486–487	486–487
	Indianapolis, IN	460–462	460–462
	Gary, IN	463–464	463–464
	South Bend, IN	465–466	465–466
	Fort Wayne, IN	467–468	467–468
	Carol Stream, IL	601, 603	601, 603
	Lansing, MI	488–499	488–489
	Palatine, IL	600, 602	600, 602
Mid-Atlantic	Baltimore, MD	210–211, 219	210–211, 212, 214, 219
	Suburban, MD	208–209	208–209
	Greenville, SC	293, 296	293, 296
	Charleston, WV	250–252	250–253
	Washington, DC	202–205	200, 202–205
	Roanoke, VA	240–241	240–243
	Louisville, KY	400–401, 471	400–402, 471
	Charlotte, NC	280–281, 297	280–282, 297
Pacific	San Francisco, CA (A)	940, 943–944	940–941, 943–944
	San Francisco, CA (B)	962–966	962–966, 987
	Industry, CA	917–918	917–918

PROPOSED 3 DIGIT "SCHEME SORT" COMBINATIONS—Continued

Area	Plant name	Proposed 3-digit Zip code	3-digit Zip codes served
	San Diego, CA	919–921	919–921
	Santa Clarita, CA	913–914	913–914, 915–916
	Honolulu, HI	967–969	967–969
	Santa Ana, CA	926–927	926–928
	Marina, CA	902–905	902–905
	Oakland, CA (A)	945, 948	945–948
	Oakland, CA (B)	946, 947	945–948
	Long Beach, CA	906–908	906–908
	Stockton, CA	952–953	952–953
	San Bernardino, CA	923–925	923–925
	Sacramento, CA	956–957	956–957, 958
Southeast	Tampa, FL	335, 346	325–336, 346
	Macon, GA	310, 312	310, 312, 315–317
	Columbus, GA	318–319	318–319
	Atlanta, GA	303, 311, 399	303, 311, 399
	North Metro, GA	300–301	300–302
	Jackson, MS (A)	390–391	369, 390–393
	Jackson, MS (B)	369, 393	369, 390–393
	W Palm Beach, FL	334, 349	334, 349
	Chattanooga, TN	307, 374	307, 373–374
	Knoxville, TN	377–379	377–379
Southwest	Shreveport, LA (A)	710–711	710–714
	Shreveport, LA (B)	713–714	710–714
	Dallas, TX	752–753	751–753
	Austin, TX	786, 789	786–787, 789
Western	Albuquerque, NM	873, 877–878, 881, 883–884	870–874, 877–878, 880–884
	Billings, MT	590–599, 821	590–599, 821
	Colorado Springs, CO	808–809	808–810
	Las Vegas, NV	889–891	889–891
	Reno, NV	861, 894–895, 897	861, 894–895, 897
	Salt Lake City, UT	840–844	840–844
Midwest	Des Moines, IA (A)	500–502	500–503, 509
	Des Moines, IA (B)	503, 509	500–503, 509
	Cedar Rapids, IA	522–523	522–524
	Madison, WI	535–538	535, 537–538
	Green Bay, WI	541–542	541–543
	St. Paul, MN	540, 550	540, 550–551
	St. Louis, MO	620, 622, 630, 633	620, 622, 630–633
	Springfield, MO (A)	654–655	648, 654–658
	Springfield, MO (A)	656–657	648, 654–658
	Wichita, KS	670–671	670–672
	Omaha, NE	515–516, 680	515–516, 680–681
Northeast	Brockton, MA	020, 023–024	020, 023–024
	Boston, MA	021–022	021–022
	Middlesex-Essex, MA	018–019, 055	018–019, 055
	Central Mass, MPC	014–015, 017	014–017
	Springfield, MA	010–011, 013	010–013
	Buffalo, NY	140–143	140–143, 147
	Stamford, CT	068–069	068–069
	Portland, ME	043, 045	040–043, 045
	Burlington, VT	054, 056	054, 056
	Utica, NY	133–134	133–135
	Providence, RI	027–028	027–029
	Portsmouth, NH	038–039	038–039
	Albany, NY	120–123	120–123, 128–129
	Cape Cod, MA P&DF	025–026	025–026
	Binghamton, NY	137–139	137–139
	Syracuse, NY	130–132	130–132, 136
	White River Jct, VT (A)	057–058	035–037, 050–054, 056–059
	White River Jct, VT (B)	054, 056	
	White River Jct, VT (C)	035–036, 051–053, 059.	
	White River Jct, VT (D)	037, 050	
Allegheny	South Jersey, NJ (A)	080–081	080–081, 082–083
	South Jersey, NJ (B)	082–084	080–081, 082–083
	Johnstown, PA	155, 157	155, 157, 159
	Erie, PA	164–165	164–165
	Williamsport, PA	169, 177	169, 177
	Lehigh Valley, PA	180–181, 183	180–181, 183
	Philadelphia, PA	191–192	190–192
	Southeastern, PA	193–194	189, 193–194
	Wilmington, DE	197–199	197–199
	Columbus, OH (A)	430–431, 433	430–433, 437–438

PROPOSED 3 DIGIT "SCHEME SORT" COMBINATIONS—Continued

Area	Plant name	Proposed 3-digit Zip code	3-digit Zip codes served
New York Metro	Columbus, OH (B)	437–438	430–433, 437–438
	Toledo, OH	434–436	434–436
	Akron, OH	442–443	442–443
	Youngstown, OH	444–445	444–445
	Canton, OH	446–447	446–447
	Cincinnati, OH (A)	410, 470	410, 450–452, 470
	Cincinnati, OH (B)	450–451	410, 450–452, 470
	San Juan, PR	006–009	006–009
	Hackensack, NJ	074, 076	074, 076
	West Jersey, NJ	078–079	078–079
	Trenton, NJ	085–087	085–087
	Kilmer, NJ	077, 088	077, 088–089
	Queens, NY	110, 113–114, 116	110, 113–114, 116
	Mid-Hudson, NY	124–124, 127	124–127

Total Reduction in Separations From Combined 3-Digit Destinations: 166.

III. Periodicals

The classification reform proposal changes the name for second-class mail to Periodicals. Second-class regular rate mail will be split into two subclasses: Publications Service and Regular Periodicals. Preferred second-class mail preparation rules and rates, including those for in-county mail, will not change as a result of the pending classification reform case.

A. General

1. Basic Requirements

The requirements listed below represent no change to current standards governing eligibility for second-class rates.

- Must qualify as General Publication, Requester Publication, Publication of Institution and Society, or Publication of State Department of Agriculture (411.1).
- Must be mailable matter consisting of newspapers and other periodical publications (411.2).
- Must be regularly issued at stated intervals at least four times a year, bear a date of issue, and be numbered consecutively (411.3).
- Must have a known office of publication (411.4).
- Must be formed of printed sheets (411.5).
- No size or weight limits (430).
- Postage must be paid in accordance with (441).
- Must be presorted as prescribed by the Postal Service (442).
- Must be identified as prescribed by the Postal Service (444).
- May have certain attachments and enclosures (443).
- Must file certain information (445).
- May contain enclosures/supplements as prescribed by the Postal Service (446).
- Must be deposited at places and times designated by the Postal Service (451).

2. General Publications

These requirements are the same as current standards for second-class mail:

- Must be for the purpose of disseminating information of a public character, or devoted to literature, the sciences, art, or some special industry (412.2).
- Must have at least 50% paid circulation (412.31).
- Must have a legitimate list of subscribers (412.32).
- Must meet tests to ensure that it is not designed primarily for advertising purposes, including may not have advertising in excess of 75% in more than one-half of its issues during any 12-month period (412.4).

3. Requester Publications

These requirements are the same as current standards for second-class mail:

- Must contain at least 24 pages (413.2).
- Must contain at least 25% nonadvertising (413.31).
- Must meet ownership and control test for advertising purposes (413.32).
- Must have a legitimate list of requesters and at least 50% distribution to requesters (413.41).

4. Publications of Institutions and Societies

These requirements are the same as current standards for second-class mail:

- Must meet General Publications advertising requirements (414.1).
- No non-publisher advertising unless certain conditions meet (414.1, 414.2).
- Published by an institution or society (414.1).

5. Publications of State Departments of Agriculture

These requirements are the same as current standards for second-class mail:

- Issued by a state department of agriculture (415).
- Contains no advertising and further the objectives of the department (415).

6. Foreign Publications

The requirements are the same as current standards for second-class mail including the following:

- Must have same character as domestic periodicals (416).

B. Regular Subclass

1. General Requirements

With the exception of the change in the description of rate categories and the alignment of presort rules with those for Publications Service, as explained below, the requirements for the Regular Periodicals subclass have not changed from those currently applicable to regular second-class mail.

- Must be presorted, marked, and presented as prescribed by the Postal Service (421.1).

—Must meet current requirements in DMM M010, M020, M030, M041, M042, M200, M800, and D200.

- Must meet machinability, addressing, and other preparation requirements prescribed by the Postal Service (421.1).

—Must meet current requirements in DMM A200, A800, C200, and C800.

2. Regular Subclass Pound Rate Category

These requirements are the same as current standards for second-class mail:

- An unzoned pound rate applies to the nonadvertising portion of the publication (421.2).
- A zoned pound rate applies to the advertising portion (421.2).

—Rates are based on nine zones.

3. Regular Piece Rate Categories (421.3)

—Regular piece rate categories include basic, 3- and 5-digit, and carrier route. These proposed categories eliminate the rate levels A, B, and C, making the presortation structure for Periodicals more consistent with other classes. The new 3- and 5-digit rate category replaces the current B3 and B5 rates. Mail presorted to all 3-digit destinations (not just to unique 3-digit destinations) will qualify for the 3- and 5-digit rate. This proposal represents a change from today's regular second-class rate structure.

—Based on industry suggestions, the presort requirements for Regular and Publications Service rates will be aligned, including the elimination of the optional city, SCF, state, and SDC sortations levels. See the Publications Service chart below for additional information on the proposed sortation scheme.

4. Basic Rate Category (421.31)

a. Three- and Five-Digit Rate Category

• Must be presorted to single or multiple 3- and 5-digit ZIP Code destinations as prescribed by the Postal Service (421.32).

—In nonautomation rate mailings, rates apply to pieces in 5-digit and 3-digit packages of six or more addressed pieces each that are correctly sorted to 5-digit or 3-digit sacks.

—In packaged-based automation-rate letter-size mailings, rates apply to pieces in 5-digit packages of 10 or more pieces, and in 3-digit packages of 50 or more pieces that are placed in 5-digit, 3-digit, or AADC trays.

—In barcoded rate flat-size mailings, rates apply to pieces in 5-digit and 3-digit packages of six or more addressed pieces that are sorted to 5-digit, 3-digit, ADC, or SDC sacks.

b. Carrier Route Rate Category

These requirements are the same as current standards for second-class mail:

• Must be presorted to carrier routes as prescribed by the Postal Service (421.33).

—Must prepare packages of six or more addressed pieces each.

5. Regular Subclass Discounts (421.4)

a. Barcoded Letter Discount

These requirements are the same as current standards for second-class mail:

• Must bear a barcode representing not more than 11 digits (not including correction digits) as prescribed by the Postal Service (421.41).

• Must meet the machinability, addressing, and barcoding specifications and other preparation requirements prescribed by the Postal Service (421.41).

b. Barcoded Flats Discounts

These requirements are the same as current standards for second-class mail:

• Must bear a barcode representing not more than 11 digits (not including correction digits) as prescribed by the Postal Service (421.42).

• Must meet flats machinability, addressing, and barcoding specifications and other preparation requirements prescribed by the Postal Service (421.42).

c. High-Density Discount

High density refers to the current 125-piece walk-sequence category as follows:

• Must be presented in walk-sequence order (421.43).

• Must meet high-density and preparation requirements prescribed by the Postal Service (421.43).

d. Saturation Discount

These requirements are the same as current standards for second-class mail:

• Must be presented in walk-sequence order (421.44).

• Must meet the saturation and preparation requirements prescribed by the Postal Service (421.44)

e. Destination Entry Discounts

These requirements are the same as current standards for second-class mail:

• Must be entered at the destinating SCF or DDU (421.45).

• DDU discount applies only to Carrier Route mail (421.45).

f. Nonadvertising Discount

These requirements are the same as current standards for second-class mail including the following:

• A discount applies based on the proportion of nonadvertising content (421.46).

C. Publications Service Subclass

1. General Requirements

There are three primary criteria that must be met in order to mail under Publications Service:

(1) At least 75% of the mailed volume must be paid (for General Publications) or requested (for Requester circulation);

(2) At least 30% of the content in each issue must be nonadvertising matter; and

(3) At least 90% of each issue must be presorted to carrier route, 5-digit, or 3-digit destinations.

Each of these is explained further below. The requirements that periodicals must meet to be eligible to mail at Publications Service rates are based on the entire mailed volume of the publication rather than the entire circulated volume of the publication (circulated volume is that which must be accounted for when a publication is audited for eligibility as Periodicals).

This change was made in response to publishers' requests that the Postal Service concern itself with only the mailed portion of a publication's circulation. ''Mailed volume'' for the purposes of these proposals includes all mailed copies (including mailed newsstand copies) except for those claimed at in-county, foreign, First-Class, Priority Mail, or Express Mail rates.

2. Seventy-Five Percent Paid or Requested Circulation

• At least 75% of the mailed volume must be paid or requested (422.1).

—This differs from current second-class requirements in two ways; it is an increase in the paid/requested requirement from 50% to 75% and it is applied against the mailed volume, not total circulation. Comments on the June 29 notice proposed that publishers provide certification of a publication's compliance with the 75% paid/requested circulation criterion on a per-issue basis. It was suggested that this could be accomplished by the submission of a report of the number of paid/requested recipients on file at the time of the issue's file maintenance update or label run as part of required CPP documentation and a certification block for publisher signature added on each mailing statement. The Postal Service also wants additional comments on a proposal that all mailed newsstand copies (regardless of the number returned or destroyed) be considered paid circulation for the purpose of meeting the 75% criterion. Failure to meet this requirement will result in revocation of Publications Service eligibility.

3. Thirty Percent Nonadvertising Content

• Must have at least 30% nonadvertising content in each issue (mailed volume except in-county rate volume) (422.1).

—The 30% nonadvertising criterion applies to all mailed copies in the mailed volume (this does not include copies mailed at the in-county, foreign, First-class, Priority Mail, or Express Mail rates. Failure to meet the 30% nonadvertising requirement will result in a 40% postage penalty

assessment on the non-complying issue. Despite comments on the June 29 notice, the Postal Service believes that the penalty is more effective if applied to the entire issue rather than only to those copies that fail to meet the 30% requirement. Concerns that a publication could erroneously be assessed the 40% postage penalty due to a miscalculation in the advertising percentage by an outside auditor are obviated by noting that the Postal Service is proposing that an audit be used only to validate compliance with the 75% circulation requirement; the outside auditor will not be responsible for confirming the advertising/editorial ratio. To monitor compliance with the 30% nonadvertising requirement, the Postal Service is considering including on the mailing statement a certification block for signature by publishers, validating that the minimum has been met. If the Postal Service believes that an issue is in excess of 70% advertising, the publisher will be given ample opportunity to demonstrate compliance with the requirement before any postage penalty is assessed. Despite suggestions that the Postal Service allow copies with advertising in excess of 70% to be mailed at the higher third-class or fourth-class bound printed matter rates as an alternative to the entire issue being assessed a 40% penalty, the Postal Service is without authority to consider such options. Current second-class standards restrict publications from being mailed at third- or fourth-class rates, except under limited conditions, and no proposal is being considered to amend this prohibition.

4. Ninety Percent Presorted to Three-Digit Destinations or Finer

• Must have at least 90% of each issue presorted to 3-digit or 5-digit destinations or to carrier routes (mailed volume except in-county rate volume) (422.1).

—Copies count toward the 90% density criterion if they are part of a minimum of 24 pieces to a 3-digit destination all of which are properly presorted in packages of six or more to carrier-route, 5-digit or 3-digit, as appropriate. Failure to meet the 90% presortation requirement will result in a 40% postage penalty assessment on the noncomplying issue. In response to the June 29 notice, it was suggested that the penalty be applied to only those pieces in supplemental mailings that cause the issue's presort percentage to fall below 90%, but not lower than 85%. Although the Postal Service acknowledges publishers' needs for flexibility in distribution, it believes that the currently proposed method for calculating the 90% standard is adequately flexible. Moreover, the implementation of a conditioned percentage adds an additional level of administrative complexity where the opposite is sought. The following chart further explains this requirement.

Sort level	Publications 90% criterion						
	Zip codes						
	102	202	302	402	502	602	Total
Carrier Route	6	0	18	12	6	124	166
5-Digit	6	6	34	40	56	124	266
3-Digit	18	17	28	2	8	75	148
Total	30	23	80	54	70	323	580
Quantity Toward 90%	30	0	80	52	70	323	555
							95.69

In this example the 23 pieces to ZIP 202 do not count toward the 90% requirement because there are fewer than 24 pieces to the 3-digit destination. Two of the pieces to ZIP Code 402 do not count because they are not part of a package of six or more. Note that, because carrier route is an optional sortation level, the customer may choose to move four pieces from the carrier route qualifying portion to the 3-digit level to meet the six-piece minimum (this assumes that the finest level of sort for those four pieces is 3-digit and not part of the 5-digit).

—Although firm packages will continue to be considered a single addressed piece for presort and postage purposes all copies in firm packages of six or more and all copies in firm packages of fewer than six that are included in packages of six or more will count toward meeting the 90% presortation criterion.

—For the purposes of the 90% criterion, an ''issue'' is considered to consist of all copies in the mailed volume that are mailed with that ''window'' of time during which the main file and most supplemental mailings for a particular title are deposited with the Postal Service. The mailing ''window'' includes all copies, regardless of cover date, which are mailed between cover dates. To ensure that the entire mailed volume of a publication is considered, the Postal Service continues to believe that all mailings, including ''supplementals,'' be counted. Moreover, to avoid inequitable situations, the same basic definition of a ''window'' will be applied to all publications and not ''negotiated'' with the publisher as one commenter on the June 29 notice suggested.

—For example, the first copy of the January cover date of *XYZ Monthly* mails on January 1st, and the first copy of the February cover date mails on February 1st. During January the ''issue'' might include the full main file of the January cover date, at least one supplemental run of the January cover date, at least one supplemental run of the December cover date, and possibly even a supplemental run of the November cover date. (See the chart in the June 29 notice for an illustration.)

—In a comailing situation—for administering the 90% criterion, the Postal Service proposes to look at what happened to the individual title within the comailing. In other words, the qualifying pieces in the comailing are added to the qualifying pieces in the main file and any qualifying pieces in supplemental runs that were not comailed and the final qualifying percentage is derived by dividing the total number of qualifying pieces by the total number of mailed pieces. The group of pieces reported on each individual PS Form 3541 will not have to meet the 90% criterion.

—Publications Service titles may be comailed with Regular Periodicals. If a decision is made not to align the presort requirements in Regular Periodicals with that of Publications Service, if Publications Service and Regular Periodicals are comailed, the

entire comailing is to be prepared using the Publications Service sortation criteria.

—In a comailing, penalties apply to the publication that fails to meet the requirements, not to those with which it is comailed.

• Must be presorted, marked, and presented as prescribed by the Postal Service (422.1).

—Barcoded letter mail must be prepared in trays.

—Flats must be packaged if there are six or more pieces to a 5-digit area, to a 3-digit area, or to an ADC; with remaining mail in mixed-ADC packages. Packages may be placed on pallets or in 5-digit, 3-digit, ADC, and mixed-ADC sacks. Flats may be optionally packaged to carrier route when there are six or more pieces per carrier route. Carrier route packages may be placed on pallets or in carrier route sacks or in 5-digit carrier route sacks.

—The charts at the end of this section further describe the presort requirements:

—Barcoded tray or sack labels (as specified in DMM M032) must be used. The Postal Service plans to make this requirement effective at the time when classification reform is implemented.

—Scheduling of deposit times is required. The Postal Service does not intend this to mean a specific appointment will be required unless under an existing program.

—Must use Presort Accuracy Verification and Evaluation (PAVE) software or provide standardized documentation. Regardless of future capabilities of PAVE, the current proposal applies to only to use in producing standardized documentation in support of the mailing statement.

—Mailings must be entered at an acceptance point designated by the Postal Service. This requirement is the same as current standards for second-class mail.

• Must meet the machinability, addressing, barcoding, postage payment, containerization, and other preparation requirements prescribed by the Postal Service (422.1).

—For non-automation compatible, non-carrier route rate mail, must use a certified process to verify the accuracy of mailing lists against USPS 5-digit ZIP Code file at least once a year.

—A recommended checklist of possible ZIP Code verification options for address lists that are not computerized could be signed as a part of the verification process. Items to appear on the checklist might include manual verification, using the most recent ZIP Code directory, a survey of the people currently in the address list to inquire about changes to ZIP Code information, participation in the current manual list correction service, and turning the list over to someone else to verify, and use of approved software.

—For automation-compatible pieces other than carrier route rate flats, must use Coding Accuracy Support System (CASS)-certified software within 6 months of date of mailing or use Multiline Accuracy Support System (MASS)-certified equipment to apply the barcode. This simply changes the current requirement for use of such software from within 1 year of mailing to within 6 months of mailing.

—Must match addresses to current CRIS file using certified software within 90 days of mailing for carrier route rate mail.

—Must use uniform address element placement. Uniform address element placement refers to the positioning of elements within the address block, not the placement of the address on the piece itself. Although this requirement will apply to non-barcoded pieces only, the Postal Service strongly recommends that all mailpieces contain an address that meets these standards.

—Must use Address Change Service (ACS).

—Must use computer-based electronic payment systems when those systems are developed. Electronic payment systems will not be required in the final rule but will be strongly recommended. These systems or their data exchange formats have not yet been defined.

—New containerization requirements will be developed with mailers. For the purposes of this rulemaking, palletized sacks or packages (palletized trays for letter mail) will be the preferred method of containerization; sacks may also be used.

• Must bear a barcode representing not more than 11 digits (not including correction digits) on automation-compatible pieces other than carrier-route rate flats as prescribed by the Postal Service (422.1).

—If a mailpiece meets all machinable requirements, every piece (other than the carrier route flat qualifying portion) must be barcoded. All pieces must bear at least a 5-digit barcode, and no less than 85% of the pieces must bear a ZIP+4 or delivery point barcode. If a piece is not machinable, barcoding is not required. The Postal Service will include the carrier route portion of Publications Service mail when determining compliance with the 85% criterion. The criterion will be determined based on addressed pieces, not copies. The barcoding requirement pertains only to machinable mail, i.e., mail that meets all the current DMM standards for automation compatibility (see DMM C810 and C820); nonmachinable pieces and carrier route rate mail do not have to bear barcodes. The 85% criterion will be applied to the entire mailed volume of the issue, regardless of the source(s) of that volume. Documentation can be required to support compliance.

—Barcodes are defined by the current requirements in DMM C840.

—Automation-compatibility is defined by the current requirements in DMM C810 for letters, and those in DMM C820 for flats.

—Must use a certified system or software to determine and document advertising and editorial percentages in each edition/issue when available.

—The Postal Service does not plan to require use of a certified system to audit advertising/nonadvertising percentages in these implementation rules. When such systems are developed in the future, and the Postal Service has reason to believe that they will be, the Postal Service expects to propose their use in a future rulemaking.

• Must have a legitimate list of subscribers or requesters (422.1). (This requirement is the same as the current standard for second-class mail.)

• Must be audited by a CPA or a national circulation audit service as prescribed by the Postal Service (422.1).

• Must be authorized to mail at Publications Service rates and, if so authorized, may mail only at Publications Service and in-county rates (483).

—There will be an application process for authorization to mail in Publications Service with a proposed application fee of $305. The application process has yet to be developed; however, it is expected to be similar to the current second-class procedures. A publisher will first have to show that the basic requirements for entry into Periodicals have been met (such as frequency of issue etc.). Then, compliance with the additional Publications Service criteria must be shown.

• If a Publications Service authorization is withdrawn or revoked, a new authorization may not be issued for 1 year (483).

5. Publications Service Pound Rate Category

• A zoned pound rate applies to the entire publication (422.3). (This differs from current second-class because only the advertising content of the publication is zone rated.)

• Rates apply to five zones. (This differs in that current second-class and Regular Periodicals have nine zones.)

6. Publications Service Piece Rate Categories (422.4)

7. Basic Rate Category (422.41)

8. Carrier Route Rate Category

• Applies to mail prepared and presorted to carrier routes as prescribed by the Postal Service (422.42).

—Carrier route mail must be prepared in line-of-travel sequence.

—This is not exact walk-sequence arrangement of the mailpieces. For line-of-travel sequence, the mailpieces are first sorted into the sequence in which the ZIP+4 codes are delivered by the carrier. They are further sorted into ascending or descending numerical sequence within the number range associated with the ZIP+4 code.

9. Destination Entry Discounts

• Applies to mail entered at the destination SCF or DDU (422.5).

• DDU discount applies only to Carrier Route mail (422.5).

III–1.—PERIODICALS (REGULAR AND PUBLICATIONS SERVICE SUBCLASSES)—LETTERS

Sort level	Optional/required	Package minimum	Tray level	Regular rate	Publications service rate
Carrier Route	Optional	10 pieces per route	Carrier Route (full, no overflow).	Carrier Route	Publications Service Carrier Route.
Carrier Route	Optional	10 pieces per route	5-Digit Carrier Routes (no minimum).	Carrier Route	Publications Service Carrier Route.
5-Digit	Optional	N/A	5-Digit (full, no overflow allowed).	3/5-Digit	Publications Services Carrier Route.
3-Digit	Required	N/A	3-Digit (full, overflow allowed).	3/5-Digit	Publications Service.
AADC	Required	N/A	AADC (full, overflow allowed).	Basic	Publications Services.
Mixed AADC	Required	No minimum AADC Sequence (with separations).	Mixed AADC (no mimimum).	Basic	Publications Service.

III–2.—PERIODICALS (REGULAR AND PUBLICATIONS SERVICE SUBCLASSES)—FLATS

Sort level	Optional/required	Package minimum	Sack level	Regular rate	Publications service rate
Firm	Optional	2 copies		Carrier Route	Publications Service or Publications Service Carrier Route, based on further packaging and sacking.
Carrier Route	Optional	6 pieces per route.	Carrier Route (minimum one 6-piece package required if 24 or more pieces).	Carrier Route	Publications Service Carrier Route.
Carrier Route	Optional	6 pieces per route.	5-Digit Carrier Routes (no minimum).	Carrier Route	Publications Service Carrier Route.
5-Digit	Required	6 pieces	5-Digit (minimum one 6-piece package required if 24 or more pieces).	3/5-Digit	Publications Service.
3-Digit	Required	6 pieces	3-Digit (minimum one 6-piece package required if 24 or more pieces).	3/5-Digit	Publications Service.
ADC	Required	6 pieces (fewer permitted).	ADC (minimum one 6-piece package required if 24 or more pieces).	Basic	Publications Service.
Mixed ADC	Required	No minimum	Mixed ADC (no minimum)	Basic	Publications Service.

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