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Wednesday
July 3, 1996

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

WASHINGTON, DC

[Two Sessions]

WHEN: July 9, 1996 at 9:00 am, and
July 23, 1996 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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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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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 530, 531, 534, 550, 575, 581, 582, and 630

RIN 3206–AH09

Pay Under the General Schedule; Termination of Interim Geographic Adjustments

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations to implement the termination of interim geographic adjustments (IGA's) payable to certain Federal employees. The IGA's were terminated because the locality-based comparability payments the President authorized for January 1996 exceeded 8 percent in both of the two remaining IGA areas (New York-Northern New Jersey-Long Island, NY–NJ–CT–PA, and Los Angeles-Riverside-Orange County, CA).

EFFECTIVE DATE: August 2, 1996.

FOR FURTHER INFORMATION CONTACT: Jeanne D. Jacobson, (202) 606–2858 or FAX: (202) 606–0824.

SUPPLEMENTARY INFORMATION: On February 1, 1996, the Office of Personnel Management (OPM) published interim regulations (61 FR 3539) to implement the termination of IGA's. IGA's were terminated because the locality-based comparability payments the President authorized for January 1996 exceeded 8 percent in both of the two remaining IGA areas (New York-Northern New Jersey-Long Island, NY–NJ–CT–PA, and Los Angeles-Riverside-Orange County, CA).

The President's alternative pay plan of August 31, 1995, provided an 8.05-percent comparability payment for the New York-Northern New Jersey-Long Island, NY–NJ–CT–PA, locality pay area and an 8.15-percent comparability payment for the Los Angeles-Riverside-Orange County, CA, locality pay area for 1996. Since the comparability payments exceeded the 8-percent IGA previously established for these areas, the President's Executive Order 12984 of December 28, 1995, included no IGA pay schedules. This had the effect of terminating the IGA's for the New York and Los Angeles IGA areas. (Executive Order 12944 of December 29, 1994, previously terminated IGA's for the San Francisco-Oakland-San Jose, CA IGA area because the comparability payment for that area exceeded 8 percent in January 1995.)

As a result of the termination of IGA's, the interim rule removed 5 CFR part 531, subpart A, ''Interim Geographic Adjustments.'' However, because some employees in the former IGA areas will continue to receive ''continued rates of pay'' (a form of saved pay established in January 1994 for employees who previously received an IGA on top of a worldwide or nationwide special rate), the provisions previously found in subpart A concerning the administration of continued rates of pay were retained in a new subpart G of part 531. The interim regulations also made conforming changes in other parts of the regulations to reflect the termination of IGA's.

The 60-day comment period for the interim regulations ended on April 1, 1996. OPM received comments by telephone from one agency asking for clarification of 5 CFR 531.703(i). Section 531.703(i) provides that an employee's entitlement to a continued rate of pay is not affected by a temporary promotion or temporary reassignment. The agency felt this provision could be interpreted incorrectly to provide entitlement to continued pay during temporary promotions or reassignments when such assignments involve one of the actions that ordinarily terminate continued pay, such as when an employee's official duty station is no longer located in one of the IGA areas. OPM agrees.

We have revised 5 CFR 531.703(i) in the final regulations to provide that an employee's entitlement to a continued rate of pay is not affected by a temporary promotion or temporary reassignment, unless such assignments cause one of the conditions in 5 CFR 531.703(g) to be satisfied. In such situations, the continued rate is suspended during the temporary promotion or reassignment. The employee's entitlement to the continued rate resumes as if never interrupted upon return to his or her permanent position, as long as the employee is otherwise eligible to receive that rate. A continued rate that is resumed must include any pay adjustments authorized for the permanent position during the period of the temporary promotion or reassignment, as provided in 5 CFR 531.703(e).

This revision is the only change being made in the interim regulations. All other provisions of the interim regulations are adopted as final.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Parts 530, 531, 534, 550, 575, 581, 582, and 630

Administrative practice and procedure, Alimony, Child support, Claims, Government employees, Hospitals, Law enforcement officers, Reporting and recordkeeping requirements, Students, and Wages.

Office of Personnel Management.

James B. King,

Director.

Accordingly, the interim rule amending parts 530, 531, 534, 550, 575, 581, 582, and 630 of title 5, Code of Federal Regulations, which was published at 61 FR 3539 on February 1, 1996, is adopted as final with the following change:

PART 531—PAY UNDER THE GENERAL SCHEDULE

1. The authority citation for part 531 continues to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103–89, 107 Stat. 981 and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2);

Subpart C also issued under 5 U.S.C. 5304, 5305, and 5553; sections 302 and 404 of FEPCA, Pub. L. 101–509, 104 Stat. 1462 and 1466; and section 3(7) of Pub. L. 102–378, 106 Stat. 1356;

Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336;

Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553; and E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682;

Subpart G also issued under 5 U.S.C. 5304, 5305, and 5553; section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), Pub. L. 101–509, 104 Stat. 1462; and E.O. 12786, 56 FR 67453, 3 CFR, 1991 Comp., p. 376.

Subpart G—Continued Rates of Pay

2. In § 531.703, paragraph (i) is revised to read as follows:

§ 531.703 Administration of continued rates of pay.

* * * * *

(i) An employee's entitlement to a continued rate of pay is not affected by a temporary promotion or temporary reassignment, except that a continued rate shall be suspended when a temporary promotion or reassignment causes one of the conditions in paragraph (g) of this section to be satisfied. In such situations, an employee's entitlement to continued pay will resume as if never interrupted upon return to the permanent position, subject to the requirements of this subpart. A continued rate that is resumed shall include any pay adjustments that were authorized for the permanent position under paragraph (e) of this section during the period of the temporary promotion or reassignment.

[FR Doc. 96–16942 Filed 7–2–96; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 868

RIN 0580–AA47

Fees for Rice Inspection

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS), of the Grain Inspection, Packers and Stockyards Administration (GIPSA) is increasing the fees for Federal Rice Inspection Services, as performed under the Agricultural Marketing Act (AMA) of 1946. This fee increase is intended to cover, as nearly as practicable, the projected operating costs, including related supervisory and administrative costs, for Federal Rice Inspection Services rendered and to generate sufficient revenues to cover costs and maintain an appropriate operating reserve.

EFFECTIVE DATE: August 2, 1996.

FOR FURTHER INFORMATION CONTACT: George Wollam, USDA–GIPSA, Room 0623—South Building, 1400 Independence Avenue, SW, Washington, D.C., 20090–6454, telephone (202) 720–0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. This increase in the service fees is necessary to recover operating losses in the Federal Rice Inspection Services. These fees were last increased on January 1, 1995 56 FR 15483), but revenue is still not covering operating costs. The overall cost of operating the Federal Rice Inspection Service program increased between fiscal years (FY) 1994 and 1995 by more than 6 percent. In FY 1955, the program generated revenue of $3,982,744 with operating costs of $4,274,733, resulting in a 1-year operating loss of $291,990.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to provisions of this rule.

Effect on Small Entities

James R. Baker, Administrator, GIPSA, has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the rice inspection services do not meet the requirements for small entities. In addition, GIPSA is required by statute to recover the costs of providing rice inspection services.

Information Collection and Record Keeping Requirements

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements concerning applications for official inspection services, including rice inspections, have been approved by the Office of Management and Budget under control number 0580–0013.

Background

On January 11, 1996, FGIS proposed in the Federal Register (61 FR 1013) to increase fees charged for Federal Rice Inspection Services. The rice inspection fees were last amended on January 1, 1995 (56 FR 15483). They presently appear in § 868.91 in Tables 1 and 2 of the regulations (7 CFR 868.91 (Tables 1 and 2)). Since publication of the proposed rule, FY 96 cost and revenue information has become available and has been included in the discussion herein.

FGIS continually monitors its cost, revenue, and operating reserve levels to ensure that there are sufficient resources for operations. During FYs 1993, 1994, and 1995, respectively, FGIS implemented cost-saving measures in an effort to provide more cost effective services. However, while the quantity of rice inspections may fluctuate, certain FGIS costs remain constant. Consequently, revenues ($3,758,893; $3,500,597; $3,982,744) did not cover operating costs ($3,847,762; $4,022,194; and $4,274,733) for FYs 1993, 1994, and 1995, respectively. This reflects a reduction in operating reserves for all three fiscal years.

At the time of the publication of the proposed rule, FY 94 offered the most current 1-year figures available to compare FGIS' rice inspection operating costs with revenue. The figures for this year were used to project the budgeted FY 95 rice inspection operating costs and establish revenue levels necessary to cover projected operating costs. During the period of October 1, 1994, to July 31, 1995, the actual operating cost was $3,760,305 and revenue was $3,438,683, resulting in a reduction in operating reserves of $321,667.

Since the publication of the proposed rule, FY 95 offers the most current 1-year figures available to compare FGIS' rice inspection operating costs with revenue. The figures for FY 95 used to project the budgeted FY 96 rice inspection operating costs and establish revenue levels necessary to cover those projected costs confirms the trend toward reducing operating reserves. From October 1, 1994, to September 30, 1995, the actual operating cost was $4,274,733 and revenue was $3,982,744, resulting in a reduction in operating reserves of $291,990.

The trend, as reflected in FY 94 to FY 95 data, is expected to continue. This overall trend necessitates an increase in fees and an increase to the per-hundredweight volume charge for services performed at export port locations on lots at rest in order to recover the projected operating costs and maintain

a 3-month operating reserve. As of September 30, 1995, the reserve was at a level of negative $1,089,741.

In fiscal year 1995, FGIS reduced costs to the rice program by closing and/or reducing field offices to suboffices. Two field offices were reduced to suboffices and one field office was closed entirely. The estimated savings from these measures is $220,000 over two years. FGIS believes that actions taken to this point represent an appropriate balance between running an efficient operation and providing a high level of service to our customers. However, we will continue to seek out further cost savings that do not compromise our service. In addition, numerous talks were held with rice industry trade groups outlining FGIS' intention of increasing fees. Industry realized the need for the increase.

Alternatives Considered

FGIS considered several options to the final fees. It considered: (1) a straight 14 percent increase in fees and (2) reforming the current system of fees to gather revenue in a manner less dependent upon seasonal shifts, and (3) incremental increases of fees. The third alternative was selected. It was decided to propose three incremental six percent fee increases, the first increase to be implemented May 1, 1996, second on January 1, 1997, and third on January 1, 1998. This alternative was selected for several reasons: the negative balance in retained earnings requires the increases be implemented in a more timely manner; the trade is familiar with incremental increases and incremental increases allows the rice industry time to adjust their operations to the increased fees. We will propose the second option at a later date when we have had a chance to evaluate the operation of a current proposal to reform the Grain Inspection and Weighing. That proposal, under the United States Grain Standards Act will change the methodology in fee collection from the current system, an hourly rate basis, to a combination of reduced hourly rates, more contract options, and per metric ton administrative charge to recover obligations.

Comment Review

FGIS received no comments during the 30-day comment period.

Final Action

Section 203 of the AMA (7 U.S.C. 1622) provides for the establishment and collection of fees that are reasonable and, as nearly as practicable, cover the costs of the services rendered. These fees cover the FGIS administrative and supervisory costs for the performance of official services, including personnel compensation, personnel benefits, travel, rent, communications, utilities, contractual services, supplies, and equipment.

Section 868.91, Tables 1 and 2 (as currently shown in section 868.91, Tables 1 and 2 of the regulations), are revised to provide for the increase in rice inspection fees. A 3-stage increase plan to raise hourly rates and unit fees by approximately 6 percent per year for calendar years 1996, 1997, and 1998 is implemented. These incremental increases will lessen the impact of the amount of increase required to replenish retained earnings to appropriate levels.

FGIS will review its costs, revenue, and operating reserve levels to ensure that the fee increases scheduled for calendar years 1997 and 1998 are required at the levels specified. FGIS, as the fee increases are implemented, will review the level of the operational reserve and if available funds exceed what is needed to maintain a reasonable reserve, we will consider proposing a reduction in fees. In the event that a change in the fees appears necessary, FGIS will engage in rulemaking before making any changes.

List of Subjects in 7 CFR Part 868

Administrative practice and procedure, Agricultural commodities.

For reasons set out in the preamble, 7 CFR Part 868 is amended as follows:

PART 868—GENERAL REGULATIONS AND STANDARDS FOR CERTAIN AGRICULTURAL COMMODITIES

1. The authority citation for Part 868 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 et. seq.)

2. Section 868.91 is revised to read as follows:

§ 868.91 Fees for Certain Federal Rice Inspection Services.

The fees shown in Tables 1 and 2 apply to Federal Rice Inspection Services.

TABLE 1.—HOURLY RATES/UNIT RATE PER CWT

[Fees for Federal Rice Inspection Services]

Service [1]	Regular Workday (Monday–Saturday)	Nonregular Workday (Sunday–Holiday)
Effective August 2, 1996		
Contract (per hour per Service representative)	$35.80	$49.80
Noncontract (per hour per Service representative)	43.50	60.50
Export Port Services [2]	.042/CWT	.042/CWT
Effective January 1, 1997		
Contract (per hour per Service representative)	37.90	52.80
Noncontract (per hour per Service representative)	46.10	64.10
Export Port Services [2]	.045/CWT	.045/CWT
Effective January 1, 1998		
Contract (per hour per Service representative)	40.20	56.00
Noncontract (per hour per Service representative)	48.90	67.90
Export Port Services [2]	.048/CWT	.048/CWT

[1] Original and appeal inspection services include: Sampling, grading, weighing, and other services requested by the applicant when performed at the applicant's facility.

[2] Services performed at export port locations on lots at rest.

TABLE 2.—UNIT RATES

Service [1] [3]	Rough rice	Brown rice for processing	Milled rice
Effective August 2, 1996			
Inspection for quality (per lot, sublot, or sample inspection)	$29.20	$25.30	$18.00
Factor analysis for any single factor (per factor):			
(a) Milling yield (per sample)	22.70	22.70	.....
(b) All other factors (per factor)	10.80	10.80	10.80
Total oil and free fatty acid	.....	35.40	35.40
Interpretive line samples:[2]	.....	.....	.....
(a) Milling degree (per set)	.....	.....	75.80
(b) Parboiled light (per sample)	.....	.....	19.00
Extra copies of certificates (per copy)	3.00	3.00	3.00
Effective January 1, 1997			
Inspection for quality (per lot, sublot, or sample inspection)	31.00	26.80	19.10
Factor analysis for any single factor (per factor):			
(a) Milling yield (per sample)	24.10	24.10	.....
(b) All other factors (per factor)	17.40	11.40	11.40
Total oil and free fatty acid	.....	37.50	37.50
Interpretive line samples: [2]	.....	.....	.....
(a) Milling degree (per set)	.....	.....	80.30
(b) Parboiled light (per sample)	.....	.....	20.10
Extra copies of certificates (per copy)	3.00	3.00	3.00
Effective January 1, 1998			
Inspection for quality (per lot, sublot, or sample inspection)	32.90	28.40	20.20
Factor analysis for any single factor (per factor):			
(a) Milling yield (per sample)	25.50	25.50	.....
(b) All other factors per factor):	12.10	12.10	12.10
Total oil and free fatty acid	.....	39.80	39.80
Interpretive line samples: [2]			
(a) Milling degree (per set)	.....	.....	85.10
(b) Parboiled light (per sample)	.....	.....	21.30
Extra copies of certificates (per copy)	3.00	3.00	3.00

[1] Fees apply to determinations (original or appeals) for kind, class, grade, factor analysis, equal to type, milling yield, or any other quality designation as defined in the U.S. Standards for Rice or applicable instructions, whether performed singly or in combination at other than at the applicant's facility.

[2] Interpretive line samples may be purchased from the U.S. Department of Agriculture, Grain Inspection, Packers and Stockyards Administration; Technical Services Division; Board of Appeals and Review; FGIS Technical Center, 10383 North Executive Hills Boulevard, Kansas City, MO 64153–1394. Interpretive line samples also are available for examination at selected FGIS field offices. A list of field offices may be obtained from the Deputy Director, Field Management Division, USDA, GIPSA, FGIS, P.O. Box 96454, Washington, DC 20090–6454. The interpretive line samples illustrate the lower limit for milling degrees only and the color limit for the factor ''Parboiled Light'' rice.

[3] Fees for other services not referenced in Table 2 will be based on the noncontract hourly rate listed in Section 868.90, Table 1.

Dated: June 27, 1996.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 96–16993 Filed 7–2–96; 8:45 am]

BILLING CODE 3410–EN–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–127; Special Conditions No. 25–ANM–117]

Special Conditions: Cessna Model 500, 550, and S550 Airplanes; High-Intensity Radiated Fields

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Cessna Model 500, 550, and S550 airplanes. These airplanes, as modified by Columbia Avionics, Inc., utilize new avionics/electronic systems, such as an electronic flight information system (EFIS), which perform critical functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is June 20, 1996. Comments must be received on or before August 2, 1996.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–127, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM–127. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (206) 227–2145; facsimile (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the

regulatory docket and special condition number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NM–127.'' The postcard will be date stamped and returned to the commenter.

Background

On April 8, 1996, Columbia Avionics, 11200 Airport Road, Columbia, MO 65201, applied for a Supplemental Type Certificate (STC) to modify Cessna 500, 550, and S550 airplanes to incorporate the installation of an electronic flight instrument system (EFIS). The airplanes are pressurized, executive transport airplanes powered by two fuselage-mounted turbofan engines.

Supplemental Type Certification Basis

Under the provisions of § 21.101 of 14 CFR part 21, Columbia Avionics must show that the modified Cessna 500, 550, and S550 airplanes continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate A22CE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in TC A22CE include the following for the Cessna 500, 550 and S550 series: 14 CFR part 25, dated February 1, 1965, as amended by Amendments 25–1 through 25–17, and §§ 25.934 and 25.1091(d)(2), as amended through Amendment 25–23. In addition, under § 21.101(b)(1), the following regulations apply to the EFIS installation: §§ 25.1303, 25.1305, and 25.1322, as amended by Amendment 25–38; §§ 25.1309, 25.1321 (a), (b), (d), and (e), 25.1331, 25.1333, and 25.1335, as amended by Amendment 25–41; and § 25.1316, as amended by Amendment 25–80. These special conditions form an additional part of the type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Cessna Model 500, 550, and S550 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with 14 CFR § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Cessna Model 500, 550, and S550 airplanes incorporate new avionics/electronic systems, such as the electronic flight instrument system (EFIS), that perform critical functions. These systems may be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, a special condition is needed for the Cessna Model 500, 550, and S550, as modified by Columbia Avionics, which requires that new electrical and electronic systems, such as the EFIS, that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the EFIS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 OR 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz–2 MHz	70	70
2 MHz–30 MHz	200	200
30 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1 GHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

As discussed above, these special conditions are applicable to the Cessna Model 500, 550, and S550 airplanes, as modified by Columbia Avionics, Inc. Should Columbia Avionics apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A22CE to incorporate the same novel or unusual design feature, this special condition would apply to that model as well, under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain design features on the Cessna Model 500, 550, and S550 airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA

for approval of these features on the airplane.

The substance of the special conditions for this airplane has been subject to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for this special condition is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Cessna Model 500, 550, and S550 airplanes, as modified by Columbia Avionics, Inc.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of this special condition, the following definition applies: *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, in June 20, 1996.

Gary L. Killion,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 96–16959 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 95–NM–253–AD; Amendment 39–9675; AD 96–13–07]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, that currently requires supplemental structural inspections to detect fatigue cracks, and repair or replacement, as necessary, to ensure the continued airworthiness of these airplanes. This amendment adds and revises certain significant structural items for which inspection and repair or replacement is necessary. This amendment is prompted by a structural re-evaluation conducted by the manufacturer, which identified additional structural elements where fatigue damage is likely to occur. The actions specified by this AD are intended to prevent reduced structural integrity of these airplanes.

DATES: Effective August 6, 1996.

The incorporation by reference of Fokker SIP Product Support Document 27438, Part 1, including revisions up through August 1, 1995, as listed in the regulations is approved by the Director of the Federal Register as of August 6, 1996.

The incorporation by reference of Fokker SIP Document 27438, Part 1, including revisions up through November 1, 1991, as listed in the regulations, was approved previously by the Director of the Federal Register as of October 21, 1992 (57 FR 42693).

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth E. Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1721; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 92–19–07, amendment 39–8365 (57 FR 42693, September 16, 1992), which is applicable to all Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, was published in the Federal Register on April 10, 1996 (61 FR 15906). The action proposed to supersede AD 92–19–07 to continue to require a program of supplemental structural inspections (SIP) to detect fatigue cracks, and repair or replacement, as necessary. The action also proposed to add and revise certain significant structural items (SSI) for which inspection and repair or replacement is necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

Support for the Proposal

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with as proposed.

Cost Impact

There are approximately 34 Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 92–19–07 take approximately 295 work hours per airplane per year to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators relative to the requirements of the previously-issued AD that are retained in this new AD action is estimated to be $601,800, or $17,700 per airplane, annually.

The new actions that are required by this new AD action will take approximately 179 additional work hours per airplane per year to accomplish, at an average labor rate of

$60 per work hour. These actions include the implementation of the inspections, repairs, or replacements specified in the revisions to the SIP Document into an operator's maintenance program; as well as removal, inspection, and installation of structure. Based on these figures, the cost impact on U.S. operators relative to the new requirements of this AD is estimated to be $365,160, or $10,740 per airplane, the first year and annually thereafter.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8365 (57 FR 42693, September 16, 1992), and by adding a new airworthiness directive (AD), amendment 39–9675, to read as follows:

96–13–07 Fokker: Amendment 39–9675. Docket 95–NM–253–AD. Supersedes AD 92–19–07, Amendment 39–8365.

Applicability: All Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise 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 request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of these airplanes, accomplish the following:

Note 2: Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2120–0056.

(a) Within 6 months after October 21, 1992 (the effective date of AD 92–19–07, amendment 39–8365), incorporate into the FAA-approved maintenance program the inspections, inspection intervals, repairs, or replacements defined in Fokker Structural Integrity Program (SIP) Document 27438, Part 1, including revisions up through November 1, 1991; and inspect, repair, and replace, as applicable. The non-destructive inspection techniques referenced in the SIP Document provide acceptable methods for accomplishing the inspections required by this AD. If any cracking is detected, inspection results must be reported to Fokker in accordance with the instructions of the SIP Document.

(b) Within 6 months after the effective date of this AD, incorporate into the FAA-approved maintenance program the inspections, inspection intervals, repairs, or replacements defined in Fokker SIP Product Support Document 27438, Part 1, including revisions up through August 1, 1995; and inspect, repair, and replace, as applicable. The non-destructive inspection techniques referenced in the SIP Document provide acceptable methods for accomplishing the inspections required by this AD. If any cracking is detected, inspection results must be reported to Fokker in accordance with the instructions of the SIP Document.

(c) Cracked structure detected during the inspections required by paragraph (a) or (b) of this AD must be repaired or replaced, prior to further flight, in accordance with the instructions in Fokker SIP Document 27438, Part 1, including revisions up through November 1, 1991; or Fokker SIP Product Support Document 27438, Part 1, including revisions up through August 1, 1995; respectively; or in accordance with other data meeting the certification basis of the airplane which is approved by the FAA or by the Rijksluchtvaartdienst (RLD).

(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, Standardization Branch, ANM–113, 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, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(f) Certain of the actions shall be done in accordance with Fokker SIP Document 27438, Part 1, including revisions up through November 1, 1991. The incorporation by reference of that document was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of October 21, 1992 (57 FR 42693). Certain other actions shall be done in accordance with Fokker SIP Product Support Document 27438, Part 1, including revisions up through August 1, 1995. The incorporation by reference of this document was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of either document may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on August 6, 1996.

Issued in Renton, Washington, on June 13, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–15600 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–AWP–38]

Establishment of Class D and E Airspace Areas; Saipan Island, CQ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes Class D and Class E airspace areas at the Saipan International Airport, Saipan Island, CQ (Northern Mariana Islands). Due to the commissioning of an air traffic control tower (ATCT) at the airport, Class D airspace is necessary to require pilots to establish two-way radio communication prior to entering the airspace. This action establishes a Class E airspace area at Saipan Island, CQ, to provide adequate controlled airspace for aircraft executing instrument approach operations at Saipan International Airport.

EFFECTIVE DATE: 0901 UTC, October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On December 22, 1995, the FAA proposed to amend Title 14 of the Code of Federal Regulations part 71 (14 CFR part 71) to establish Class D and E airspace areas at Saipan Island, CQ (60 FR 66529). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Class D and E airspace designations are published in paragraphs 5000 and 6004, respectively, of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in this Order.

The Rule

This amendment to 14 CFR part 71 establishes Class D and E airspace areas at Saipan Island, CQ. Due to the commissioning of an ATCT at the airport, Class D airspace is necessary to require pilots to establish two-way radio communication prior to entering the airspace. The FAA is establishing a Class E airspace area to provide adequate controlled airspace for aircraft executing instrument approach operations at Saipan International Airport.

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

Because these amendments involve, in part, the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AWP CQ D Saipan Island, CQ [New]

Saipan International Airport, CQ
(Lat. 15°07′08″N, long. 145°43′46″E)
Saipan RBN
(Lat. 15°06′41″N, long. 145°42′37″E)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.3-mile radius of Saipan International Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory, Pacific Chart Supplement.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area.

* * * * *

AWP CQ E4 Saipan Island, CQ [New]

Saipan International Airport, CQ
(Lat. 15°07′08″N, long. 145°43′46″E)
Saipan RBN
(Lat. 15°06′41″N, long. 145°42′37″E)

That airspace extending upward from the surface within a 4.3-mile radius of Saipan International Airport and within 2.6 miles each side of the Saipan RBN 264° bearing, extending from the 4.3-mile radius to 7.4 miles west of the Saipan RBN and within 1.8 miles each side of the Saipan RBN 248° radial, extending from the 4.3-mile radius to 7.4 miles west of the Saipan RBN and within 1.8 miles each side of the Saipan RBN 068° radial, extending from the 4.3-mile radius to 6.5 miles east of the Saipan International Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory, Pacific Chart Supplement.

* * * * *

Issued in Washington, DC, on June 25, 1996.

Nancy B. Kalinowski,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 96–17037 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 71

[Airspace Docket No. 94–ASW–10]

Alteration of Jet Route J–66

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule alters Jet Route J–66 from the Dallas-Fort Worth, TX, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC), via the Bonham, TX, VORTAC, to the Little Rock, AR, VORTAC. Altering J–66 enhances the flow of air traffic, simplifies routings in the northeast vicinity of the Dallas-Fort Worth metroplex area, and reduces controller and pilot workload.

EFFECTIVE DATE: 0901 UTC, October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Bil Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On March 28, 1995, the FAA proposed to amend Title 14 of the Code of Federal Regulations part 71 (14 CFR part 71) to alter J–66 from the Dallas-Fort Worth, TX, VORTAC, to the Little Rock, AR, VORTAC (60 FR 15887). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Jet Routes are published in paragraph 2004 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 alters J–66 from the Dallas-Fort Worth, TX, VORTAC, to the Little Rock, AR, VORTAC. This rule will alter that portion of J–66 within the state of Texas from the Dallas-Fort Worth VORTAC, via the Bonham VORTAC, to the Little Rock VORTAC. Additionally, the Glove intersection will be established at the Texarkana 279°T(286°M) and the Bonham 056°T(064°M) radials to assist navigation along J–66. Altering J–66 enhances the flow of air traffic, simplifies routings in the northeast vicinity of the Dallas-Fort Worth metroplex area, and reduces controller and pilot workload.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–66 [Revised]

From Newman, TX; Abilene, TX; Dallas-Forth Worth, TX; Bonham, TX; Little Rock, AR; Memphis, TN; to Rome, GA.

* * * * *

Issued in Washington, DC, on June 25, 1996.

Nancy B. Kalinowski,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 96–17036 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 93–ASW–3]

Establishment of Jet Route J–181

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes Jet Route 181 (J–181) between the Dallas-Fort Worth, TX, metroplex area and the Chicago O'Hare, IL, terminal area. This route provides improved en route and arrival traffic flow into the Chicago O'Hare area. This action enhances the movement of traffic, minimizes air traffic delays, and reduces the controller workload.

EFFECTIVE DATE: 0901 UTC, October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Bil Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On November 9, 1993, the FAA proposed to amend Title 14 of the Code of Federal Regulations part 71 (14 CFR part 71) to establish J–181 located in the vicinity of Dallas-Fort Worth, TX (58 FR 59422). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Jet routes are published in paragraph 2004 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes J–181 between the Dallas-Fort Worth, TX, metroplex area and the Chicago O'Hare, IL, terminal area. This route provides improved en route and arrival traffic flow into the Chicago area. This action enhances the movement of traffic, minimizes air traffic delays, and reduces the controller workload.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 2004 Jet Routes

* * * * *

J–181 [New]

From Dallas-Fort Worth, TX; Okmulgee, OK; Neosho, MO; INT Neosho 049° and Bradford, IL, 219° radials; to Bradford.

* * * * *

Issued in Washington, DC, on June 26, 1996.

Nancy B. Kalinowski,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 96–17039 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 93–ASW–4]

Alteration of VOR Federal Airways; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule alters twelve Federal airways located in the vicinity of Dallas, TX. This action, which supports the Dallas/Fort Worth Metroplex Plan, is necessary due to the decommissioning of four Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facilities and the commissioning of four new VORTAC's. In addition, this action enhances the flow of air traffic, simplifies routings, increases safety and reduces pilot/controller workload.

EFFECTIVE DATE: 0901 UTC, October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Bil Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On June 27, 1995, the FAA proposed to amend Title 14 of the Code of Federal Regulations part 71 (14 CFR part 71) to alter twelve Federal airways located in the vicinity of Dallas, TX (60 FR 33159). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The airways listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 alters twelve Federal airways located in the vicinity of Dallas, TX. The alterations to the airways surrounding the Dallas/Fort Worth (DFW) International Airport, which are essential to support the Dallas/Fort Worth Metroplex Plan, are necessary because of the decommissioning of the existing Bridgeport, Blue Ridge, Scurry and Action VORTAC's and the commissioning of the Bowie, Bonham, Cedar Creek and Glen Rose VORTAC's. This action enhances the flow of the air traffic, simplifies routings, increases safety, and reduces pilot/controller workload.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways

* * * * *

V–15 [Revised]

From Hobby, TX, via Navasota, TX; College Station, TX; Waco, TX; Cedar Creek, TX; Bonham, TX; Ardmore, OK; Okmulgee, OK, to Neosho, MO. From Sioux City, IA; INT Sioux City 340° and Sioux Falls, SD, 169° radials; Sioux Falls; Huron, SD; Aberdeen, SD; Bismarck, ND; to Minot, ND.

V–16 [Revised]

From Los Angeles, CA; Paradise, CA; Palm Springs, CA; Blythe, CA; Buckeye, AZ; Phoenix, AZ; INT Phoenix 155° and Stanfield, AZ, 105° radials; Tucson, AZ; Cochise, AZ; Columbus, NM; El Paso, TX; Salt Flat, TX; Wink, TX; Wink 066° and Big Spring, TX, 260° radials; Big Spring; Abilene, TX; Millsap, TX; Glen Rose, TX; Cedar Creek, TX; Quitman, TX; Texarkana, AR; Pine Bluff, AR; Holly Springs, MS; Jacks Creek, TN; Shelbyville, TN; Hinch Mountain, TN; Volunteer, TN; Holston Mountain, TN; Pulaski, VA; Roanoke, VA; Lynchburg, VA; Flat Rock, VA; Richmond, VA; INT Richmond 039° and Patuxent, MD, 228° radials; Patuxent; Smyrna, DE; Cedar Lake, NJ; Coyle, NJ; INT Coyle 036° and Kennedy, NY, 209° radials; Kennedy; Deer Park, NY; Calverton, NY; Norwich, CT; Boston, MA. The airspace within Mexico and the airspace below 2,000 feet MSL outside the United States is excluded. The airspace within Restricted Areas R–5002A, R–5002C, and R–5002D is excluded during their times of use. The airspace within Restricted Areas R–4005 and R–4006 is excluded.

V–17 [Revised]

From Brownsville, TX, via Harlingen, TX; McAllen, TX; 29 miles 12 AGL, 34 miles 25 MSL, 37 miles 12 AGL; Laredo, TX; Cotulla, TX; INT Cotulla 046° and San Antonio, TX, 198° radials; San Antonio; INT San Antonio 042° and Austin, TX, 229° radials; Austin; Waco, TX; Glen Rose, TX; Milsap, TX; Bowie, TX; Duncan, OK; Will Rogers, OK; Gage, OK; Garden City, KS; to Goodland, KS.

V–18 [Revised]

From Guthrie, TX, via INT Guthrie 156° and Millsap, TX, 274° radials; Millsap; Glen Rose, TX; Cedar Creek, TX; Quitman, TX; Belcher, LA; Monroe, LA; Jackson, MS; Meridian, MS; Tuscaloosa, AL; Vulcan, AL; Talladega, AL; Atlanta, GA; Colliers, SC; Charleston, SC.

* * * * *

V–54 [Revised]

From Waco, TX; Cedar Creek, TX; Quitman, TX; Texarkana, AR; INT Texarkana 052° and Little Rock, AR, 235° radials; Little Rock; Holly Springs, MS; Muscle Shoals, AL; Rocket, AL; Choo Choo, GA; Harris, GA; Spartanburg, SC; Charlotte, NC; Sandhills, NC; INT Sandhills 146° and Fayetteville, NC, 267° radials; Fayetteville; to Kinston, NC.

* * * * *

V–62 [Revised]

From Gallup, NM; INT Gallup 089° and Santa Fe, NM, 268° radials; Santa Fe; Anton Chico, NM; Texico, NM; Lubbock, TX; Abilene, TX; INT Abilene 109° and Glen Rose, TX, 273° radials; Glen Rose.

V–63 [Revised]

From Bonham, TX, via McAlester, OK; Razorback, AR; Springfield, MO; Hallsville, MO; Quincy, IL; Burlington, IA; Moline, IL; Davenport, IA; Rockford, IL; Janesville, WI; Badger, WI; Oshkosh, WI; Stevens Point, WI; Wausau, WI; Rhinelander, WI, to Houghton, MI. The airspace at and above 10,000 feet MSL from Quincy to 32 miles north, is excluded during the time that the Allen MOA is activated by NOTAM.

* * * * *

V–66 [Revised]

From Mission Bay, CA, Imperial, CA; 13 miles, 24 miles, 25 MSL, Bard, AZ; 12 miles 35 MSL INT Bard 089° and Gila Bend, AZ, 261° radials; 46 miles, 35 MSL, Gila Bend; Tucson, AZ, 7 miles wide (3 miles south and 4 miles north of centerline); Douglas, AZ; INT Douglas 064° and Columbus, NM, 277° radials; Columbus; El Paso, TX; 6 miles wide, INT El Paso 109° and Hudspeth 287° radials; 6 miles wide, Hudspeth; Pecos, TX; Midland, TX; INT Midland 083° and Abilene, TX, 252° radials; Abilene; Bowie, TX; Bonham, TX; Sulphur Springs, TX; Texarkana, AR. From Tuscaloosa, AL, Brookwood, AL; LaGrange, GA; INT LaGrange 120° and Columbus, GA, 068° radials; INT Columbus 068° and Athens, GA, 195° radials; Athens; Greenwood, SC; Sandhills, NC; Raleigh-Durham, NC; Franklin, VA, excluding the airspace above 13,000 feet MSL from the INT of Tucson, AZ, 122° and Cochise, AZ, 257° radials to the INT of Douglas, AZ, 064° and Columbus, NM, 277° radials.

* * * * *

V–94 [Revised]

From Blythe, CA, INT Blythe 094° and Gila Bend, AZ, 299° radials; Gila Bend; Stanfield, AZ; 55 miles, 74 miles, 95 MSL, San Simon, AZ; Deming, NM; Newman, TX; Salt Flat, TX; Wink, TX; Midland, TX; Tuscola, TX; Glen Rose, TX; Cedar Creek, TX: Gregg County, TX; Elm Grove, LA; Monroe, LA; Greenville, MS; Holly Springs, MS; Jacks Creek, TN; Bowling Green, KY. The airspace within R–5103A is excluded.

* * * * *

V–114 [Revised]

From Amarillo, TX, via Childress, TX; Wichita Falls, TX; Bonham, TX; Quitman, TX; Gregg County, TX; Alexandria, LA; INT Baton Rouge, LA, 307° and Lafayette, LA, 042° radials; 7 miles wide (3 miles north and 4 miles south of centerline); Baton Rouge; New Orleans, LA; INT New Orleans 070° and Gulfport, MS, 247° radials; Gulfport; INT Gulfport 344° and Eaton, MS, 171° radials; to Eaton, excluding the portion within R–3801B and R–3801C.

* * * * *

V–124 [Revised]

From Bonham, TX, via Paris, TX; Hot Springs, AR; Little Rock, AR; Gilmore, AR; Jacks Creek, TN; to Graham, TN.

* * * * *

V–161 [Revised]

From Three Rivers, TX, via Center Point, TX; Llano, TX; INT Llano 026° and Millsap, TX, 193° radials; Millsap; Bowie, TX; Ardmore, OK; Okmulgee, OK; Tulsa, OK; Oswego, KS; Butler, MO; Napoleon, MO; Lamoni, IA; Des Moines, IA; Mason City, IA; Rochester, MN; Farmington, MN; Gopher, MN; Brainerd, MN; Grand Rapids, MN; International Falls MN; to Winnipeg, MB, Canada, excluding the portion within Canada.

* * * * *

Issued in Washington, DC, on June 25, 1996.

Nancy B. Kalinowski,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 96–17038 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 93–ASW–5]

Alteration of VOR Federal Airways; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule alters eleven Federal airways located in the vicinity of Dallas, TX. This action, which supports the Dallas/Fort Worth Metroplex Plan, is necessary due to the decommissioning of four Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facilities and the commissioning of four new VORTAC's. In addition, this action enhances the flow of air traffic, simplifies routings, increases safety and reduces pilot/controller workload.

EFFECTIVE DATE: 0901 UTC, October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Bil Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On June 27, 1995, the FAA proposed to amend Title 14 of the Code of Federal Regulations part 71 (14 CFR part 71) to alter eleven Federal airways located in the vicinity of Dallas, TX (60 FR 33158). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The airways listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 alters eleven Federal airways located in the vicinity of Dallas, TX. The alterations to the airways surrounding the Dallas/Fort Worth (DFW) International Airport, which are essential to support the Dallas/Fort Worth Metroplex Plan, are necessary because of the decommissioning of the existing Bridgeport, Blue Ridge, Scurry and Action VORTAC's and the commissioning of the Bowie, Bonham, Cedar Creek and Glen Rose VORTAC's. This action enhances the flow of the air traffic, simplifies routings, increases safety, and reduces pilot/controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways

* * * * *

V–163 [Revised]

From Matamoros, Mexico; via Brownsville, TX; 27 miles standard width, 37 miles 7 miles wide (3 miles E and 4 miles W of centerline); Corpus Christi, TX; Three Rivers, TX; INT Three Rivers 345° and San Antonio, TX, 168° radials; San Antonio; Lampasas, TX; Glen Rose, TX; Millsap, TX; Bowie, TX; Ardmore, OK; to Will Rogers, OK. The airspace within Mexico is excluded.

* * * * *

V–194 [Revised]

From Cedar Creek, TX; College Station, TX; INT College Station 151° and Hobby, TX, 290° radials; Hobby; Sabine Pass, TX; Lafayette, LA; Baton Rouge, LA; McComb, MS; INT McComb 055° and Meridian, MS; 221° radials; Meridian. From Liberty, NC, via Raleigh-Durham, NC; Tar River, NC, Cofield, NC, to INT Cofield 077° and Norfolk, VA, 209° radials.

* * * * *

V–278 [Revised]

From Texico, NM, via Plainview, TX; Guthrie, TX; Bowie, TX; Bonham, TX; Paris, TX; Texarkana, AR; Monticello, AR; Greenville, MS; Sidon, MS; Bigbee, MS; to Vulcan, AL.

* * * * *

V–355 [Revised]

From Bowie, TX; to Wichita Falls, TX.

* * * * *

V–358 [Revised]

From San Antonio, TX, via Stonewall, TX; Lampasas, TX; INT Lampasas 041° and Waco, TX, 249° radials; Waco; Glen Rose, TX; Millsap, TX; Bowie, TX; Ardmore, OK; INT Ardmore 327° and Will Rogers, OK, 195° radials; to Will Rogers.

* * * * *

V–369 [Revised]

From Dallas-Fort Worth, TX; to Navasota, TX.

* * * * *

V–477 [Revised]

From Leona, TX; to Cedar Creek, TX.

* * * * *

V–568 [Revised]

From Corpus Christi, TX, via INT Corpus Christi 296° and Three Rivers, TX, 165° radials; Three Rivers; INT Three Rivers 327° and San Antonio, TX, 183° radials; San Antonio; Stonewall, TX; Llano, TX; INT Llano 026° and Glen Rose, TX, 216° radials; Glen Rose; Millsap, TX; to Wichita Falls, TX.

V–569 [Revised]

From Beaumont, TX, via INT Beaumont 338° and Lufkin, TX, 146° radials; Lufkin; Frankston, TX; to Cedar Creek, TX.

* * * * *

V–571 [Revised]

From Humble, TX, via Navasota, TX; Leona, TX; INT Leona 331° and Cedar Creek, TX, 186° radials; to Cedar Creek.

* * * * *

V–583 [Revised]

From Austin, TX; INT Austin 062° and College Station, TX, 270° radials; College Station; Leona, TX; Frankston, TX; Quitman, TX; Paris, TX; to McAlester, OK.

* * * * *

Issued in Washington, DC, on June 25, 1996.

Nancy B. Kalinowski,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 96–17040 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–13–P

Office of the Secretary

14 CFR Parts 211 and 213

RIN 2105–AC53

Aviation Economic Regulations: Updates and Corrections

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department is amending 14 CFR Parts 211 and 213 to eliminate obsolete provisions and references, to conform citations to the recodification by Pub. L. 103–272 of the Federal Aviation Act and other transportation statutes, and to update organizational titles.

EFFECTIVE DATE: The rule shall become effective on August 2, 1996.

FOR FURTHER INFORMATION CONTACT: George L. Wellington, Chief, Foreign Air Carrier Licensing Division (X–45), Office of International Aviation, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2388.

SUPPLEMENTARY INFORMATION: In his Regulatory Reinvention Initiative Memorandum of March 4, 1995, President Clinton directed Federal agencies to conduct a page-by-page review of all of their regulations and to ''eliminate or revise those that are outdated or otherwise in need of reform.'' In response to that directive, the Department has undertaken a review of its aviation economic regulations as contained in 14 CFR Chapter II. This rule is one result of those efforts.

This rule eliminates obsolete provisions and references, conforms citations to the recodification by Pub. L. 103–272 of the Federal Aviation Act and other transportation statutes, and updates organizational titles. The Department finds that notice and comment are unnecessary and contrary to the public interest because of the editorial nature of these changes.

Executive Order 12866 (Regulatory Planning and Review)

The Department has analyzed the economic and other effects of the final rule and has determined that they are not ''significant'' within the meaning of Executive Order 12866. The rule has not, therefore, been reviewed by the Office of Management and Budget.

DOT Regulatory Policies and Procedures

The final rule is not significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because it does not involve

important Departmental policies; rather, the changes are being made solely for the purposes of eliminating obsolete requirements, correcting out-of-date references, and enhancing the organization of the regulations used by the Department to administer its aviation economic regulatory functions. The Department has also determined that there will be no economic impact as a result of these changes.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, I certify that the amendments will not have a significant economic impact on a substantial number of small entities. The changes are editorial in nature and will have no substantive impact.

Executive Order 12612 (Federalism)

The final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The Department has determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The amendments will not have a substantial direct effect 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.

National Environmental Policy Act

The Department has also analyzed the rule for the purpose of the National Environmental Policy Act. The rule will not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

There are no reporting or recordkeeping requirements associated with the final rule.

Lists of Subjects

14 CFR Part 211

Foreign air carriers, Economic authority, Transportation Department.

14 CFR Part 213

Foreign air carriers, Economic authority, Transportation Department.

Final Rule

For the reasons set out in the preamble, Title 14, Chapter II of the Code of Federal Regulations is amended as follows:

PART 211—[AMENDED]

1. The authority citation for part 211 is revised to read as follows:

Authority: 49 U.S.C. Chapters 401, 411, 413, 415, 417.

2. Throughout the part, remove the words ''Board'' and ''Board's'' wherever they appear, and add, in their place, the words ''Department'' and ''Department's.'' Remove the words ''Docket Section,'' and add, in their place, the words ''Docket Facility.''

§ 211.1 [Amended]

3. In § 211.1, remove the words ''section 402 of the Federal Aviation Act'' and add, in their place, the words ''section 41301 of Title 49 of the United States Code (Transportation).''

§ 211.10 [Amended]

4. In § 211.10(b), remove the words ''Regulatory Affairs Division, Bureau of International Aviation, Civil Aeronautics Board, Washington, DC 20428,'' and add, in their place, the words ''Foreign Air Carrier Licensing Division, Office of International Aviation, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.''

§ 211.20 [Amended]

5. In § 211.20(t), remove the words ''CAB form 263,'' and add, in their place, the words ''OST Form 4523.''

Subpart D—[Amended]

6. Throughout subpart D of part 211, remove the words ''overseas,'' ''overseas and interstate,'' ''overseas or interstate,'' ''interstate and overseas'', and ''interstate or overseas,'' wherever they appear, and add, in their place, the word ''interstate.''

§ 211.33 [Amended]

7. In § 211.33(c), remove the words ''section 801(a)'' and add in their place the words ''section 41307.''

PART 213—[AMENDED]

8. The authority citation for part 213 is revised to read as follows:

Authority: 49 U.S.C. Chapters 401, 411, 413, 415, 417.

9. Throughout the part, remove the words ''Board'' and ''Board's'' wherever they appear, and add, in their place, the words ''Department'' and ''Department's.'' Remove the words ''Docket Section,'' and add, in their place, the words ''Docket Facility.''

§ 213.1 [Amended]

10. In § 213.1, remove the words ''section 402 permits authorizing foreign direct air carriers to engage in'' and add, in their place, the words ''foreign air carrier permits issued under section 41302 of Title 49 of the United States Code (Transportation) authorizing.'' Remove the entire sentence that begins with ''Notwithstanding.''

§ 213.3 [Amended]

11. In § 213.3(f), remove the words ''section 1005(b) of the Act,'' and add, in their place, the words ''49 U.S.C. 46103.''

§ 213.5 [Amended]

12. The heading of § 213.5 is revised to read as follows:

§ 213.5 Filing and service of schedules and applications for approval of schedules; procedure thereon.

* * * * *

13. In § 213.5(a), remove the words ''each airport notice or,'' and ''each application for permission to use an airport (§ 213.4(b)) or.'' Remove the words ''19 copies,'' and add, in their place, the words ''seven (7) copies.'' Remove the entire sentence that begins with ''Each airport notice or application . . .''

14. Section 213.5(b) is revised to read as follows:

* * * * *

(b) *Pleadings by interested persons.* Any interested person may file and serve upon the foreign air carrier a memorandum in opposition to, or in support of, schedules or an application for approval of schedules within 10 days of the filing opposed or supported. All memoranda shall set forth in detail the reasons for the position taken together with a statement of economic data and other matters which it is desired that the Department officially notice, and affidavits stating other facts relied upon. Memoranda shall contain a certificate of service as prescribed in paragraph (a) of this section. An executed original and seven (7) true copies shall be filed with the Department's Docket Facility. Unless otherwise provided by the Department, further pleadings will not be entertained.

* * * * *

15. In § 213.5(c), remove the words ''for permission to use an airport or.'' Remove the entire sentence beginning with ''Petitions for reconsideration of the Board'' determination on an application for permission to use an airport . . .''

§ 213.6 [Amended]

16. In § 213.6, remove the words ''Title IV of the Act'' and add in their place the words ''Subtitle VII of Title 49 of the U.S. Code.''

§ 213.7 [Amended]

17. In § 213.7, remove the abbreviation ''CAB'' before the word ''Agreement.'' Remove the words ''CAB form 263,'' and add, in their place, the words ''OST Form 4523'', and remove

the words ''Publications Services Division, Civil Aeronautics Board, Washington, DC 20428,'' and add in their place the words ''Foreign Air Carrier Licensing Division (X–45), Office of International Aviation, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC, on May 31, 1996.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 96–16808 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 452

[Docket No. 96N–0117]

Antibiotic Drugs; Clarithromycin Granules for Oral Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to include accepted standards for clarithromycin for its use in a new dosage form of clarithromycin, clarithromycin granules for oral suspension. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective August 2, 1996; comments, notice of participation, and a request for hearing by August 2, 1996; data, information, and analyses to justify a hearing by September 3, 1996.

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

FOR FURTHER INFORMATION CONTACT: James M. Timper, Center for Drug Evaluation and Research (HFD–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2193.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations issued under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new dosage form of clarithromycin, clarithromycin granules for oral suspension. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic dosage form are adequate to establish the safety and efficacy when used as directed in the labeling and that the regulations should be amended in part 452 (21 CFR part 452) to include accepted standards for this product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because, when effective, it provides notice of accepted standards, FDA finds that notice and comment procedure is unnecessary and not in the public interest. This final rule, therefore, is effective August 2, 1996. However, interested persons may, on or before August 2, 1996, submit comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before August 2, 1996, a written notice of participation and request for a hearing, and (2) on or before September 3, 1996, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for a hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for a hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, 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 452

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 452 is amended as follows:

PART 452—MACROLIDE ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR part 452 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

§ 452.150a [Redesignated from § 452.150]

2. Section 452.150 is redesignated as § 452.150a and new §§ 452.150 and 452.150b are added to subpart B to read as follows:

§ 452.150 Clarithromycin oral dosage forms.

§ 452.150b Clarithromycin granules for oral suspension.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Clarithromycin granules for oral suspension is a dry mixture containing clarithromycin-coated particles, suitable and harmless dispersing agents, diluents, preservatives, and flavorings. It contains the equivalent of 25 or 50 milligrams of clarithromycin activity per milliliter of the reconstituted suspension. Its potency is satisfactory if it is not less than 90 percent and not more than 115 percent of the number of milligrams of clarithromycin that it is represented to contain. Its loss on drying is not more than 2.0 percent. When constituted as directed in the labeling, its pH is not less than 4.0 nor more than 5.4. The

clarithromycin used conforms to the standards prescribed by § 452.50(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(A) The clarithromycin used in making the batch for potency, moisture, pH, residue on ignition, heavy metals, specific rotation, identity, and crystallinity.

(B) The batch for content, loss on drying, pH, and identity.

(ii) Samples, if required by the Director, Center for Drug Evaluation and Research:

(A) The clarithromycin used in making the batch: 10 packages, each containing approximately 500 milligrams.

(B) The batch: A minimum of six immediate containers.

(b) *Tests and methods of assay*—(1) *Clarithromycin content.* Proceed as directed in § 452.50(b)(1), except use a known injection volume between 10 and 60 microliters. Also, prepare the mobile phase, working standard solution, and sample solution, and use system suitability requirements and calculation as follows:

(i) *Mobile phase.* Add 600 milliliters of methanol and 400 milliliters of 0.067M potassium phosphate, monobasic, to a suitable container, mix well, and adjust the pH to 3.5 with phosphoric acid. Filter through a suitable filter capable of removing particulate matter to 0.5 micron in diameter. Degas the mobile phase just before its introduction into the chromatographic system.

(ii) *Preparation of standard solution.* Dissolve an accurately weighed portion of the clarithromycin working standard in sufficient methanol to obtain a solution having a known concentration of approximately 2.1 milligrams per milliliter of clarithromycin. Quantitatively transfer and dilute an aliquot of this solution with mobile phase and mix to obtain a solution of known concentration of approximately 415 micrograms of clarithromycin per milliliter.

(iii) *Preparation of sample solution.* Constitute as directed in the labeling. Accurately measure a representative portion of the suspension that contains about 1 to 2 grams of clarithromycin activity and, using approximately 330 milliliters of 0.067M potassium phosphate, dibasic, quantitatively transfer into a 1,000 milliliter volumetric flask containing approximately 50 milliliters of 0.067M potassium phosphate, dibasic. Shake for 30 minutes. Dilute to volume with methanol. Mix well and place in an ultrasonic bath for 30 minutes. Cool to room temperature and adjust to volume with methanol. Add a magnetic stirring bar and stir for 60 minutes. Allow excipients to settle and dilute an appropriate aliquot of the solution with mobile phase to obtain a solution containing 500 micrograms of clarithromycin activity per milliliter and mix well. Filter through a suitable filter capable of removing particulate matter 0.5 micron in diameter.

(iv) *System suitability requirements*—(A) *Tailing factor.* The tailing factor (T) is satisfactory if it is not less than 1.0 and not greater than 1.7 for the clarithromycin peak.

(B) *Efficiency of the column.* The efficiency (n) is satisfactory if it is greater than 2,100 theoretical plates for the clarithromycin peak.

(C) *Capacity factor.* The capacity factor (k') is satisfactory if it is between 2.5 and 6 for the clarithromycin peak.

(D) *Coefficient of variation (relative standard deviation).* The coefficient of variation (S_R in percent of three replicate injections) is satisfactory if it is not more than 2.0 percent.

(v) *Calculations.* Calculate the clarithromycin content as follows:

$$\text{Milligrams of clarithromycin per milliliter} = \frac{A_U \times P_S \times D}{A_S \times V}$$

where:

A_U = Area of the clarithromycin peak in the chromatogram of the sample;

A_S = Area of the clarithromycin peak in the chromatogram of the clarithromycin working standard;

P_S = Clarithromycin activity in the clarithromycin working standard solution in micrograms per milliliter;

D = Dilution factor of the sample test solution; and

V = Volume, in milliliters, of the portion of suspension taken.

(2) *Loss on drying.* Proceed as directed in § 436.200(a) of this chapter, using a sample weight of approximately 1 gram, weighing in a normal laboratory atmosphere.

(3) *pH.* Proceed as directed in § 436.202 of this chapter, using the suspension prepared as directed in the labeling. Stir the suspension for 10 minutes with the electrode immersed and record the pH.

(4) *Identity.* Using the high-performance liquid chromatographic procedure described in paragraph (b)(1) of this section, the retention times for the clarithromycin peak must be within 2 percent of the retention time for the peak of the reference standard.

Dated: June 20, 1996.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 96–16977 Filed 7–2–96; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Parts 520, 522, 529, and 558

Animal Drugs, Feeds, and Related Products; 29 Various New Animal Drug Products and Type A Medicated Articles

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions reflecting approval of 29 new animal drug applications (NADA's) held by Bayer Corp., Agriculture Division, Animal Health (formerly Miles, Inc., Agriculture Division, Animal Health Products), Hubbard Milling Co., Hoffmann-LaRoche, Inc., and Ohmeda, Inc. The NADA's provide for the use of 29 various new animal drug products and Type A medicated articles used to manufacture finished medicated animal feeds. In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of the NADA's.

EFFECTIVE DATE: July 15, 1996.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0159.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of the following NADA's:

NADA No.	Drug name	Sponsor name and address
6–462	Diethylcarbamazine tablets	Bayer Corp., Agriculture Division, Animal Health, P.O. Box 390, Shawnee Mission, KS 66201.
10–540	Calcium disodium edetate injection	Do.
11–380	Diethylcarbamazine powder	Do.
12–054	Protokylol hydrochloride tablets and injection	Do.
12–103	Triamcinolone tablets	Do.
12–392	Triamcinolone injection	Do.
12–598	Disophenol sodium injection	Do.
15–161	Trichlorfon powder	Do.
15–965	Coumaphos Type A medicated article	Do.
30–045	Triamcinolone/neomycin sulfate ointment	Do.
34–394	Niclosamide tablets	Do.
35–263	Styrylpyridinium chloride, diethylcarbamazine (as base) oral liquid.	Do.
45–287	Coumaphos crumbles	Do.
48–645	Tylosin Type A medicated articles (5, 10, 20, and 40 grams per pound).	Hubbard Milling Co., 424 North Riverfront Dr., P.O. Box 8500, Mankato, MN 56002–8500.
49–555	Styrylpyridinium chloride, diethylcarbamazine control diet HRH/MSD.	Bayer Corp.
91–628	Diethylcarbamazine citrate syrup	Do.
93–372	Chlortetracycline calcium complex Type A medicated articles.	Hoffmann-LaRoche, Inc., Nutley, NJ 07110.
94–402	Tylosin and sulfamethazine Type A medicated articles	Hubbard Milling Co.
95–078	Trichlorfon oral liquid	Bayer Corp.
96–031	Styrylpyridinium chloride, diethylcarbamazine citrate tablets.	Do.
100–201	Trichlorfon paste	Do.
100–356	Styrylpyridinium chloride, diethylcarbamazine control diet HRH.	Do.
100–670	Niclosamide Type A medicated article	Do.
101–078	Dichlorophene and toluene capsules	Do.
120–327	Diethylcarbamazine chewable tablets	Do.
120–670	Styrylpyridinium, diethylcarbamazine edible tablets	Do.
121–291	Enflurane liquid (anesthetic)	Ohmeda, Inc., Pharmaceutical Products Division, P.O. Box 804, Liberty Corner, NJ 07938–0804.
121–813	Styrylpyridinium, diethylcarbamazine film-coated tablets	Bayer Corp.
133–509	Pyrantel tartrate Type A medicated articles	Hubbard Milling Co.

The sponsors requested withdrawal of approval of the NADA's. This final rule removes 21 CFR 520.500, 520.620a, 520.620b, 520.1520, 520.2022, 520.2160a, 520.2160b, 520.2160c, 520.2160d, 520.2480, 520.2520c, 520.2520d, 522.281, 522.740, 522.2022, 522.2480, 529.810, 558.367, and 558.565, and amends 21 CFR 520.580, 520.622a, 520.622b, 520.2520a, 558.185, 558.485, 558.625, and 558.630.

List of Subjects

21 CFR Parts 520, 522, and 529

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520, 522, 529, and 558 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

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

§ 520.500 [Removed]

2. Section 520.500 *Coumaphos crumbles* is removed.

§ 520.580 [Amended]

3. Section 520.580 *Dichlorophene and toluene capsules* is amended in paragraph (b)(2) by removing ''000859,''.

§ 520.620a [Removed]

4. Section 520.620a *Diethylcarbamazine* is removed.

§ 520.620b [Removed]

5. Section 520.620b *Diethylcarbamazine chewable tablets* is removed.

§ 520.622a [Amended]

6. Section 520.622a *Diethylcarbamazine citrate tablets* is amended in paragraph (a) by removing ''000859 and''.

7. Section 520.622b is amended by revising paragraph (b)(2) to read as follows:

§ 520.622b Diethylcarbamazine citrate syrup.

* * * * *

(b)(1) * * *

(2) *Sponsors.* See No. 017030 for use as in paragraphs (b)(3)(ii)(*a*) and (b)(3)(ii)(*c*) of this section.

* * * * *

§ 520.1520 [Removed]

8. Section 520.1520 *Niclosamide tablets* is removed.

§ 520.2022 [Removed]

9. Section 520.2022 *Protokylol hydrochloride tablets* is removed.

§ 520.2160a [Removed]

10. Section 520.2160a *Styrylpyridinium, diethylcarbamazine tablets* is removed.

§ 520.2160b [Removed]

11. Section 520.2160b *Styrylpyridinium chloride, diethylcarbamazine (as base)* is removed.

§ 520.2160c [Removed]

12. Section 520.2160c *Styrylpyridinium, diethylcarbamazine edible tablets* is removed.

§ 520.2160d [Removed]

13. Section 520.2160d *Styrylpyridinium, diethylcarbamazine film-coated tablets* is removed.

§ 520.2480 [Removed]

14. Section 520.2480 *Triamcinolone tablets* is removed.

§ 520.2520a [Amended]

15. Section 520.2520a *Trichlorfon oral* is amended in paragraph (b) by removing the phrase ''Nos. 017800 and 000859'' and adding in its place ''No. 017800''.

§ 520.2520c [Removed]

16. Section 520.2520c *Trichlorfon oral liquid* is removed.

§ 520.2520d [Removed]

17. Section 520.2520d *Trichlorfon paste* is removed.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

18. 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).

§ 522.281 [Removed]

19. Section 522.281 *Calcium disodium edetate injection* is removed.

§ 522.740 [Removed]

20. Section 522.740 *Disophenol sodium injection* is removed.

§ 522.2022 [Removed]

21. Section 522.2022 *Protokylol hydrochloride injection* is removed.

§ 522.2480 [Removed]

22. Section 522.2480 *Triamcinolone injection* is removed.

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

23. 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).

§ 529.810 [Removed]

24. Section 529.810 *Enflurane* is removed.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

§ 558.185 [Amended]

26. Section 558.185 *Coumaphos* is amended by removing and reserving paragraph (a)(1).

§ 558.367 [Removed]

27. Section 558.367 *Niclosamide* is removed.

§ 558.485 [Amended]

28. Section 558.485 *Pyrantel tartrate* is amended by removing and reserving paragraph (a)(16).

§ 558.565 [Removed]

29. Section 558.565 *Styrylpyridinium chloride, diethylcarbamazine* is removed.

§ 558.625 [Amended]

30. Section 558.625 *Tylosin* is amended by removing and reserving paragraph (b)(72).

§ 558.630 [Amended]

31. Section 558.630 *Tylosin and sulfamethazine* is amended in paragraph (b)(10) by removing ''012190,''.

Dated: June 3, 1996.

Michael J. Blackwell,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 96–16886 Filed 7–2–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

28 CFR Part 42

[A.G. Order No. 2037–96]

Equal Employment Opportunity

AGENCY: Department of Justice

ACTION: Final Rule

SUMMARY: This document revises the Department of Justice policy with regard to the nondiscrimination in employment to include sexual orientation as a prohibited basis for discrimination. This revised rule also makes clear that retaliation for opposing a prohibited practice or participating in a related proceeding is prohibited. This action promotes the equitable treatment of employees and applicants for employment

EFFECTIVE DATE: June 26, 1996.

FOR FURTHER INFORMATION CONTACT:

Ted McBurrows, Director, Equal Employment Opportunity Staff, Room 1246, 10th & Pennsylvania Ave., NW, Washington, DC 20530, (202) 616–4800.

SUPPLEMENTARY INFORMATION: In 1994, pursuant to 5 U.S.C. 301, the Attorney General issued several policy statements prohibiting discrimination on the basis of sexual orientation and affirmatively promoting the principles of equal employment opportunity. The Attorney General is revising 28 CFR 42.1 to reflect this policy. This policy affects agency operation and procedures, and therefore is exempt from the notice requirement of 5 U.S.C. 553(b) and is effective upon issuance.

This rule has been drafted and reviewed in accordance with section 1(b) of Executive Order 12866. This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget. In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Attorney General certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will not have a substantial direct impact upon the states, on the relationships between the national government and the states, or on distribution of power and responsibilities among the various levels of government. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment in accordance with Executive order 12612.

List of Subjects in 28 CFR Part 42

Administrative practice and procedure, Aged, Civil rights, Equal employment opportunity, Grant programs, Individuals with disabilities, Reporting and recordkeeping, Sex discrimination.

Accordingly, for reasons set out in the preamble, 28 CFR Part 42 is amended as set forth below.

PART 42—EQUAL EMPLOYMENT OPPORTUNITY WITHIN THE DEPARTMENT OF JUSTICE

1. The authority citation for Part 42 Subpart A is revised to read as follows:

Authority: 5 U.S.C. 301, 28 U.S.C. 509, 510; E.O. 11246, 3 CFR 1964–1965 Comp., p. 339; E.O. 11478, 3 CFR 1966–1970 Comp., p. 803.

2. Section 42.1 is revised to read as follows:

§ 42.1 Policy.

(a) It is the policy of the Department of Justice to seek to eliminate discrimination on the basis of race, color, religion, sex, sexual orientation, national origin, marital status, political affiliation, age, or physical or mental handicap in employment within the Department and to assure equal employment opportunity for all employees and applicants for employment.

(b) No person shall be subject to retaliation for opposing any practical prohibited by the above policy or for participating in any stage of administrative or judicial proceedings related to this policy.

Dated: June 26, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96–16888 Filed 7–2–96; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 256

RIN 1010–AC18

Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This rule amends the regulations of MMS to allow the authorized officer to extend the 90-day time period within which we must accept or reject the high bids received on Outer Continental Shelf (OCS) tracts offered for sale. Unforeseen circumstances including a flood, a furlough, and an extremely high bid response may create a need for more time to evaluate bids. The rule gives the authorized officer authority to extend the time period for 15 working days or longer, beyond 90 days after the date on which the bids are opened, when circumstances warrant.

EFFECTIVE DATE: This rule is effective July 18, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. Marshall Rose, Chief, Economic Evaluation Branch, telephone (703) 787–1536.

SUPPLEMENTARY INFORMATION: The time to accept or reject bids is established under the regulations at 30 CFR 256.47. The authorized officer must accept or reject the high bids within 90 days after the bid opening, except for tracts or blocks identified by the Secretary of the Interior as subject to:

(1) Another nations's claims of jurisdiction and control which conflict with the claims of the United States, or

(2) Defense-related activities that may be incompatible with mineral exploration/development activities. Any bid not accepted within that period is deemed rejected.

In the Central Gulf of Mexico Sale 157, held April 24, 1996, we received 1,381 bids on 924 tracts, 632 of which passed to Phase 2 for detailed reviews. This unprecedented response by industry in Sale 157 resulted from the enactment of the Outer Continental Shelf Deep Water Royalty Relief Act (Pub. L. 104–58, DWRRA) and other factors, such as higher natural gas and oil prices. Consequently, MMS is unable to conduct and complete the entire bid review process within the 90 days, i.e., by July 22, 1996. If we do not modify the timing restriction before the 90 days expire for Sale 157, dozens of high bids received on tracts offered in that sale may be rejected because of our inability to complete the statutorily mandated review for fair market value. Therefore, in accordance with 5 U.S.C. 553(b)(3)(B), this rule is effective July 18, 1996. It is in the public interest to ensure that adequate time is available to give all high bids a full and appropriate review and to ensure the receipt of fair market value.

The 90-day period was established in 1982 because of the change from nomination to areawide sales and from presale to postsale evaluations. Since then, MMS has held mainly areawide sales. The DWRRA amended the Outer Continental Shelf Lands Act and defined a new bidding system which provides for royalty suspensions. The deep water incentive law did not amend the requirement that we receive fair market value for tracts leased. Any lease sale held before November 28, 2000, must use the new bidding system for all tracts located in water depths of 200 meters or more in the Gulf of Mexico west of 87 degrees, 30 minutes west longitude. The large number of bids received in response to the new statutory requirements resulted in an increased workload which we expect will exceed our ability to complete the bid review process within 90 days as required by 30 CFR 256.47(e)(2).

This rule allows the authorized officer authority to extend the time period for 15 working days or longer when circumstances warrant. Recent examples include floods and furloughs; however, other circumstances such as an excessive unanticipated workload may arise which could warrant the need for a longer time for bid evaluation.

This rule addresses a housekeeping issue and will enable us to adjust the bid acceptance/rejection time period to meet changing conditions. It recognizes that 90 days may not be enough time to complete the review process, which would result in the rejection of the high bids which we fail to evaluate within 90 days. This would result in fewer leases being issued because of failure to complete the bid review process within time and resource constraints. The Government may receive less bonus and rental monies.

Today, without authority to extend the bid review period, the 1982 90-day rule is arbitrarily too rigid and may not allow sufficient time given the current complexities inherent in evaluating certain tracts. It is in the public interest to ensure that adequate time is available to give all high bids a full and appropriate review, to ensure the receipt of fair market value, and ultimately to increase natural gas and oil supplies.

This rulemaking finalizes the rule, with one substantive modification, as originally proposed and published in the Federal Register (61 FR 24466, May 15, 1996). Seven respondents—a trade organization and six companies—submitted comments on the proposed rule during the public comment period. The MMS reviewed and analyzed the comments. The following is a discussion of the comments received and our response.

Narrative Responses to Comments

Comment: Although MMS now pays interest on the one-fifth bonus held during the evaluation period, industry must set aside the four-fifths of the bonus and first year rental to pay for the lease when and if awarded. Delays in rejecting a lease may cause a company to miss participating in a significant opportunity elsewhere. Delays in awarding leases can cause delays in planning further seismic evaluation, hazard surveys, rig commitment, and budgeting of wells. On the other hand, industry does not want the retention of the 90-day period to result in the rejection of the high bids because MMS does not have sufficient time to evaluate them.

Response: We realize that any extension beyond the 90 days could result in some missed opportunities and impact exploration and development activities, but MMS must fulfill its duty to obtain fair market value for offshore leased tracts. Because we accept tracts sequentially during the bid review period, on only a small portion of tracts will MMS require more than 90 days to

complete the evaluation. We plan to extend the bid review period only when circumstances beyond our control arise, such as weather conditions, furloughs, or an unusually large number of unanticipated tracts receiving bids causing disruptions in our workload. We would rather ensure that adequate time is available to give all high bids a full and appropriate review, than have to reject high bids for insufficient time to evaluate, which could be the case without this rule. To accommodate the concern to keep the review time extension as short as possible, MMS has reduced the minimum extension time from 30 days as proposed to 15 working days in the final rule.

Comment: The ''authorized officer'' should not be allowed authority to extend the time period for more than 30 days. This extension of time should only apply to the evaluation of Sale 157 bids and should not be for additional time caused by a change in the bid adequacy procedures, for example, elimination of the 3-bid rule.

Response: Our recent experience with floods and furloughs, which resulted in extensions of the bid review period for 14 and 9 days each, would indicate that it is unlikely that the authorized officer will extend the time period for more than 15 working days. As a result, we have modified the proposed 30 days to 15 working days. However, in those rare circumstances that may arise which could warrant a longer time for bid evaluation, this rule gives the authorized officer the flexibility to respond appropriately and in the public interest. With respect to Sale 157, more than three times the normal number of tracts went to Phase 2 for further evaluation, only a small percentage of which was attributable to the elimination of the 3-bid rule. The excessive workload burden is a result primarily of industry competition and bidding in Sale 157 and not a change in the bid adequacy procedures.

Comment: The fact that a tract is covered by the DWRRA should not be a factor in evaluating the high bid on that tract.

Response: The MMS must fulfill its duty to obtain fair market value for offshore leased tracts. The fact that a tract may benefit from the DWRRA will normally cause the bidders to adjust their bids accordingly. Therefore, any bid review procedure should take this effect into consideration as well.

Comment: The regulation and the notice granting the extension should make clear the event or circumstances which require the extension.

Response: Based on past experience, the rule does not list all possible reasons, or combination of reasons, that could trigger an extension. Examples of circumstances that might apply are: Inclement weather that results in closing the office; damage to the building (e.g., explosion, fire, or water); lack of electrical power; etc. Any announcement of an extension beyond the 90-day period will include the reasons warranting the extension.

Comment: An extension to accept or reject the high bids is acceptable provided the additional time is warranted, and the sale schedule in the Central and Western Gulf of Mexico is not seriously affected. The alternative of rejecting high bids not evaluated because of insufficient time does not serve the best interest of the companies or the Government.

Response: We, like the companies, do not want to extend the bid review period any more than absolutely necessary because MMS wants to continue to meet our sales schedule. We also realize that companies might delay exploration and development decisions because considerable amounts of financial resources, which could be better employed elsewhere, are tied up during this period. Any extensions should be for the minimum time warranted and affect a small number of tracts.

Comment: The 90-day period would be sufficient if MMS limited its evaluation efforts in Phase 2 to those tracts where there is current activity or new production offsetting a tract receiving bids.

Response: Because we are required to receive fair value for all tracts leased, the existing bid adequacy procedures do not limit Phase 2 evaluation efforts only to those tracts where there is current activity or new production offsetting a tract receiving bids. The rule recognizes that more than 90 days may be needed to complete the process. We will continue to review our procedures and, based on knowledge gained from experience in lease sales, may identify modifications which might reduce the length of the bid review period.

Author: This document was prepared by Mary Vavrina, Offshore Resource Evaluation Division, MMS.

Executive Order (E.O.) 12866

This rule does not meet the criteria for a significant rule requiring review by the Office of Management and Budget (OMB) under E.O. 12866.

Regulatory Flexibility Act

The Department of the Interior (DOI) has determined that this rule will not have a significant economic effect on a substantial number of small entities. Any direct effects of this rulemaking will primarily affect the lessees and operators—entities that are not, by definition, small due to the technical complexities and financial resources necessary to conduct OCS activities. Small entities are more likely to operate onshore or in State waters—areas not covered by this rule. The indirect effect of this rulemaking on small entities that provide support for offshore activities has also been determined to be small. When small entities work on the OCS, they are more likely to be contractors rather than lessees. While these contractors must follow the rules governing OCS operations, we are not changing the rules that govern actual operations on a lease. We are only modifying the rules governing the actual acceptance or rejection of a high bid for a lease.

Paperwork Reduction Act

The rule has been examined under the Paperwork Reduction Act of 1995 and has been found to contain no new reporting and information collection requirements.

Takings Implication Assessment

The DOI certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment prepared under E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights, is not required.

E.O. 12988

The DOI has certified to OMB that the rule meets the applicable reform standards provided in Section 3(b)(2) of E.O. 12988.

National Environmental Policy Act

The DOI has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment; therefore, an environmental impact statement is not required.

Unfunded Mandate Reform Act of 1995

The DOI has determined and certifies according to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 et seq., that this rule will not impose a cost of $100 million or more in any given year on local, tribal, or State governments or the private sector.

List of Subjects in 30 CFR Part 256

Administrative practices and procedures, Continental shelf, Government contracts, Incorporation by reference, Oil and gas exploration,

Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

Dated: June 27, 1996.

Sylvia V. Baca,

Assistant Secretary, Land and Minerals Management.

For the reasons set forth in the preamble, we amend 30 CFR part 256 as follows:

PART 256—LEASING OF SULPHUR OR OIL AND GAS IN THE OUTER CONTINENTAL SHELF

1. The Authority citation for part 256 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

2. Section 256.47(e)(2) is revised to read as follows:

§ 256.47 Award of leases.

* * * * *

(e) * * *

(2) The authorized officer must accept or reject the bid within 90 days. The authorized officer may extend the time period for acceptance or rejection of a bid for 15 working days or longer, if circumstances warrant. Any bid not accepted within the prescribed time period, including any extension thereof, is deemed rejected.

* * * * *

[FR Doc. 96–17013 Filed 7–2–96; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

33 CFR Part 334

Chesapeake Bay Off Fort Monroe, VA, and Canaveral Harbor Adjacent to the Navy Pier at Port Canaveral, FL; Restricted Areas, and Pacific Ocean, Hawaii, Danger Zones

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: The Corps is amending the regulations which establish a restricted area in the waters off of Fort Monroe, Virginia, which is located at Hampton Roads in the Chesapeake Bay. The purpose of the amendment is to increase the size of the restricted area to protect sensitive test equipment operated by the Navy in that area. The equipment is susceptible to damage by commercial fishing vessels, anchoring and dragging. The Corps is amending the regulations which establish a restricted area in Canaveral Harbor in the waters adjacent to the Navy pier at Port Canaveral, Florida. This amendment concerns the replacement of a warning light system in the Canaveral area. The change is necessary because the existing rules refer to the display of a nonexistent red ball and the Port Canaveral water tower which has been dismantled. The marker light has been relocated. The Corps is also making several editorial changes to the regulations which establish danger zones in the waters offshore of Hawaii. The amendments reflect a change in the use of a danger zone and the identity of the Agency responsible for enforcement of the regulations. The changes are being made as a result of an ongoing review of the regulations.

EFFECTIVE DATE: August 2, 1996.

ADDRESSES: HQUSACE, CECW–OR, Washington, D.C. 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Eppard, Regulatory Branch, CECW–OR at (202) 761–1783, or questions concerning the Fort Monroe restricted area may be directed to Ms. Alice G. Riley of the Norfolk District at (804) 441–7389, and questions concerning the Port Canaveral restricted area may be directed to Ms. Shirley Stokes of the Jacksonville District at (904) 232–1668.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending the regulations in 33 CFR Part 334.360, 334.530 and 334.1340.

The Commanding Officer, Naval Surface Warfare Center, Dahlgren Detachment, Fort Monroe, Virginia has requested an amendment to the regulations in 33 CFR 334.360, which establish a restricted area in the Chesapeake Bay off Fort Monroe, Virginia. In addition, the Commanding Officer, Naval Ordnance Test Unit, Cape Canaveral, Florida, has requested an amendment to the restricted area regulations in 33 CFR 334.530 to delete a reference to a red warning light on a water tower and refer in its place to a new warning light system. We published these proposed amendments to the regulations in the notice of proposed rulemaking section of the Federal Register on February 27, 1996, with the comment period expiring on April 12, 1996 (61 FR 7231–7132). We received no comments in response to the proposed rule. The Commander, Naval Base, Pearl Harbor has requested that minor editorial changes be made to the regulations which establish several danger zones in the waters offshore of Hawaii to remove obsolete material. The title of the danger zone in 33 CFR 1340(a)(4) is changed from ''*Aerial bombing and naval shore bombardment area, Kahoolawe Island Hawaii*'' to ''*Submerged unexploded ordnance danger zone, Kahoolawe Island, Hawaii*'' and the enforcing authority in paragraph (c) is changed from ''Commander, Third Fleet, Pearl Harbor'' to ''Commander, Naval Base, Pearl Harbor, Hawaii 96860–5020.'' These amendments to the danger zones in 33 CFR 334.1340 are being promulgated without being published as proposed rules with opportunity for public comment because the changes are editorial in nature and since the revisions do not change the boundaries or increase or decrease the restrictions on the public's use or entry into the designated danger zones, the changes will have practically no effect on the public, and accordingly, public comment is unnecessary and impractical.

Economic Assessment and Certification

This final rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply. This final rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The Corps expects that the economic impact of the changes to the restricted areas will have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this final rule will have no significant economic impact on small entities.

National Environmental Policy Act Certification

An environmental assessment has been prepared for each of these actions. We have concluded, based on the minor nature of these amendments, that these amendments to danger zones and restricted areas will not have a significant impact to the human environment, and preparation of an environmental impact statement is not required. Copies of the environmental assessment may be reviewed at the District Offices listed at the end of **SUPPLEMENTARY INFORMATION,** above.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger Zones.

For the reasons set out in the preamble, 33 CFR Part 334 is amended as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.360 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 334.360 Chesapeake Bay off Fort Monroe, Virginia; restricted area, U.S. Naval Base and Naval Surface Weapons Center.

(a) *The area.* Beginning at latitude 37°01′03″, longitude 076°17′52″; thence to latitude 37°01′00″, longitude 076°16′11″; thence to latitude 36°59′43″, longitude 076°16′11″; thence to latitude 36°59′18″, longitude 076°17′52″; thence to latitude 37°00′05″, longitude 076°18′18″; thence north along the seawall to the point of beginning.

(b) *The regulations.* (1) Anchoring, trawling, fishing and dragging are prohibited in the restricted area, and no object, either attached to a vessel or otherwise, shall be placed on or near the bottom unless authorized by the Facility Manager, Naval Surface Warfare Center, Dahlgren Division Coastal Systems Station Detachment, Fort Monroe, Virginia.

* * * * *

3. Section 334.530 is amended by revising paragraph (b)(2) to read as follows:

§ 334.530 Canaveral Harbor adjacent to the Navy Pier at Port Canaveral, Fla.; restricted area.

* * * * *

(b) * * *

(2) The area will be closed when a red square flag (bravo), and depending on the status of the hazardous operation, either an amber or red beacon, steady burning or rotating, day or night, when displayed from any of the three berths along the wharf.

* * * * *

4. Section 334.1340 is amended by redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(1) and (a)(2), respectively, revising the heading of newly designated paragraph (a)(2), and revising paragraph (c) to read as follows:

§ 334.1340 Pacific Ocean, Hawaii; danger zones.

(a) *Danger zones.* (1) * * *

(2) *Submerged unexploded ordnance danger zone, Kahoolawe Island, Hawaii.* * * *

* * * * *

(c) *Enforcing agency.* The regulations in this section shall be enforced by Commander, Naval Base, Pearl Harbor, Hawaii 96860–5020, and such agencies as he/she may designated.

Dated: June 19, 1996.

Stanley G. Genega,

Major General, U.S. Army, Director of Civil Works.

[FR Doc. 96–16850 Filed 7–2–96; 8:45 am]

BILLING CODE 3710–92–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AD-FRL–5530–4]

Title V Clean Air Act Final Interim Approval of Operating Permits Program; Maryland

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Interim Approval.

SUMMARY: EPA is promulgating interim approval of the operating permits program submitted by Maryland for the purpose of complying with federal requirements for an approvable program to issue operating permits to all major stationary sources, and to certain other sources. Maryland has substantially, but not fully, met the requirements for an operating permits program set out in title V of the Clean Air Act (CAA) and 40 CFR part 70. Upon the effective date of this program approval, those sources must comply with Maryland's regulatory requirements to submit an application for an operating permit pursuant to the state's submittal schedule.

EFFECTIVE DATE: August 2, 1996.

ADDRESSES: Copies of Maryland's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

FOR FURTHER INFORMATION CONTACT: Lisa M. Donahue, (3AT23), Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 566–2062, donahue.lisa@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Title V of the 1990 CAA Amendments (sections 501–507 of CAA), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 require that states seeking to administer a title V operating permits program develop and submit a program to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval of an operating permits program submittal. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by November 15, 1995, or by the expiration of the interim approval period, it must establish and implement a federal program.

EPA compiled a technical support document (TSD), associated with the proposal, which contains a detailed analysis of the operating permits program. On October 30, 1995, EPA proposed interim approval of the operating permits program for Maryland, and requested comments on that proposal. (See 60 FR 55231). In this document EPA is taking final action to promulgate interim approval of the operating permits program for Maryland.

II. Analysis of State Submission

On May 9, 1995, Maryland submitted an operating permits program to satisfy the requirements of the CAA and 40 CFR part 70 and the submittal was found to be administratively complete pursuant to 40 CFR 70.4(e)(1). The submittal was supplemented by additional material on June 9, 1995. EPA reviewed the program against the criteria for approval in section 502 of the CAA and the part 70 regulations. EPA determined, as fully described in the notice of proposed interim approval of the state's operating permits program (see 60 FR 55231 (October 30, 1995)) and the TSD for this action, that Maryland's operating permits program substantially meets the requirements of the CAA and part 70.

III. Response to Public Comments

EPA received several comments during the public comment period. Additional comments to clarify comments submitted during the comment period were submitted after the expiration of the public comment period. These comments and EPA's responses are grouped into four categories. All comments are contained

in the docket at the address noted in the ADDRESSES section above.

A. Judicial Standing

Comment 1: One commenter expressed the belief that EPA was overstepping its authority in proposing that Maryland amend the Maryland Environmental Standing Act (MESA) to afford non-state residents and organizations the same standing rights as other ''persons'' as defined in MESA. Citing the 10th amendment to the U.S. Constitution, the commenter argues that the regulation of state courts is clearly a right reserved to the states and that the Maryland common law ''specific interest or property right'' test of harm is a reasonable criteria for determining standing in a state court that EPA should not seek to alter.

EPA Response to comment 1: EPA does not agree that Maryland's common law standing requirements fully meet the standards of title V. Moreover, EPA does not believe that section 502(b)(6) of the CAA, and the requirements of 40 CFR 70.4(b)(3)(x) regarding the necessary opportunity for judicial review of permit actions represent an unconstitutional invasion of state sovereignty or a coercion of state legislative or regulatory action since, under title V, states are required to amend their standing laws only if they wish to obtain EPA approval under the CAA. If a state elects not to participate in implementing title V, it is free to make that choice. EPA's position has been upheld recently at both the Federal District Court and Appellate Court levels. See, State of Missouri and Mel Carnahan v. U.S., et al, No. 4:94CV01288 ELF, 1996 U.S. Dist. Lexis 3215 (E.D. Mo. Feb. 5, 1996). See also, Commonwealth of Virginia v. Carol Browner, et al., No. 95–1052, 1996 U.S. App. Lexis 5334 (4th Cir. Mar. 26, 1996).

Comment 2: Two commenters, including the Maryland Department of the Environment (MDE), expressed disagreement with EPA's evaluation that title V standing criteria must meet the minimum requirements of Article III of the U.S. Constitution. One of these commenters disagreed with EPA's conclusion that MESA consequently provides an inadequate opportunity for judicial review of part 70 permits.

EPA Response to comment 2: Section 502(b)(6) states that every approvable permit program must provide the applicant and ''any person who participated in the public comment process'' with the opportunity for judicial review of the final permit action in state court. The same opportunity must also be afforded to any other person who could obtain judicial review of the action under any applicable state law. EPA believes that for a state title V operating permits program to be approved by EPA, that program must provide access to judicial review to any party who participated in the public comment process and who at a minimum meets the threshold standing requirements of Article III of the U.S. Constitution.

EPA's interpretation is consistent with the language, structure, and legislative history of the Act, under which it is clear that affected members of the public must have an opportunity for judicial review of permit actions to ensure an adequate and meaningful opportunity for public participation in the permit process. See, Chafee-Baucus Statement of Senate Managers, S. 1630, the Clean Air Act Amendments of 1990, reprinted in 136 Cong. Rec. S169941 (daily ed. October 27, 1990). The legislative history, together with the expansive language of section 502(b)(6), demonstrates the clear intent of the Congress to provide citizens a broad opportunity for judicial review.

EPA's position regarding the Article III standard recently was affirmed by the U.S. Court of Appeals for the Fourth Circuit in Commonwealth of Virginia v. Carol M. Browner, et al., No. 95–1052, 1996 U.S. App. Lexis 5334 (4th Cir. Mar. 26, 1996). The Fourth Circuit Court of Appeals therein held that:

> Here, EPA resolved the slight tension within § 502(b)(6) by interpreting the section to require that states, at a minimum, extend judicial review rights to participants in the state public comment process who satisfy the standard for Article III standing. This resolution is both authorized by Congress and reasonable, and therefore we must reject Virginia's alternative interpretation.

Commonwealth v. Browner, 1996 U.S. App. Lexis 5334 at 25–26.

Certain parties, including non-state residents and organizations not doing business in Maryland, do not fall within MESA's definition of ''person'' and cannot take advantage of the standing provisions of MESA. These parties are required to establish standing for judicial review under the Maryland common law of standing. While Maryland's program submittal provides adequate standing for state residents and organizations doing business in Maryland and thus substantially meets the standing requirements of title V of the CAA and 40 CFR part 70, EPA has concluded that Maryland standing requirements are somewhat less favorable than the standing requirements of Article III with respect to non-state residents and organizations not doing business in Maryland. In order to fully meet the standing requirements for judicial review required by CAA section 502(b)(6) and 40 CFR 70.4(b)(3)(x), MESA must be amended to accord such non-state residents and organizations the same standing to challenge part 70 permit decisions as other ''persons'' defined in MESA, or, in the alternative, other appropriate legislative action must be taken to ensure that standing requirements for such organizations are not more restrictive than the minimum requirements of Article III of the U.S. Constitution as they apply to federal courts.

Comment 3: One commenter argues that judicial review under the Maryland Administrative Processes Act (APA) is unavailable in Maryland for a part 70 permit and the scope of review under MESA is much narrower than that afforded under the APA. The commenter further asserts that MESA does not abrogate the existing requirement of exhaustion of remedies, expresses due process concerns inherent under Maryland APA standing principles and questions whether MESA can serve as the ''primary avenue'' for third parties to obtain judicial review of part 70 permits issued by MDE. A second commenter generally asserted the belief that Maryland's permit program effectively precludes citizen suits under all circumstances and is deficient in its citizen suit ''standing'' provisions.

EPA Response to comment 3: The Maryland Attorney General acknowledges that in order to obtain judicial review under the APA, a party must show that the party has been ''aggrieved''. The Maryland Attorney General recognizes that MESA cannot be used for this purpose and that MESA does not provide standing for a direct judicial review of permit actions under Maryland's APA. See, Medical Waste Associates, Inc. v. Maryland Waste Coalition, Inc., 327 Md. 596, 612 A.2d 241 (1992). Citing Medical Waste, the Maryland Attorney General concludes that MESA cannot be used by a plaintiff organization to create standing rights that the organization otherwise would not have to obtain judicial review of a contested case decision under the APA. However, the Maryland Attorney General concludes that the decision in Medical Waste has relevance to the scope of review available under MESA only with respect to MDE permits that are subject to contested case hearings. The Maryland Attorney General states that part 70 operating permits will not be subject to contested case proceedings and that Medical Waste should not be seen as controlling with respect to part

70 permits, especially where MDE has specified that MESA is the appropriate mechanism for obtaining judicial review of such permits.

The Maryland Attorney General acknowledges that the nature and scope of review that is available with respect to part 70 operating permits will depend on the issues raised by the petitioner and on the type of action brought. However, the Maryland Attorney General notes that the Maryland Court of Appeals, in discussing the type of review available in an adjudicative type of permit review proceeding, has stated that:

> Consequently, such an administrative proceeding, even if not subject to judicial review under the APA, would be subject to judicial review, of essentially the same scope, in an action for mandamus, certiorari, injunction, or declaratory judgment.

Medical Waste, 327 Md. at 610.

The Maryland Attorney General further asserts that, in the absence of an express provision for review, actions for declaratory or injunctive relief, as well as mandamus, are available to persons challenging state permit issuance. The Maryland Attorney General notes that a reviewing court essentially may provide the same remedies that a person could obtain from judicial review under the APA and that MESA, therefore, should provide the basis for judicial review of any part 70 permit in which MDE fails correctly to apply applicable CAA requirements that pertain to the source covered under the permit. As to the issue of exhaustion of remedies, neither title V nor 40 CFR part 70 prohibit an administrative remedy exhaustion requirement.

On the basis of the Maryland Attorney General's Opinion, it appears that review of essentially equivalent scope as direct judicial review is available in administrative proceedings such as permit issuances or denials, even if not subject to direct review under the Maryland APA. Nevertheless, Maryland could avoid the risk of any future Maryland judicial decision interpreting MESA or Maryland's common law of standing in such a manner as potentially to compromise Maryland's part 70 approval status if Maryland were to amend its state APA to provide directly for the opportunity for judicial review of permit actions in state court, consistent with CAA section 502(b)(6) and 40 CFR 70.4(b)(3)(x).

Comment 4: One commenter opines that Maryland part 70 regulations should be able to provide expressly for standing consistent with existing Federal law through an adoption of the Federal definition of standing, as Maryland has done with state regulations promulgated under the Federal Surface Mining Control and Reclamation Act.

EPA Response to comment 4: EPA believes that the commenter may have identified one of several potential alternatives available to Maryland to meet fully the requirements of CAA section 502(b)(6) and 40 CFR 70.4(b)(3)(x). However, EPA does not believe that Maryland must select this particular alternative in order to maintain part 70 approval status.

Comment 5: One commenter notes that the Maryland APA requirement that a party be ''aggrieved'' mirrors general common law standing principles applicable to judicial review of administrative decisions, but asserts that Maryland imposes a ''special interest'' requirement whereby a party ''ordinarily must'' show that his personal property rights are specially affected in a way different from the general public in order to have common law standing. The commenter states that Maryland's ''special interest'' requirement differs significantly from the ''general interest'' requirement under the Federal rule and that the Court of Special Appeals of Maryland has virtually excluded anyone but an adjoining property holder from meeting the ''special harm'' requirement of standing.

EPA Response to comment 5: No Maryland appellate decision has articulated those ''interests'' which are sufficient to establish standing on the part of an individual in an environmental permit case. In the event that a Maryland judicial decision having precedential effect is issued in the future which makes Maryland common law standing requirements more stringent than Article III standing requirements, EPA will take appropriate action under 40 CFR 70.10(c) (''Criteria for Withdrawal of State Programs'').

Comment 6: One commenter asserts that MESA places major limitations upon when and where a private citizen may initiate an action and that judicial application of MESA renders nugatory MESA's supposedly broad standing requirements.

EPA Response to comment 6: While it is clear that MESA confers standing on any individual citizen residing ''in the county or Baltimore City where the action is brought'', no reported Maryland appellate decision has interpreted the additional standard set forth in MESA which confers standing on any individual citizen able to ''demonstrate that the alleged condition, activity, or failure complained of affects the environment where he resides.'' In the event that a Maryland judicial decision having precedential effect is issued in the future which makes MESA's standing requirements more stringent than Article III standing requirements, EPA will take appropriate action under 40 CFR 70.10(c).

Comment 7: One commenter notes that organizational standing under Maryland common law is significantly more restrictive than under Federal law in that the organization's members must meet the ''special harm'' test and the organization itself must have its own ''property'' interest, separate and distinct from that of its members and the public at large.

EPA Response to comment 7: EPA has identified the commenter's concerns as an interim approval issue and agrees that Maryland standing requirements are somewhat less favorable than the standing requirements of Article III with respect to organizations not doing business in Maryland. See, 60 FR 55231, 55233. The federal courts interpret Article III to provide standing for organizations in actions brought to protect the interests of their members, provided certain conditions are met. See, Chesapeake Bay Foundation v. Bethlehem Steel Corp., 608 F.Supp. 440 (D. Md. 1985). Under the Maryland common law of standing, an organization must have an interest of its own, separate and distinct from that of its individual members, in order to establish standing. Medical Waste Associates, Inc. v. Maryland Waste Coalition, 327 Md. 596 (1992). However, the Maryland Attorney General notes that if at least one plaintiff in an action for review of a permit establishes standing, the Maryland courts will not ordinarily inquire as to whether other plaintiffs have standing. Therefore, an organization doing business outside of Maryland may be able to participate in a permit challenge on behalf of its individual members if other parties having the requisite standing also join as plaintiffs in the action.

Maryland's program submittal substantially meets the standing requirements of title V of the CAA and 40 CFR part 70. However, in order to meet fully the requirements of section 502(b)(6) of the CAA and 40 CFR 70.4(b)(3)(x), MESA must be amended to accord non-state residents and organizations not doing business in Maryland the same standing to challenge part 70 permit decisions as other ''persons'' as defined in MESA, or, in the alternative, other appropriate legislative action must be taken to ensure that standing requirements for such organizations are not more restrictive than the minimum

requirements of Article III of the U.S. Constitution as they apply to federal courts.

Comment 8: One commenter questions where the Maryland Attorney General finds support for the proposition that Maryland would recognize a non-economic interest as sufficient for standing purposes. The commenter considers it clear that Maryland recognizes only an individual's ''health or property'' interest and that not one single case allows recreational, environmental or aesthetic interests as being sufficient to constitute the type of special interest needed to establish standing under Maryland common law (i.e., non-MESA) standing.

EPA Response to comment 8: There are no reported cases in Maryland that would preclude a non-economic interest (such as a recreational, conservational or aesthetic interest) from constituting the type of specific interest needed to establish standing under Maryland common law. If a Maryland judicial decision having precedential effect is issued in the future limiting the special interest required for standing to economic interests, then the Maryland standing requirement would become more stringent than Article III standing requirements. See e.g., Commonwealth of Virginia v. Carol M. Browner, et al., No. 95–1052, 1996 U.S. App. Lexis 5334 (plaintiff need not show ''pecuniary'' harm to have Article III standing; injury to health or to aesthetic, environmental, or recreational interests will suffice). See, also, United States v. Students Challenging Regulatory Agency Procedures (SCRAP), 412 U.S. 669, 686–87 (1973); Sierra Club v. Morton, 405 U.S. 727, 734 (1972). EPA would then take appropriate action under 40 CFR 70.10(c).

Comment 9: One commenter asked that EPA disapprove the Maryland part 70 Permit Program and take the first steps to institute discretionary sanctions.

EPA Response to comment 9: Maryland's part 70 Permit Program submittal does not meet fully the requirements of title V of the CAA and 40 CFR part 70 and full approval by EPA is inappropriate. However, Maryland's part 70 Permit Program submittal substantially meets the requirements of title V of the CAA and 40 CFR part 70 and interim approval is appropriate. During the interim approval period, which may extend for up to 2 years, Maryland is protected from sanctions for failure to have a fully approved title V, part 70 program. EPA may apply discretionary sanctions, where warranted, any time after the end of an interim approval period if Maryland has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program.

B. Programmatic Issues

Comment 10: A commenter disagreed with EPA's statement that any relaxation of a compliance plan or schedule must be processed as a significant permit modification. The commenter believes that Maryland should be allowed discretion to process insubstantial changes to a compliance plan or schedule as either administrative or minor permit revisions, and cites an example. The commenter believes that it is inappropriate to require a significant permit modification for a one month delay in meeting a compliance milestone, when the state can assure that the source is acting in good faith and that the delay is beyond the source's control. The commenter believes that this provision of the regulation (Code of Maryland Regulations (COMAR) 26.11.03.14.C) should be approved as currently written.

EPA Response to Comment 10: EPA agrees with the comment and revises its position, removing the requirement to revise COMAR 26.11.03.14C as set out in the proposed interim approval notice. COMAR 26.11.03.14C does not prohibit MDE from considering a change to a compliance plan as a significant permit modification. Rather, it provides an additional requirement for changes to compliance plans. Whereas sources may make changes addressed in administrative permit amendments (see COMAR 26.11.03.15F) or minor permit modifications (with some exceptions, see COMAR 26.11.03.16G) before MDE completes its amendment or modification, changes to compliance plans may not be made until they have been approved in writing. The criteria for determining the type of permit modification that is required in any particular instance are set out at COMAR 26.11.03.14–19. In keeping with these criteria, Maryland has the discretion to treat ''insubstantial'' changes as administrative or minor permit modifications, as appropriate.

Comment 11: A commenter expressed support for MDE's plan to place fee revenues from the title V program into a segregated portion of the Air and Radiation Management and Administration's budget. Maryland's title V program allows surplus funds from previous years to be carried over to the following year and used solely for the part 70 permit program. The commenter recommended that the funds be placed in an interest bearing account, and credited to sources, according to the proportion of the total of all emission fees which were paid by the source in a timely manner.

EPA Response to Comment 11: Part 70 requires that states establish a fee schedule that results in revenues sufficient to cover the permit program costs. Part 70 does not specify how surplus funds from one year should be carried over to fund the next year, and does not require that funds be placed in an interest bearing account and credited to sources. Maryland has discretion to manage surplus funds as the state determines is appropriate, provided that the funds are used solely for title V purposes and in accordance with the provisions of part 70. The state is also required under part 70.9(d) to provide periodic accounting updates demonstrating how fee revenues are used solely to cover the costs of implementing the title V program.

Comment 12: A commenter requested that EPA encourage Maryland to adopt a ''trivial activities'' list and set up a process for approving trivial activities on a case by case basis, as provided for in the EPA's ''White Paper for Streamlined Development of Part 70 Permit Applications.''

EPA Response to Comment 12: As discussed in the ''White Paper for Streamlined Development Part 70 Permit Applications'', dated July 10, 1995, EPA believes that, in addition to the insignificant activity provisions of part 70.5(c), part 70.5 allows permitting authorities to recognize certain activities as being clearly trivial (i.e., emissions units and activities which do not in any way implicate applicable requirements) and that such trivial activities can be omitted from the permit application even if not included on a list of insignificant activities approved in a state's part 70 program. Permitting authorities may, on a case-by-case basis and without EPA approval, exempt additional activities which are clearly trivial. However, additional exemptions, to the extent that the activities they cover are not clearly trivial, still need to be approved by EPA before being added to state lists of insignificant activities. While part 70.5 has been interpreted to allow flexibility for the determination of trivial activities, EPA will defer to Maryland to determine whether similar flexibility exists under its own permit application provisions. EPA believes that it is appropriate to have such determinations made in the first instance at the state level as the decision of whether any particular item should be on a state's trivial list may depend on

state-specific factors, such as whether the activity is subject to state-only requirements or specific requirements of the SIP.

Comment 13: A commenter urged EPA to allow the state to provide more time for facilities to submit permit applications. Maryland requires facilities to submit permit applications on a staggered basis within 4, 6 or 8 months after the effective date of EPA's approval of the title V program. The commenter is concerned that pending rulemakings for the title V program and monitoring requirements are needed to determine what will be required in a title V permit application and permit. Further, the commenter requested EPA to develop a national standard for permit application forms, so that no one company or state would have a greater or lesser burden in completing its permit application.

EPA Response to Comment 13: Section 503(c) of the CAA requires that any person required to have a permit shall submit to the permitting authority a permit application and compliance plan not later than 12 months after the date on which the source becomes subject to the program, or such earlier date as the permitting authority may establish. This requirement is established by regulation at 40 CFR part 70.5(a)(1). EPA has no authority to allow states to extend the time frame for sources to submit permit applications beyond the required 12 months. The CAA and part 70 provide states discretion to establish earlier due dates for sources to submit permit applications. Many states, including Maryland, have done so, particularly so that they will be able to meet the requirement for issuing one-third of permits within the first year of title V program approval. EPA supports states' decisions to establish earlier due dates for permit applications and believes that Maryland's approach is reasonable.

EPA's pending rulemakings pertaining to the title V program and monitoring requirements do not have an impact on the information that sources must include in permit applications. Sources subject to Maryland's title V program, once approved, will be subject to the requirements for permit applications found in Maryland's regulations (primarily COMAR 26.11.03.02, 26.11.03.03, and 26.11.03.04).

EPA does not agree that a national standardized permit application form should be established. Part 70.5(c) requires the state to provide a standard application form(s) and provides that the permitting authority may use its discretion in developing application forms that best meet program needs and administrative efficiency. Part 70.5(c) specifies the minimum types of information that must be included in permit applications.

C. Decision for ''Interim'' Approval

Comment 14: One general comment raised with respect to several of the proposed interim approval issues questions why such program deficiencies warrant interim approval status. Although this same comment was submitted with respect to several of the proposed interim approval issues, EPA will respond to this comment generally in this rulemaking action.

EPA Response to comment 14: The part 70 regulations define the minimum elements required by the CAA for approval of state operating permit programs. Section 70.4(d) authorizes EPA to grant interim approval in situations where a state's program substantially meets the requirements of part 70, but is not fully approvable. In reviewing Maryland's operating permit regulations, several instances in which the impact of seemingly ''small'' deficiencies such as vague or awkward language, misplaced, misreferenced or mislabeled provisions prevents EPA from being able to determine that the requirements of part 70 are fully met. EPA identified such deficiencies as ''interim approval issues'' which Maryland must revise, modify or otherwise clarify to fully meet part 70's requirements. To the extent that EPA's concerns can be satisfied through other mechanisms, regulatory revision may not be necessary.

Comment 15: Commenters also have questioned the propriety of EPA's proposal to grant interim approval status to Maryland's title V Program in light of recognized deficiencies in the Program's standing requirements for judicial review and have previously suggested that EPA may be applying inconsistent approval standards and an inconsistent level of review and comment among the various state and local jurisdictions seeking operating permit program approvals under title V of the CAA.

EPA Response to comment 15: EPA believes that MESA provides adequate standing for judicial review to Maryland residents and corporations, and any partnership, organization, association or legal entity doing business in the state, all of whom are defined as ''persons'' therein. EPA further believes that the substantial majority of challenges to state permit actions will be brought by resident individuals and organizations doing business within the state and who will have standing for judicial review pursuant to MESA. EPA recognizes that non-state residents must establish standing pursuant to Maryland common law, which requires a ''specific interest or property right'' such that the party will suffer harm that is different in kind from that suffered from the general public. However, there are no reported cases in Maryland that would preclude non-economic interests such as recreational, conservational or aesthetic interests from constituting the type of specific interest needed for standing. In the event that a Maryland decision having precedential effect subsequently limits the special interest required for standing to economic interests, or otherwise makes the Maryland standing requirements more stringent that Article III standing requirements, EPA has previously stated its intent to take appropriate action under 40 CFR 70.10(c). EPA also acknowledges, as an interim approval issue, that Maryland standing requirements are somewhat less favorable than the standing requirements of Article III with respect to organizations not doing business in Maryland and that Maryland must accord non-state residents and organizations not doing business in the state the same standing rights to challenge part 70 permit decisions as other ''persons'' as defined in MESA. In the interim, an organization doing business outside Maryland still may be able to participate in a permit challenge on behalf of its individual members if it joins other plaintiffs who already have the requisite standing in the action, as Maryland courts will not ordinarily inquire as to whether other plaintiffs have standing.

For these reasons, EPA believes that Maryland's program currently provides the requisite standing for judicial review to the broad majority of prospective plaintiffs in part 70 state permit actions and substantially meets the requirements of part 70. EPA further believes that Maryland's program meets each of the minimum requirements of 40 CFR 70.4(d)(3), such that interim approval should be granted to Maryland's title V Program.

EPA has applied consistent review, comment and approval standards among the various jurisdictions seeking approval of operating permit programs under title V of the CAA. EPA evaluates each program separately to determine if it meets the requirements of 40 CFR part 70 and has not proposed approval for any state operating permits program that does not substantially meet the requirements for standing for judicial review as required by section 502(b)(6) of the Act and 40 CFR 70.4(b)(3)(x).

Some commenters have questioned the consistency of EPA's review, comment and approval standards with respect to the issue of standing for judicial review because EPA proposes to grant interim approval status to Maryland's title V Program after acknowledging certain deficiencies in Maryland's program submittal. These commenters note that EPA previously denied approval of the Commonwealth of Virginia's Program upon finding that limitations on judicial review in Virginia did not meet the minimum threshold standing requirements of Article III.

On the basis of five disapproval issues, including the issue of standing for judicial review, EPA determined that Virginia's operating program submittal did not substantially meet the requirements of part 70 and, therefore, was not eligible for interim approval. (See 59 FR 62324 (December 5, 1994)). On the issue of standing for judicial review, EPA took particular note that section 10.1–1318(B) of the Code of Virginia extends the right to seek judicial review only to persons who have suffered ''actual, threatened, or imminent injury * * *'' where ''such injury is an invasion of an immediate, legally protected, pecuniary and substantial interest which is concrete and particularized * * *'' and found that the limitations on judicial review in Virginia did not meet the minimum threshold standing requirements of Article II of the U.S. Constitution and did not meet the minimum program approval criteria under title V. (See 59 FR 31183, 31184 (June 17, 1994)).

The strict limitations on judicial review which are contained in Virginia's program submittal are in sharp contrast to the comparatively minor limitations on judicial review contained in Maryland's operating program submittal (as described above). Because Maryland's program submittal confers general standing privileges on all state residents and organizations doing business in the state (i.e., the broad majority of potential plaintiffs), and for the additional reasons explained above, EPA believes that Maryland's program submittal substantially meets the standing requirements of title V of the CAA and 40 CFR part 70. EPA further believes that such a finding is factually appropriate and is consistent with applicable approval standards and prior EPA program evaluations.

D. Part 70 Supplemental Rule

Comment 16: A commenter expressed support for EPA's supplemental proposed rule for the title V program (See 60 FR 45530, August 31, 1995) which would provide states the flexibility to match the level of review of permit revisions to the environmental significance of the operational change.

EPA Response to Comment 16: This comment does not pertain to EPA's proposed interim approval action for Maryland's title V program. EPA's approval action for Maryland is based on 40 CFR part 70 as promulgated on July 21, 1992. Once EPA promulgates final revisions to the part 70 program, the state will be required to amend its title V program to reflect the changes.

FINAL ACTION: EPA is promulgating interim approval of the operating permits program submitted by Maryland on May 9, 1995, and supplemented on June 9, 1995. Maryland must make the changes identified in the notice of proposed rulemaking, with the exception noted in Comment 10 above, in order to fully meet the requirements of the July 21, 1992 version of part 70 (See 60 FR 55231, October 30, 1995).

The scope of Maryland's part 70 program approved in this action applies to all part 70 sources (as defined in the approved program) within Maryland, except any sources of air pollution over which an Indian Tribe has jurisdiction. *See, e.g.,* 59 FR 55813, 55815–18 (Nov. 9, 1994). The term ''Indian Tribe'' is defined under the Act as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' *See* section 302(r) of the CAA; *see also* 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

This interim approval extends until August 3, 1998. During this interim approval period, Maryland is protected from sanctions for failure to have a fully approved title V, part 70 program, and EPA is not obligated to promulgate, administer and enforce a federal operating permits program in Maryland. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If Maryland fails to submit a complete corrective program for full approval by February 3, 1998, EPA will start an 18-month clock for mandatory sanctions. If Maryland then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that Maryland has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of Maryland, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determined that Maryland had come into compliance. In any case, if, six months after application of the first sanction, Maryland still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves Maryland's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to the date on which the sanction would be applied Maryland has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of Maryland, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that Maryland has come into compliance. In all cases, if, six months after EPA applies the first sanction, Maryland has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if Maryland has not timely submitted a complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to Maryland's program by the expiration of the interim approval period, EPA must promulgate, administer and enforce a federal permits program for Maryland upon the date the interim approval period expires.

Requirements for approval, specified in 40 CFR 70.4(b), encompass the CAA's section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the state's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of Maryland's program for receiving

delegation of section 112 standards that are unchanged from federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

Additionally, EPA is promulgating approval of Maryland's operating permits program, under the authority of title V and part 70 for the purpose of implementing section 112(g) to the extent necessary during the transition period between promulgation of the federal section 112(g) rule and adoption of any necessary state rules to implement EPA's section 112(g) regulations. However, since this approval is for the purpose of providing a mechanism to implement section 112(g) during the transition period, the approval of the operating permits program for this purpose will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until state regulations are adopted. Although section 112(l) generally provides the authority for approval of state air toxics programs, title V and section 112(g) provide authority for this limited approval because of the direct linkage between implementation of section 112(g) and title V. Unless the federal section 112(g) rule establishes a specific time frame for the adoption of state rules, the duration of this approval is limited to 18 months following promulgation by EPA of section 112(g) regulations, to provide the state with adequate time to adopt regulations consistent with federal requirements.

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

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action to grant interim approval of Maryland's operating permits program pursuant to title V of the CAA and 40 CFR part 70 does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

EPA has determined that this action, promulgating interim approval of Maryland's operating permits program, 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.

List of Subjects in 40 CFR Part 70

Environmental Protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Dated: June 19, 1996.

W. Michael McCabe,

Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by adding the entry for Maryland in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Maryland

(a) Maryland Department of the Environment: submitted on May 9, 1995; interim approval effective on August 2, 1996; interim approval expires August 3, 1998.

(b) Reserved

* * * * *

[FR Doc. 96–17020 Filed 7–3–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–300420A; FRL–5381–5]

RIN 2070–AB78

Potassium Citrate; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of potassium citrate (CAS Reg. No. 866–84–2), when used as an inert ingredient (chelating agent and pH control) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest and animals. This regulation was requested by Monsanto Company and Zeneca Ag Products, pursuant to the Federal Food, Drug, and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective July 3, 1996.

ADDRESSES: Written objections, identified by the document control number, [OPP–300420A] 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 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 request to: Rm. 1132, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. 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 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–300420A]. No ''Confidential Business Information'' (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 below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Amelia M. Acierto, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Westfield Building North, 6th Fl., 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8375; e-mail: acierto.amelia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 10, 1996 (61 FR 15915), EPA issued a proposed rule (FRL–5361–2) gave notice that Monsanto Company, 700 14th Street, NW., Washington, DC 20005 had submitted pesticide petition (PP) 6E4607 and Zeneca Ag Products, 1800 Concord Pike, Wilmington, DE 19850–5458 had submitted pesticide petition (PP) 6E4637 to EPA requesting that the

Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(c) and (e) by establishing an exemption from the requirement of a tolerance for residues of potassium citrate (CAS Reg. No. 866–84–2) when used as an inert ingredient (chelating agent and pH control) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest and animals.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

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

The data submitted relevant to 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 exemption will protect the public health. Therefore, the tolerance exemption 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 [OPP–300420A] (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 public 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 1B2, 1921 Jefferson Davis Highway, Arlington, VA.

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 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, 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.

This action does not impose any enforceable duty, or contain any ''unfunded mandates'' as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is (is not) a ''major rule'' as defined by 5 U.S.C. 804(2) of the APA as amended.

Pursuant to the requirements of the Regulatory Flexibility Act (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: June 24, 1996.

Peter Caulkins,

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 § 180.1001 the table to paragraph (c) and (e) is amended by adding alphabetically the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* *	* * *	* *
Potassium citrate (CAS Reg. No. 866–84–2)		Chelating agent, pH control
* *	* * *	* *

(e) * * *

Inert ingredients	Limits	Uses
* *	* * *	* *
Potassium citrate (CAS Reg. No. 866–84–2)		Chelating agent, pH control
* *	* * *	* *

[FR Doc. 96–16859 Filed 7–2–96; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300419A; FRL–5381–2]

RIN 2070–AB78

Pentaerythritol Stearates; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of a mixture of chemicals known as pentaerythritol stearates (CAS Reg. No. 85116–93–4), which include pentaerythritol monostearate (CAS Reg. No. 78–23–9), pentaerythritol distearate (CAS Reg. No. 13081–97–5), pentaerythritol tristearate (CAS Reg. No. 28188–24–1), and pentaerythritol tetrastearate (CAS Reg. No. 115–83–3) when used as an inert ingredient (emulsifier) at a concentration of no more than 25 ppm in pesticide formulations applied to growing crops and to raw agricultural commodities after harvest. This regulation was requested by Wacker Silicones Corporation, pursuant to the Federal Food, Drug, and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective July 3, 1996.

ADDRESSES: Written objections, identified by the docket number, [OPP–300419A] 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 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 request to: Rm. 1132, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. 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 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 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–300419A). No ''Confidential Business Information'' (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 below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Amelia M. Acierto, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Westfield Building North, 6th Fl., 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8375; e-mail: acierto.amelia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 17, 1996 (61 FR 16747), EPA issued a proposed rule (FRL–5355–7), gave notice that Wacker Silicones Corporation, 3301 Sutton Road, Adrian, Michigan 49221–9397 had submitted pesticide petition (PP) 4E4378 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for residues of a mixture of chemicals known as pentaerythritol stearates (pentaerythritol monostearate (CAS Reg. No. 78–23–9), pentaerythritol distearate (CAS Reg. No. 13081–97–5), pentaerythritol tristearate (CAS Reg. No. 28188–24–1) and pentaerythritol tetrastearate (CAS Reg. No. 115–83–3) when used as an inert ingredient (emulsifier) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

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

The data submitted relevant to 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 exemption will protect the public health. Therefore, the tolerance exemption 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 (OPP–300419A) (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 public 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 may 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 any copies of 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 comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia 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.

This action does not impose any enforceable duty, or contain any ''unfunded mandates'' as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2) of the APA as amended.

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: June 24, 1996.

Peter Caulkins,

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. The table in § 180.1001(c) is amended by adding alphabetically the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

(c) * * *

* * * * *

Inert ingredients	Limits	Uses
* *	* * *	* *
Pentaerythritol stearates mixture (CAS Reg. No. 85116–93–4) which include pentaerythritol monostearate (CAS Reg. No. 78–23–9), pentaerythritol distearate (CAS Reg. No. 13081–97–5), pentaerythritol tristearate (CAS Reg. No. 28188–24–1) and pentaerythritol tetrastearate (CAS Reg. No. 115–83–3).	No more than 25 ppm in pesticide formulations.	Emulsifier
* *	* * *	* *

* * * * *

[FR Doc. 96–16857 Filed 7–2–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–27; RM–8750]

Radio Broadcasting Services; Pullman, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Keith E. Lamonica, allots Channel 249A at Pullman, Washington, as the community's third local commercial FM transmission service *See* 61 FR 9410, March 8, 1996. Channel 249A can be allotted to Pullman in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.8 kilometers (5.5 miles) east to avoid a short-spacing to the construction permit site of Station WLKY(FM), Channel 250C1, Milton-Freewater, Oregon, and to the licensed site of Station KISC(FM), Channel 251C, Spokane, Washington. The coordinates for Channel 249A at Pullman are North Latitude 46–44–37 and West Longitude 117–03–34. Since Pullman is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained. With this action, this proceeding is terminated.

DATES: Effective August 12, 1996. The window period for filing applications will open on August 12, 1996, and close on September 12, 1996.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 95–27, adopted June 21, 1996, and released June 28, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 973.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Channel 249A at Pullman.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–16954 Filed 7–2–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 96–25; RM–8752]

Radio Broadcasting Services; Forest Acres, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Kuhel Communications, allots Channel 232A at Forest Acres, South Carolina, as the community's first local aural transmission service. *See* 61 FR 9411, March 8, 1996. Channel 232A can be allotted to Forest Acres in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 232A at Forest Acres are North Latitude 34–01–09 and West Longitude 80–59–24. With this action, this proceeding is terminated.

DATES: Effective August 12 1996. The window period for filing applications will open on August 12, 1996 and close on September 12, 1996.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 96–25, adopted June 21, 1996, and released June 28, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by adding Forest Acres, Channel 232A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–16955 Filed 7–2–96; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–46; RM–8594]

Radio Broadcasting Services; Edenton, Columbia and Pine Knoll Shores, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Lawrence F. and Margaret A. Loesch, substitutes Channel 273C1 for Channel 273C2 at Edenton, NC, reallots Channel 273C1 from Edenton to Columbia, NC, and modifies the license of Station WERX-FM to specify operation on the higher class channel and Columbia as its community of license. *See* 60 FR 19878, April 21, 1995. The proposal to substitute Channel 290A for vacant but applied-for Channel 272A at Pine Knoll Shores, NC, is moot since the Commission deleted the channel, without replacement, and dismissed the sole application for the channel. *See* 10 FCC Rcd 13159 (1995). Channel 273C1 can be allotted to Columbia in compliance with the Commission's minimum distance separation requirements with a site restriction of 24.7 kilometers (15.3 miles) south-southeast, at coordinates 35–42–48 NL; 76–08–34 WL, to avoid short-spacings to Stations WOLC, Channel 273B, Princess, MD, and WHLQ, Channel 273A, Louisburg, NC. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 12, 1996.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 95–46, adopted June 21, 1996, and released June 28, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW. Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by removing Channel 273C2 at Edenton and adding Channel 273C1 at Columbia.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–16956 Filed 7–2–96; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 96–29; RM–8731]

Radio Broadcasting Services; Chester and Richmond, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Hoffman Communications, Inc., substitutes Channel 266A for Channel 289A for Station WDYL(FM) at Chester, Virginia; and substitutes Channel 289A for Channel 266A for Station WSMJ(FM) at Richmond, Virginia; and modifies the authorizations of Station WDYL(FM) and WSMJ(FM), respectively. Channel 266A can be allotted to Chester and Channel 289A can be allotted to Richmond in compliance with the Commission's minimum distance separation requirements and can be used at the transmitter sites specified in Stations WDYL(FM)'s and WSMJ(FM)'s authorizations, respectively. The coordinates for Channel 266A at Chester, Virginia, are 37–22–58 and 77–25–41. The coordinates for Channel 289A at Richmond, Virginia, are 37–30–52 and 77–30–28. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 12, 1996.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No.96–29, adopted June 21, 1996, and released June 28, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by removing Channel 289A and adding Channel 266A at Chester; and by removing Channel 266A and adding Channel 289A at Richmond.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–16957 Filed 7–2–96; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 96–30; RM–8762]

Television Broadcasting Services; Antigo, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action in this proceeding allots UHF Television Channel 46 to Antigo, Wisconsin, in response to a petition filed by Robert J. Cox d/b/a Native American Television. The coordinates for Channel 46 at Antigo are 45–08–54 and 89–09–00. Canadian concurrence has been obtained for this allotment.

EFFECTIVE DATE: August 12, 1996.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* MM Docket No. 96–30, adopted June 21, 1996, and released June 28, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of TV Allotments under Wisconsin, is amended by adding Antigo, Channel 46.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–16953 Filed 7–2–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–277]

Organization and Delegation of Powers and Duties; Delegation to the Commandant, United States Coast Guard

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation has delegated to the Commandant, United States Coast Guard, the authority contained in 14 U.S.C. 326 to remove an officer from active duty, and the authority in 14 U.S.C. 256(b), to establish the promotion zone for rear admiral (lower half). The *Code of Federal Regulations* does not reflect these delegations; therefore, a change is necessary.

EFFECTIVE DATE: July 3, 1996.

FOR FURTHER INFORMATION CONTACT: LCDR Michael Lehocky, Human Resources Directorate, (202) 267–1664, U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593; LCDR Vincent DeLaurentis, Coast Guard Personnel Command, (202) 267–2883, U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593; or Ronald Gordon, Executive Secretariat, (202) 366–9761, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Section 256(b) of Title 14, U.S. Code contains the Secretary's authority to establish the promotion zone for rear admirals. On September 16, 1986, then Secretary Elizabeth Dole delegated to the Commandant, United States Coast Guard, the Secretary's authority under 14 U.S.C. 256(b) to establish the promotion zone for rear admiral (lower half) provided that all captains eligible for consideration under the provisions of section 257(a)(5), Title 14, U.S. Code are placed in the zone. The necessary changes to the Code of Federal Regulations were never completed, however, and the current CFR sections relating to delegations still show this authority reserved to the Secretary of Transportation. (See 49 CFR 1.44(m)(3)).

Title 14, U.S. Code, sections 321, 322, and 323 provide a three-board (Determination Board, Board of Inquiry, and Board of Review) process to consider the record of a Coast Guard officer whose performance is substandard or whose record shows moral or professional dereliction. If the third board, the Board of Review, recommends separation of the officer, 14 U.S.C. 326 requires that recommendation to be forwarded to the Secretary for final action. On January 6, 1987, then Secretary Elizabeth Dole delegated the Secretary's authority under 14 U.S.C. 326 to the Commandant of the Coast Guard. The necessary changes to the Code of Federal Regulations were never completed, however, and the current CFR sections relating to delegations still show this authority reserved to the Secretary of Transportation. (See 49 CFR 1.44(m)(4)).

This rule removes the reservations of authority in section 1.44 and adds specific delegations of authority to 49 CFR 1.46, thus amending the codification to correctly reflect secretarial delegations of authority to the Commandant of the Coast Guard.

Since this amendment relates to departmental management, organization, procedure, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than 30 days after publication in the Federal Register. Therefore, this final rule is effective upon publication in the Federal Register.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended to read as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; Pub.L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

§ 1.44 [Amended]

2. Sections 1.44(m)(3) and 1.44(m)(4) are removed and reserved.

§ 1.46 [Amended]

3. Section 1.46 is amended by adding new paragraphs (aaa) and (bbb) to read as follows:

§ 1.46 Delegations to Commandant of the Coast Guard.

* * * * *

(aaa) Establish the promotion zone for rear admiral (lower half), provided all captains eligible for consideration under the provisions of section 257(a)(5), Title 14, U.S. Code, are placed in the zone.

(bbb) Remove an officer from active duty under section 326, Title 14, U.S. Code.

Issued at Washington, DC, this 21st day of June 1996.

Federico F. Peña,

Secretary of Transportation.

[FR Doc. 96–16935 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 960314073–6145–02; I.D. 030896E]

RIN 0648–AI23

Atlantic Swordfish Fishery; Correction

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

ACTION: Correction to final regulation.

SUMMARY: This document contains a correction to the final regulation (I.D. 030896E) that was published Friday, May 31, 1996, (61 FR 27304). The final rule amended the regulations governing the Atlantic swordfish fishery by setting the 1996 quotas, and adjusting the minimum size.

EFFECTIVE DATE: July 3, 1996.

FOR FURTHER INFORMATION CONTACT: Ronald G. Rinaldo or Rebecca Lent, 301–713–2347; fax: 301–713–0596.

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of this correction establishes, within the 1996 quota, the amount of set aside for the harpoon segment of the fishery. In § 630.25, the first sentence of paragraph (b) was revised to establish a 21,500 lb (9,752 kg) dressed weight set aside for the harpoon segment of the fishery during the June 1 through November 30 semiannual period.

Need for Correction

As published, the final regulation contains an error. In § 630.25, the second sentence of paragraph (b) is referenced instead of the first sentence of paragraph (b).

Correction of Publication

Accordingly, the publication on May 31, 1996, of the final regulation (I.D. 030896E) that is the subject of FR Doc. 96–13690 is corrected as follows:

§ 630.25 [Corrected]

On page 27308, in the first column, in amendatory instruction seven, ''second'' is corrected to read ''first''.

Dated: June 25, 1996.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 96–17053 Filed 7–2–96; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 697

[Docket No. 950605148–6180–03;I.D. 061296A]

RIN 0648–AH58

Atlantic Weakfish Fisheries; Exclusive Economic Zone (EEZ) Moratorium Rule Suspension

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

ACTION: Final rule.

SUMMARY: On February 16, 1996, the U.S. District Court for the Eastern District of Virginia, Norfolk Division, vacated the Federal regulations for Atlantic Coast weakfish in the EEZ. NMFS has not enforced the regulations since the court issued its order. In accordance with the court's order, NMFS is suspending the regulations on fishing for weakfish in the EEZ. The suspension will remain in effect until other regulations for weakfish are implemented.

EFFECTIVE DATE: July 2, 1996.

FOR FURTHER INFORMATION CONTACT: Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, NMFS, 301–713–2334.

SUPPLEMENTARY INFORMATION: NMFS implemented a final rule to impose a moratorium on fishing for weakfish in the EEZ (60 FR 58246, November 27, 1995). The regulations were subsequently revised (61 FR 29321, June 10, 1996) although they are not currently enforced. The rule was implemented to support conservation efforts developed through the Atlantic States Marine Fisheries Commission's (Commission) Fishery Management Plan for Weakfish (FMP).

On February 16, 1996, the U.S. District Court for the Eastern District of Virginia, Norfolk Division, ordered that the final rule ''is vacated and the Secretary of Commerce and his designees are hereby enjoined from enforcing the Atlantic Coast Weakfish Moratorium in the Exclusive Economic Zone, promulgated at 60 FR 58245 (Nov. 27, 1995).''

Upon the court's ruling, fishermen were immediately allowed to fish for weakfish in the EEZ. Accordingly, NMFS is suspending the Federal regulations that imposed the moratorium. The suspension will remain in effect until replaced by other regulations. NMFS is currently assessing recent actions by the Commission and will proceed with rulemaking if appropriate.

Classification

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

Because this rule implements a February 16, 1996, court order to vacate Federal regulations (60 FR 58246, November 27, 1995) that imposed a moratorium on fishing for Atlantic Coast weakfish in the EEZ, the Assistant Administrator for Fisheries (AA/F) for good cause, under 5 U.S.C.(b)(B), waives the requirement to provide prior notice and an opportunity for public comment, as such procedures are unnecessary. Similarly, the AA/F, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in the effective date.

List of Subjects in 50 CFR Part 697

Fisheries, Fishing.

Dated: June 27, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 697 is amended as follows:

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

1. The authority citation for part 697 continues to read as follows:

Authority: 16 U.S.C. 5101 *et seq.*

2. In § 697.6, paragraph (a) is suspended.

[FR Doc. 96–17050 Filed 7–2–96; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 129
Wednesday, July 3, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 11

[Docket No. 96–037–1]

Horse Protection; Public Meetings

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meetings.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service (APHIS) is hosting a series of public meetings to discuss proposed enforcement changes to the current Horse Protection Act. These proposals have been developed and are outlined in the APHIS ''Strategic Plan'' for Horse Protection. The development of the strategic plan is in line with our commitment to ensure appropriate care for horses regulated under the Horse Protection Act. We are reviewing the current regulations and standards promulgated under the Horse Protection Act, and are seeking recommendations and opinions from affected industries and other concerned members of the public to determine which revisions are necessary and appropriate in order to further reduce the incidence of soring and improve enforcement.

DATES: The first meeting will be held in Murfreesboro, TN, on July 26, 1996. The second meeting will be held in St. Louis, MO, on August 2, 1996. The third meeting will be held in Sacramento, CA, on August 16, 1996. Each meeting will be held from 7:30 a.m. until 6 p.m.

ADDRESSES: The public meetings will be held at the following locations:

1. Murfreesboro, TN: Middle Tennessee State University, Loop Drive, James Union Building, Tennessee Room, Murfreesboro, TN, (615) 898–2797. If traveling from Nashville, take I–24 to exit 78, then head east on Highway 96 (Old Fort Parkway) to Memorial Boulevard (Highway 231). Turn right on Clark Boulevard, then left onto Greenland Drive. Park in the Greenland Drive parking lot and take the shuttle bus to the James Union Building.
2. St. Louis, MO: The Adams Mark Hotel, Fourth and Chestnut, St. Louis, MO, (314) 241–7400. If traveling from Lambert International Airport, take I–70 east to the Gateway Arch exit. The Adams Mark Hotel is located at the corner of Fourth and Chestnut.
3. Sacramento, CA: Red Lion Hotel, Red Lion Ballroom, Sierra and Cascade Sections, 2001 Point West Way, Sacramento, CA, (916) 929–8855. The Red Lion Hotel is at the corner of Point West Way and Arden Way.

FOR FURTHER INFORMATION CONTACT: Dr. John V. Zisk, Director, Horse Protection, Animal Care Staff, REAC, APHIS, USDA, 4700 River Road Unit 84, Riverdale, MD 20737–1234, (301) 734–7833. Copies of the ''Strategic Plan'' are available through this office.

SUPPLEMENTARY INFORMATION: The practice known as ''soring'' is the causing of suffering in show horses to affect their performance in the show ring. Under the Horse Protection Act (HPA) (11 U.S.C. *et seq.*), the Animal and Plant Health Inspection Service (APHIS) is responsible for eliminating the practice of soring, by prohibiting the showing or selling of sored horses.

APHIS believes the regulations and standards established in accordance with the HPA may need to be updated, and APHIS officials have proposed program changes through a ''Strategic Plan.'' In this plan, we have reviewed which areas of enforcement may require a change in regulations and standards based on our experience and knowledge of the program. In developing these proposed changes and conducting this review, APHIS is seeking recommendations and opinions regarding the following: The enforcement of the HPA by USDA-certified horse industry organizations; the certification status of horse industry organizations; uniform systems of rules, regulations, and penalties; training and research. As a forum for such recommendations and opinions, APHIS will hold three meetings to gather input from the public, including equine protection organizations and members of affected industries, such as the walking horse industry and related equine organizations. The meetings will include four workshops facilitated by trained APHIS facilitators, as follows:

(1) Self-regulatory enforcement of the HPA by USDA-certified horse industry organizations;

(2) USDA certifications of horse industry organizations;

(3) Uniform rules, regulations, and penalty systems; and

(4) Training and research under the HPA.

In these workshops, group participation will be used to develop recommendations within specific topic areas. After the workshops have concluded, each workshop group will report its recommendations to the entire meeting.

APHIS will consider the recommendations received in developing any revisions to the current HPA regulations and standards. The Agency will initiate rulemaking for any changes deemed appropriate.

Each of the workshops will be conducted twice at each meeting, once in the morning and once in the afternoon. Participants who intend to attend a full 1-day meeting are asked to register for only one workshop for the morning and a different workshop for the afternoon. Attendance may be limited for some workshops because of space availability.

Registration will be held the day of each meeting between 7:30 a.m. and 8:30 a.m. at the entrance of the general assembly meeting rooms. The general sessions will begin at 8:30 a.m. Any person who is unable to attend the meetings, but who wishes to comment on any of the topics covered by the four workshops, may send written comments to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Done in Washington, DC, this 27th day of June 1996.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–16997 Filed 7–2–96; 8:45 am]

BILLING CODE 3410–34–P

Food Safety and Inspection Service

9 CFR Part 391

[Docket No. 96–013P]

Fee Increase for Inspection Services

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to increase the fees FSIS charges meat and poultry establishments, importers, and exporters for providing voluntary inspection, identification, and certification services and overtime and holiday services. These fee increases are based upon the Agency's analysis of projected costs for fiscal year 1996, which identifies increased costs resulting from the January 1996 FSIS national and locality pay raise average of 2.4 percent for Federal employees and increased health insurance costs.

FSIS also is proposing to reduce the fees charged for providing laboratory services to meat and poultry establishments. The Agency's analysis of projected costs for fiscal year 1996 identified decreased costs resulting from the use of automated equipment for testing laboratory samples and for other inspection related services not covered under the base time, overtime, and holiday costs.

DATES: Comments must be received on or before: August 2, 1996.

ADDRESSES: Submit an original and two copies of written comments concerning this proposed rule to: FSIS Docket Clerk, Docket #96–013P, Room 4352, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700. Persons preferring to present oral comments should contact William L. West at (202) 720–3367. FSIS's cost analysis and comments will be available for public inspection in the FSIS Docket Room from 8:30 a.m. to 1 p.m. and from 2 p.m. to 4:30 p.m., Monday through Friday.

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

SUPPLEMENTARY INFORMATION:

Background

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

In addition to mandatory inspection, FSIS provides a range of voluntary inspection services. Under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), FSIS provides these services to assist in the orderly marketing of various animal products and byproducts not subject to the FMIA or the PPIA. The costs of voluntary inspection are totally recoverable by the Federal Government.

Each year, FSIS reviews the fees it charges meat and poultry establishments, importers, and exporters for providing voluntary inspection, identification, and certification services, as well as overtime and holiday services, and performs a cost analysis to determine whether such fees are adequate to recover the costs FSIS incurs in providing the services. In its analysis of projected costs for fiscal year 1996, FSIS has identified increases in the costs of providing voluntary inspection, identification, and certification services, as well as overtime and holiday services. These increases are attributable to the average FSIS national and locality pay raise of 2.4 percent for Federal employees effective January 1996 and increased health insurance costs.

Accordingly, FSIS is proposing to amend § 391.2 to increase the base time rate for providing voluntary inspection, identification, and certification services from $31.92 per hour, per program employee, to $32.88 per hour, per program employee. FSIS is proposing to amend § 391.3 to increase the rate for providing overtime and holiday services from $32.96 per hour, per program employee, to $33.76 per hour, per program employee.

In its analysis of projected costs for fiscal year 1996, FSIS also has identified a decrease in the cost of providing laboratory services to meat and poultry establishments resulting from the use of automated equipment for testing laboratory samples and for other inspection services not covered under the base time, overtime, and holiday costs, such as travel expenses. Therefore, FSIS proposes to amend § 391.4 of the regulations to reduce the fee charged for providing laboratory services from $52.92 per hour, per program employee, to $48.56 per hour, per program employee.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. The proposed fee increases for voluntary inspection, identification, and certification services, overtime, and holiday inspection services primarily reflect the 1996 increase in salaries of Federal employees allocated by Congress under the Federal Employees Pay Comparability Act of 1990. The proposed fee decrease for laboratory services reflects the use of automated equipment for testing laboratory samples and other inspection related services not covered under the base time, overtime, and holiday costs such as travel expenses.

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

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted by the FMIA and the PPIA from proposing any regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This proposed rule is not intended to have retroactive effect. There are no applicable administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this proposed rule. However, the administrative procedures are set forth in 7 CFR part 1.

List of Subjects in 9 CFR Part 391

Fees and charges, Meat inspection, Poultry products inspection.

For the reasons set out in the preamble, 9 CFR part 391 is proposed to be amended as set forth below.

PART 391—FEES AND CHARGES FOR INSPECTION SERVICES

1. The authority citation for part 391 is revised to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 394, 1622, and 1624; 21 U.S.C. 451 *et seq.* 21 U.S.C. 601–695; 7 CFR 2.18 and 2.53.

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

§ 391.2 Base time rate.

The base time rate for inspection services provided pursuant to §§ 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5 shall be $32.88 per hour, per program employee.

§ 391.3 Overtime and holiday rate.

The overtime and holiday rate for inspection services provided pursuant to §§ 307.5, 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, 362.5, and 381.38 shall be $33.76 per hour, per program employee.

§ 391.4 Laboratory services rate.

The rate for laboratory services provided pursuant to §§ 350.7, 351.9, 352.5, 354.101, 355.12, and 362.5 shall be $48.56 per hour, per program employee.

Done at Washington, DC, on June 27, 1996.

Michael R. Taylor,

Administrator, Food Safety and Inspection Service.

[FR Doc. 96–17000 Filed 7–2–96; 8:45 am]

BILLING CODE 3410–DM–P

FEDERAL RESERVE SYSTEM

12 CFR Parts 218 and 250

[Regulation R; Docket No. R–0931]

Relations With Dealers in Securities Under Section 32, Banking Act of 1933; Miscellaneous Interpretations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board is proposing to amend its regulations to remove Regulation R concerning relations with dealers in securities under section 32 of the Banking Act of 1933, which the Board believes is no longer necessary. The Board also is proposing to amend its regulations to remove an interpretation of section 32 of the Glass-Steagall Act, which the Board believes is no longer necessary. This interpretation explains the position of the Board regarding the application of the prohibitions of section 32 to bank holding companies.

DATES: Comments must be received by August 2, 1996.

ADDRESSES: Comments should refer to Docket No. R–0931 and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Docket No. R–0931, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room MP–500 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Richard M. Ashton, Associate General Counsel (202/452–3750), or Thomas M. Corsi, Senior Attorney (202/452–3275), Legal Division. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act)

Section 303(a) of the CDRI Act (12 U.S.C. 4803(a)) requires the Board, as well as the other federal banking agencies, to review its regulations and written policies in order to streamline and modify these regulations and policies to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. The Board has reviewed its interpretations of section 32 of the Glass-Steagall Act (12 U.S.C. 78) with this purpose in mind, and, as is explained in greater detail in the text that follows, proposes to amend these interpretations in a way designed to meet the goals of section 303(a).

Substantive Provisions of Regulation R

The Board's Regulation R (12 CFR Part 218) implements section 32 of the Glass-Steagall Act. Section 32 prohibits officer, director and employee interlocks between member banks and firms ''primarily engaged'' in underwriting and dealing in securities, and authorizes the Board to exempt from this prohibition, under limited circumstances, certain interlocks by regulation. Currently, Regulation R restates the statutory language of section 32, and sets forth the only exemption adopted by the Board since passage of the Glass-Steagall Act. The Board also has codified in the CFR 14 interpretations of the substantive provisions of section 32 and the regulation.[1] The Board also has issued other interpretations of section 32 that are contained in the Federal Reserve Regulatory Service (FRRS).

The exemption in Regulation R, adopted by the Board in 1969, permits interlocks between member banks and securities firms whose securities underwriting and dealing activities are limited to underwriting and dealing in only securities that a national bank would be authorized to underwrite and deal in. The adoption of the express exemption was apparently based on the assumption that the literal language of the section 32 prohibition could at least arguably cover bank-eligible securities activities.

Subsequently, in orders approving applications under the Bank Holding Company Act (12 U.S.C. 1841 et seq.), the Board interpreted the prohibitions of section 20 of the Glass-Steagall Act, which prohibits a member bank from being affiliated with a firm engaged principally in underwriting and dealing in securities, as not applying on their face to underwriting and dealing in securities that may be underwritten and dealt in directly by a state member bank. In these decisions, the Board also expressed the view that section 32 similarly did not cover an interlock between a member bank and a firm that was not engaged in securities activities covered by section 20.[2] Accordingly, in light of the Board's more recent view of the scope of section 32, the express exemption from the provisions of section 32 for bank-eligible securities activities is no longer necessary.[3] Moreover, the Board has never adopted any other exemption to the interlocks provision and historically, requests that the Board create new exemptions have been infrequent and have been uniformly denied.[4]

Since the exemption in Regulation R is no longer necessary, and it is not necessary to have a substantive regulation solely to restate a statutory provision, the Board is proposing to rescind Regulation R.

Bank Holding Company Interpretation of Section 32 of the Glass-Steagall Act

With one exception, the 14 interpretations of section 32 now contained in the CFR, would be retained and transferred to 12 CFR Part 250,

[1] 12 CFR 218.101–218.114.

[2] This interpretation has been upheld by the courts. *Securities Industry Association* v. *Board of Governors of the Federal Reserve System,* 839 F.2d 47, 62 (2d Cir. 1988), *cert. denied,* 486 U.S. 1059 (1988).

[3] The Board is proposing to adopt a new interpretation of section 32 to clarify this point.

[4] A footnote to Regulation R that dates to 1936 makes it clear that a broker who is engaged solely in executing orders for the purchase and sale of securities on behalf of others in the open market is not engaged in the business referred to in section 32. The Board has since authorized bank holding companies to engage in this activity directly, reiterating that securities brokerage is not a proscribed activity under either sections 32 or 20 of the Glass-Steagall Act. *BankAmerica Corporation,* 69 Federal Reserve Bulletin 105 (1983). The courts upheld the Board's interpretation. *Securities Industry Assn.* v. *Board of Governors,* 468 U.S. 207 (1984). The removal of Regulation R does not affect this interpretation.

which contains miscellaneous Board interpretations.

By their terms, the prohibitions of section 32 apply only to member banks. In 1969, the Board issued an interpretation that extended the prohibitions of section 32 to a bank holding company where the principal activity of the bank holding company is the ownership and control of member banks.[5] The Board is now seeking public comment on rescinding this interpretation.

The Board based its 1969 interpretation not so much on the literal language of section 32, but on its belief that where the ownership and control of member banks is the principal activity of a bank holding company, the same possibilities of abuse that section 32 was designed to prevent would be present in the case of a director of the holding company as in the case of the member bank.[6] The Board believed that giving cognizance to the separate corporate entities in such a situation would partially frustrate Congressional purpose in enacting section 32.

The Board now believes that it could rescind this interpretation and give some measure of regulatory burden relief to bank holding companies in a manner consistent with section 32, and without frustrating the Congressional purpose underlying the section. The Board is not barred by the literal terms of the Glass-Steagall Act from rescinding the interpretation. As noted above, section 32 specifically restricts only those interlocks involving member banks. While the bank holding company structure was not in widespread use when section 32 was adopted, Congress has amended section 32 since the section was adopted and since bank holding companies have become commonplace, but never has extended the prohibitions in the section to bank holding companies. Notably, in 1987, Congress extended the prohibitions of section 32 to cover interlocks involving nonmember banks and thrift institutions but not interlocks involving bank holding companies.[7]

The potential that removal of the interpretation could frustrate Congressional purpose in enacting section 32 is mitigated by the fact that the prohibitions of section 32 would continue to apply to member banks. Accordingly, the directors, officers and employees of these banks, none of whom may be interlocked with a securities firm, could serve as a check against the possibilities of abuse that section 32 is intended to prohibit. In addition, the Board believes that by rescinding this interpretation, it would be granting some measure of regulatory relief to bank holding companies by giving them access to a larger pool of persons from which to choose their officers, directors, and employees.[8]

Other Interpretations of Section 32

The Board also seeks comment on whether any of the other interpretations of section 32 previously adopted by the Board could be amended.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 95–354, 5 U.S.C. 601 *et seq.*), the Board of Governors of the Federal Reserve System certifies that adoption of this proposed rule will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation.

This amendment will remove a regulation and an interpretation that the Board believes are no longer necessary. The amendment does not impose more burdensome requirements on bank holding companies than are currently applicable.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the proposed rule.

List of Subjects

12 CFR Part 218

Antitrust, Federal Reserve System, Securities.

12 CFR Part 250

Federal Reserve System.

For the reasons set forth in the preamble and under the authority of 12 U.S.C. 248, the Board proposes to amend Chapter II of the Code of Federal Regulations as set forth below:

[5] 12 CFR 218.114.

[6] As noted in the Board's interpretation, section 32 is directed to the probability or likelihood that a bank director interested in the underwriting business may use his or her influence in the bank to involve it or its customers in securities sold by his or her underwriting house.

[7] The provisions extending the prohibitions of section 32 to nonmember banks and thrifts expired in 1988.

[8] Should the Board determine to rescind this interpretation, this action would not affect other Board decisions or determinations that restrict interlocks to ensure compliance with section 20 of the Glass-Steagall Act (12 U.S.C. 377). *See, e.g., Mellon Bank Corporation,* 79 Federal Reserve Bulletin 626 (1993).

PART 218—[AMENDED]

§§ 218.101 through 218.113 [Redesignated as §§ 250.400 through 250.412]

1. Sections 218.101 through 218.113 are redesignated as set forth in the following table:

0ld Section	New section
218.101	250.400
218.102	250.401
218.103	250.402
218.104	250.403
218.105	250.404
218.106	250.405
218.107	250.406
218.108	250.407
218.109	250.408
218.110	250.409
218.111	250.410
218.112	250.411
218.113	250.412

PART 218—[REMOVED]

2. Part 218 is removed.

PART 250—MISCELLANEOUS INTERPRETATIONS

1. The authority citation for part 250 is revised to read as follows:

Authority: 12 U.S.C. 78, 248(i) and 371c(e).

2. A new center heading is added immediately preceding newly designated § 250.400 to read as follows:

Interpretations of Section 32 of the Glass-Steagall Act

3. Section 250.413 is added to read as follows:

§ 250.413 ''Bank-eligible'' securities activities.

Section 32 of the Glass-Steagall Act (12 U.S.C. 78) prohibits any officer, director, or employee of any corporation or unincorporated association, any partner or employee of any partnership, and any individual, primarily engaged in the issue, flotation, underwriting, public sale, or distribution, at wholesale or retail, or through syndicate participation, of stocks, bonds, or other similar securities, from serving at the same time as an officer, director, or employee of any member bank of the Federal Reserve System. The Board is of the opinion that to the extent that a company, other entity or person is engaged in securities activities that are expressly authorized for a state member bank under section 16 of the Glass-Steagall Act (12 U.S.C. 24(7), 335), the company, other entity or individual is not engaged in the types of activities described in section 32. In addition, a securities broker who is engaged solely in executing orders for the purchase and

sale of securities on behalf of others in the open market is not engaged in the business referred to in section 32.

By order of the Board of Governors of the Federal Reserve System.

Date: June 26, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–16841 Filed 7–02–96; 8:45am]

Billing Code 6210–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AB59

Assessments

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed Rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is proposing to amend its assessment regulations by adopting interpretive rules regarding certain provisions therein that pertain to so-called Oakar institutions: institutions that belong to one insurance fund (primary fund) but hold deposits that are treated as insured by the other insurance fund (secondary fund). Recent merger transactions and branch-sale cases have revealed weaknesses in the FDIC's procedures for attributing deposits to the two insurance funds and for computing the growth of the amounts so attributed. The interpretive rules would repair those weaknesses.

In addition, the FDIC is proposing to simplify and clarify the existing rule by making changes in nomenclature.

DATES: Comments must be received by the FDIC on or before September 3, 1996.

ADDRESSES: Send comments to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand-delivered to Room F–400, 1776 F Street, N.W., Washington, D.C., on business days between 8:30 a.m. and 5:00 p.m. (FAX number: 202/898–3838. Internet address: comments@fdic.gov). Comments will be available for inspection in the FDIC Public Information Center, Room 100, 801 17th Street, N.W., Washington, D.C. between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Allan K. Long, Assistant Director, Division of Finance, (703) 516–5559; Stephen Ledbetter, Chief, Assessments Evaluation Section, Division of Insurance (202) 898–8658; Jules Bernard, Counsel, Legal Division, (202) 898–3731, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: This proposed interpretive regulation would alter the method for determining the assessments that Oakar institutions pay to the two insurance funds. Accordingly, the proposed regulation would directly affect all Oakar institutions. The proposed regulation would also indirectly affect non-Oakar institutions, however, by altering the business considerations that non-Oakar institutions must take into account when they transfer deposits to or from an Oakar institution (including an institution that becomes an Oakar institution as a result of the transfer).

I. Background

Section 5(d)(2) of the FDI Act, 12 U.S.C. 1815(d)(2), places a moratorium on inter-fund deposit-transfer transactions: mergers, acquisitions, and other transactions in which an institution that is a member of one insurance fund (primary fund) assumes the obligation to pay deposits owed by an institution that is a member of the other insurance fund (secondary fund). The moratorium is to remain in place until the reserve ratio of the Savings Association Insurance Fund (SAIF) reaches the level prescribed by statute. *Id.* 1815(d)(2)(A)(ii); see *id.* 1817(b)(2)(A)(iv) (setting the target ratio at 1.25 percentum).

The next paragraph of section 5(d)—section 5(d)(3) of the FDI Act—is known as the Oakar Amendment. *See* Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Pub. L. 101–73 section 206(a)(7), 103 Stat. 183, 199–201 (Aug. 9, 1989); 12 U.S.C. 1815(d)(3). The Amendment permits certain deposit-transfer transactions that would otherwise be prohibited by section 5(d)(2) (Oakar transactions).

The Oakar Amendment introduces the concept of the ''adjusted attributable deposit amount'' (AADA). An AADA is an artificial construct: a number, expressed in dollars, that is generated in the course of an Oakar transaction, and that pertains to the buyer. The initial value of a buyer's AADA is equal to the amount of the secondary-fund deposits that the buyer acquires from the seller. The Oakar Amendment specifies that the AADA then increases at the same underlying rate as the buyer's overall deposit base—that is, at the rate of growth due to the buyer's ordinary business operations, not counting growth due to the acquisition of deposits from another institution (*e.g.*, in a merger or a branch purchase). *Id.* 1815(d)(3)(C)(iii). The FDIC has adopted the view that ''growth'' and ''increases'' can refer to ''negative growth'' under the FDIC's interpretation of the Amendment, an AADA decreases when the institution's deposit base shrinks.

An AADA is used for the following purposes:

—*Assessments.* An Oakar institution pays two assessments to the FDIC—one for deposit in the institution's secondary fund, and the other for deposit in its primary fund. The secondary-fund assessment is based on the portion of the institution's assessment base that is equal to its AADA. The primary-fund assessment is based on the remaining portion of the assessment base.

—*Insurance.* The AADA measures the volume of deposits that are ''treated as'' insured by the institution's secondary fund. The remaining deposits are insured by the primary fund. If an Oakar institution fails, and the failure causes a loss to the FDIC, the two insurance funds share the loss in proportion to the amounts of deposits that they insure.

For assessment purposes, the AADA is applied prospectively, as is the assessment base. An Oakar institution has an AADA for a current semiannual period, which is used to determine the institution's assessment for that period.[1] The current-period AADA is calculated using deposit-growth and other information from the prior period.

II. The proposed rule

A. Attribution of transferred deposits

1. The FDIC's Current Interpretation: The ''Rankin'' Rule

The FDIC has developed a methodology for attributing deposits to the Bank Insurance Fund (BIF) on one hand and to the SAIF on the other when the seller is an Oakar institution. *See* FDIC Advisory Op. 90–22, 2 FED. DEPOSIT INS. CORP., LAW, REGULATIONS, RELATED ACTS 4452 (1990) (Rankin letter). The Rankin letter adopts the following rule: an Oakar institution transfers its primary-fund deposits first, and only begins to

[1] Technically, each Oakar transaction generates its own AADA. Oakar institutions typically participate in several Oakar transactions. Accordingly, and Oakar institution generally has an overall or composite AADA that consists of all the individual AADAs generated in the various Oakar transactions, plus the growth attributable to each individual AADA. The composite AADA can generally be treated as a unit as a practical matter, because all the constituent AADAs (except initial AADAs) grow at the same rate.

transfer its secondary-fund deposits after its primary-fund deposits have been exhausted.

The chief virtue of this approach is that of simplicity. Sellers rarely transfer all their primary-fund deposits. A seller ordinarily has the same AADA after the transaction as before, and a buyer does not ordinarily become an Oakar institution. The Rankin letter's approach also has the virtue of being a well-established and well-understood interpretation.

Nevertheless, the Rankin letter's approach has certain weaknesses. For example, if a seller transfers a large enough volume of deposits, the seller becomes insured and assessed entirely by its secondary fund—even though it remains a member of its primary fund in name, and even though its business has not changed in character.

The Rankin letter's approach may also lend itself to ''gaming'' by Oakar institutions. Oakar banks—and their owners—have an incentive to eliminate their AADAs, because the SAIF assessment rates are currently much higher than the BIF rates. If an Oakar bank belonged to a holding company system, the holding company could purge the AADA from the system as a whole by having the Oakar bank transfer all its BIF-insured deposits to an affiliate, and then allowing the remnant of the Oakar bank to wither away.

2. ''Blended'' deposits

An alternative approach would be to adopt the view that an Oakar institution transfers a blend of deposits to the assuming institution. The transferred deposits would be attributed to the two insurance funds in the same ratio as the Oakar institution's overall deposits were so attributed immediately prior to the transfer. This ''blended deposits'' approach would have the virtue of maintaining the relative proportions of the seller's primary-fund deposit-base and the secondary-fund deposit base, just as they are preserved in the ordinary course of business.

As a general rule, the ratio would be fixed at the start of the quarter in which the transfer takes place. If the institution were to acquire deposits after the start of the quarter but prior to the transfer, the acquired deposits would be added to the institution's store of primary-fund and secondary-fund deposits as appropriate, and the resulting amounts would be used to determine the ratio.

This procedure would be designed to exclude intra-quarter growth from the calculation of the ratio. The FDIC considers that it would be desirable to do so for two main reasons: it would keep the methodology simple; and (in the ordinary case) it would make use of numbers that are readily available to the parties.

At the same time, the ''blended deposits'' approach would create a new Oakar institution each time a non-Oakar institution acquired deposits from an Oakar institution. Accordingly, this approach would generally subject buyers to more complex reporting and tracking requirements. This approach would also require more disclosure on the part of sellers, because buyers would have to be made aware that they were acquiring high-cost SAIF deposits. But the ''blended deposits'' approach could remove some uncertainty because the buyer would know that it was acquiring such deposits whenever the seller was an Oakar institution.

In cases where the seller has acquired deposits prior to the sale but during the same semiannual period as the sale, the blended-deposit approach could be more complex. The acquisition of deposits would change the seller's AADA-to-deposits ratio, which would need to be calculated and made available in conjunction with the sale. At first, the FDIC considered that this problem could be addressed by using the ratio at the beginning of the quarter for all transactions during that quarter. But the FDIC later came to the view that this technique could open up the blended-deposit approach to gaming strategies that institutions could use to decrease their AADAs.

Finally, under the blended-deposit approach, Oakar banks—which are BIF members—could find it difficult (or expensive) to transfer deposits to other institutions, due to market uncertainty regarding the prospect of a special assessment to capitalize SAIF and the alternative prospect of a continued premium differential between BIF and SAIF.

Any change to a blended-deposit approach would only apply to transfers that take place on and after January 1, 1997. Accordingly, the change would not affect any assessments that Oakar institutions have paid in prior years. Nor would it affect the business aspects of transactions that have already occurred, or that may occur during the remainder of 1996.

B. FDIC Computation of the AADA; Reporting Requirements

The FDIC currently requires all institutions that assume secondary-fund deposits in an Oakar transaction to submit an Oakar transaction worksheet for the transaction. The FDIC provides the worksheet. The FDIC provides the name of the buyer and the seller, and the consummation date of the transaction. The buyer provides the total deposits acquired, and the value of the AADA thereby generated. In addition, Oakar institutions must complete a growth adjustment worksheet to re-calculate their AADA as of December 31 of each year. Finally, Oakar banks report the value of their AADA, on a quarterly basis, in their quarterly reports of condition (call reports).

To implement the proposal to adjust AADAs on a quarterly basis, and to ensure compliance with the statutory requirement that an AADA does not grow during the semiannual period in which it is acquired, *see* 12 U.S.C. 1815(d)(3)(C)(iii), the FDIC initially considered replacing the current annual growth adjustment worksheet with a slightly more detailed quarterly worksheet. The FDIC was concerned that this approach might impose a burden on Oakar institutions, however. The FDIC was further concerned that this approach could result in an increase in the frequency of errors associated with these calculations. Accordingly, the FDIC now believes it might be more appropriate to relieve Oakar institutions of this burden by assuming the responsibility for calculating each Oakar institution's AADA, and eliminating the growth adjustment worksheet entirely. The FDIC would calculate the AADA as part of the current quarterly payment process. The calculation, with supporting documentation, would accompany each institution's quarterly assessment invoice.

If the FDIC assumes the responsibility for calculating the AADA, Oakar institutions would no longer have to report their AADAs in their call reports. But they would have to report three items on a quarterly basis. Oakar institutions already report two of the items as part of their annual growth adjustment worksheets: total deposits acquired in the quarter, and secondary-fund deposits acquired in the quarter. Oakar institutions would therefore have to supply one other item: total deposits sold in the quarter.

These items will be zero in most quarters. Even in quarters in which some transactions have occurred, the FDIC considers that the items should be readily available and easy to calculate.

While for operational purposes, the FDIC would prefer to add these three items to the call report, an alternative approach would be simply to replace the current growth adjustment worksheet with a very simple quarterly worksheet essentially consisting only of these items. The FDIC expects this specific issue to be addressed in a Request for Comment on Call Report

Revisions for 1997 currently expected to be issued jointly by the three banking agencies in July.

In addition, if the FDIC adopts the blended-deposit approach for attributing transferred deposits, the FDIC would need an additional quarterly worksheet from Oakar institutions in order to calculate AADAs accurately. The additional worksheet would report the date and amount of deposits involved in each transaction in which the Oakar institution transferred deposits to another institution during the quarter. This information is not currently collected.

C. Treatment of AADAs on a Quarterly Basis

The FDIC is proposing to adopt the view that—under its existing regulation—an AADA for a semiannual period may be considered to have two quarterly components. The increment by which an AADA grows during a semiannual period may be considered to be the result of the growth of each quarterly component.

1. Quarterly Components

a. Propriety of quarterly components. The FDIC's assessment regulation speaks of an institution's AADA ''for any semiannual period''. 12 CFR 327.32(a)(3). The FDIC currently interprets this phrase to mean that an AADA has a constant value throughout a semiannual period. The FDIC has taken this view largely for historical reasons. Recent changes in the Oakar Amendment give the FDIC room to alter its view.

The FDIC's ''constant value'' view derives from the 1989 version of the Oakar Amendment. *See* 12 U.S.C. 1815(d)(3) (Supp. I 1989). That version of the Amendment said that an Oakar bank's AADA measured the ''portion of the average assessment base'' that the SAIF could assess. *Id.* 1815(d)(3)(B). The FDI Act (as then in effect) defined the ''average assessment base'' as the average of the institution's assessment bases on the two dates for which the institution was required to file a call report. *Id.* 1817(b)(3). As a result, an AADA—even a newly created one, and even one that was generated in a transaction during the latter quarter of the prior semiannual period—served to allocate an Oakar bank's entire assessment base for the entire current semiannual period. The FDIC issued rules in keeping with this view. 54 FR 51372 (Dec. 15, 1989).

Congress decoupled the AADA from the assessment base at the beginning of 1994, as part of the FDIC's changeover to a risk-based assessment system. *See* Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Pub. L. 102–242, section 302(e) & (g), 105 Stat. 2236, 2349 (Dec. 19, 1991); *see also* Defense Production Act Amendments of 1992, Pub L. 102–558, section 303(b)(6)(B), 106 Stat. 4198, 4225 (Oct. 28, 1992) (amending the FDICIA in relevant part); *cf.* 58 FR 34357 (June 23, 1993). The Oakar Amendment no longer links the AADA directly to the assessment base. The Amendment merely declares, ''[T]hat portion of the deposits of [an Oakar institution] for any semiannual period which is equal to [the Oakar institution's AADA] * * * shall be treated as deposits which are insured by [the Oakar institution's secondary fund]''. *See* 12 U.S.C. 1815(d)(3).

The FDIC has not changed its rules for assessing Oakar institutions, and has continued to interpret the rules in the same manner as before. Accordingly, the ''constant value'' concept of the AADA has continued to be the view of the FDIC.

But the FDIC is no longer compelled to retain this view. Furthermore, as discussed below, the FDIC has found that this approach has certain disadvantages. The FDIC is therefore proposing to re-interpret the phrase ''for any semiannual period'' as it appears in § 327.32(a)(3) in the light of the FDIC's quarterly assessment program. The FDIC would take the position that an Oakar institution's AADA for a semiannual period may be determined on a quarter-by-quarter basis—just as the assessment base for a semiannual period is so determined—and may be used to measure the portion of each quarterly assessment base that is to be assessed by the institution's secondary fund. The FDIC would also take the view that, if an AADA is generated in a transaction that takes place during the second calendar quarter of a semiannual period, the first quarterly component of the AADA for the current (following) semiannual period is zero; only the second quarterly component is equal to the volume of the secondary-fund deposits that the buyer so acquired.

The FDIC considers that this view of the phrase ''for any semiannual period'' is appropriate because the phrase is the counterpart of, and is meant to interpret, the following language in the Oakar Amendment:

> (C) DETERMINATION OF ADJUSTED ATTRIBUTABLE DEPOSIT AMOUNT.—The adjusted attributable deposit amount which shall be taken into account for purposes of determining the amount of the assessment under subparagraph (B) for any semiannual period * * *
>
> 12 U.S.C. 1815(d)(3)(C).

This passage speaks of the assessment—not the AADA—''for any semiannual period''. Insofar as the AADA is concerned, the statutory language merely specifies the semiannual period for which the AADA is to be computed: the period for which the assessment is due. The FDIC believes that the phrase ''for a semiannual period'' may properly be read to have the same meaning.

Moreover, while the Amendment says the AADA must ''be taken into account'' in determining a semiannual assessment, the Amendment does not prescribe any particular method for doing so. The FDIC considers that this language provides enough latitude for the FDIC to apply the AADA in a manner that is appropriate to the quarterly payment program.

The FDIC's existing regulation is compatible with this interpretation. The regulation speaks of an assessment base for each quarter, not of an average of such bases. The regulation further says that an Oakar institution's AADA fixes a portion of its ''assessment base''. *See* 12 CFR 327.32(a)(2) (i) & (ii). Accordingly, the FDIC is not proposing to modify the text that specifies the method for computing AADAs.

b. Need for the re-interpretation. Under certain conditions, the FDIC's ''constant value'' view of the AADA appears to be tantamount to double-counting transferred deposits for a calendar quarter.

The appearance of ''double-counting'' occurs when an Oakar institution acquires secondary-fund deposits in the latter half of a semiannual period—*i.e.*, in the second or fourth calendar quarter. The seller has the deposits at the end of the first (or third) quarter; its first payment for the upcoming semiannual period is based on them. At the same time, the buyer's secondary-fund assessment is approximately equal to an assessment on the transferred deposits for both quarters in the semiannual period.[2]

[2] The correlation is not so close as it first appears. Various factors distort the relation between an Oakar institution's deposit base on one hand and its primary-fund and secondary-fund assessment bases on the other.

The chief factor is the so-called float deduction, which is equal to the sum of one-sixth of an institution's demand deposits plus one percentum of its time and savings deposits. *See* 12 CFR 327.5(a)(2). An Oakar institution's secondary-fund assessment base is equal to the full value of its AADA, however. *See id.* 327.32(a)(2). The impact of the float deduction falls entirely on the primary-fund assessment base.

Accordingly, neither the primary-fund assessment base nor the secondary-fund assessment base is directly proportional to the institutional's total deposits. Nor does the split between the

Continued

The source of this apparent effect is that, under the FDIC's current interpretation of its rule, an AADA—even a newly generated one—applies to an Oakar institution's entire assessment base for the entire semiannual period. The following example illustrates the point. The example focuses on the average assessment base, in order to show the relationship between the AADA and the assessment base up to the time the FDIC adopted the quarterly-payment procedure:

	Seller (SAIF)	Buyer (BIF)	Industry total
Before the transaction:			
Starting assessment bases (ignoring float, &c.):			
SAIF	$200	$0	$200.
BIF	0	100	100.
	200	100	300.
The transaction:			
March call report	200	100	300.
Deposits sold	(100)	+100 (AADA)	Neutral.
June call report	100	200	300.
After the transaction:			
Ending assessment bases (ignoring float, &c.):			
SAIF	100	100 (AADA)	200.
BIF	0	100	100.
	100	200	300.
Average assessment bases:			
(Ignoring float, &c.):			
SAIF	150	100 (AADA)	250.
BIF	0	50	50.
	150	150	300.

The SAIF-assessable portion of the buyer's average assessment base is $100. If the SAIF-assessable portion were based directly on the average of the buyer's SAIF-insured deposits for the prior two quarters—rather than on the buyer's AADA—that portion would only be $50. The difference is equivalent to attributing the transferred $100 to the buyer for an extra one-half of the semiannual period: by implication, for the first (or third) quarter as well as for the second (or fourth) quarter.

The anomaly is most apparent from the standpoint of the industry as a whole. The aggregate amount of the SAIF-assessable deposits temporarily balloons to $250, while the aggregate amount of the BIF-assessable deposits shrinks to $50. The anomaly only lasts for one semiannual period, however. In the following period, the seller's assessment base is $100 for both quarters, making its average assessment base $100. The buyer's AADA remains $100. Accordingly, the aggregate amount of SAIF-assessable deposits retreats to $200 once more; and the aggregate amount of BIF-assessable deposits is back to the full $100.

Broadening the focus to include both funds also brings out a more subtle point: the anomaly is not tantamount to double-counting the transferred deposits for a quarter, but rather to re-allocating the buyer's assessment base from the BIF to the SAIF. The BIF-assessable portion of the buyer's average assessment base is $50, not $100. The difference is equivalent to cutting the buyer's BIF assessment base by $100 for half the semiannual period.

The FDIC's quarterly-payment procedure has brought attention to these anomalous effects. The quarterly-payment schedule is merely a new collections schedule, not a new method for determining the amount due. *See* 59 FR 67153 (Dec. 29, 1994). Accordingly, under current procedures, the buyer and the seller in the illustration would pay the amounts specified therein even under the quarterly-payment schedule.

When an Oakar transaction occurs in the latter half of a semiannual period, however, the buyer's call report for the prior quarter does not show an AADA. The buyer's first payment for the current semiannual period is therefore based on its assessment base for that quarter, not on its AADA. Moreover, the entire payment is computed using the assessment rate for the institution's primary fund. The FDIC therefore adjusts (and usually increases) the amount to be collected in the second quarterly payment in order to correct these defects.

Interpreting the semiannual AADA to consist of two quarterly components would eliminate this anomaly.

2. Quarterly Growth

The Oakar Amendment says that the growth rate for an AADA during a semiannual period is equal to the ''annual rate of growth of deposits'' of the Oakar institution. The FDIC currently interprets the phrase ''annual rate'' to mean a rate determined over the interval of a full year. An Oakar institution computes its ''annual rate of growth'' at the end of each calendar year, and uses this figure to calculate the AADA for use during the following year.

This procedure has a weakness. An Oakar institution's AADA tends to drift out of alignment with the deposit base, because the AADA remains constant while the deposit base changes. At the end of the year, when the institution computes its AADA for the next year, the AADA suddenly—but only temporarily—snaps back into its proper proportion.

The FDIC does not believe that Congress intended to cause such a fluctuation in the relation between an institution's AADA and its deposit base.

institutions two assessment base match the split between the institution's primary-fund and secondary-fund deposits.

Moreover, from the FDIC's standpoint as insurer, it would be appropriate to maintain a relatively steady correlation between the AADA and the total deposit base. The FDIC is therefore proposing to revise its view, and take the position that—after the end of the semiannual period in which an institution's AADA has been established—the AADA grows and shrinks at the same basic rate as the institution's domestic deposit base (that is, excluding acquisitions and deposit sales), measured contemporaneously on a quarter-by-quarter basis. Over a full semiannual period, any increase or decrease in the AADA would automatically occur at a rate equal to the ''rate of growth of deposits'' during the semiannual period, thereby satisfying the statutory requirement.

The FDIC considers that the statutory reference to an ''annual rate'' does not foreclose this approach. In ordinary usage, ''annual rate'' can refer to a rate that is expressed as an annual rate, even though the interval during which the rate applies, and over which it is determined, is a shorter interval such as a semiannual period (*e.g.*, in the case of six-month time deposits). For example, until recently, the FDIC's rules regarding the payment of interest on deposits spoke of ''the annual rate of simple interest''—a phrase that pertained to rates payable on time deposits having maturities as short as seven days. See 12 CFR 329.3 (1993).

Comparison of Annual and Quarterly AADA Growth Adjustment Methods

Consider an Oakar institution that has total deposits of $15 as of 12/31/93, with an AADA of $6.5. Further assume that the institution's total deposits grow by $1 every quarter, and that it does not participate in any additional acquisitions or deposit sales. The following graphs show the effects of making growth adjustments to its AADA on an annual basis versus a quarterly basis.

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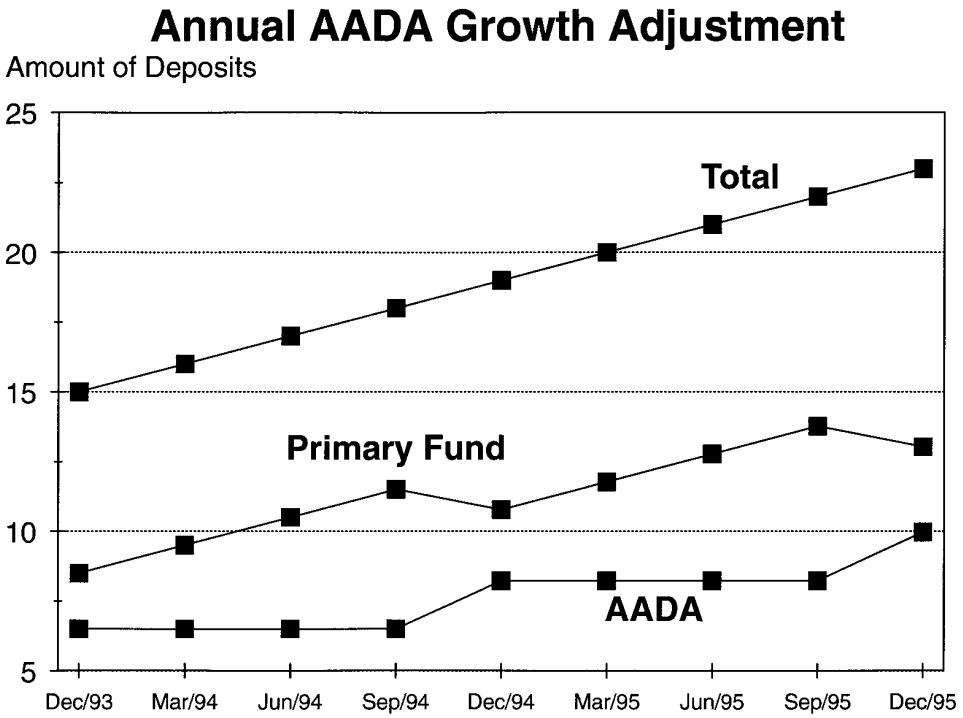
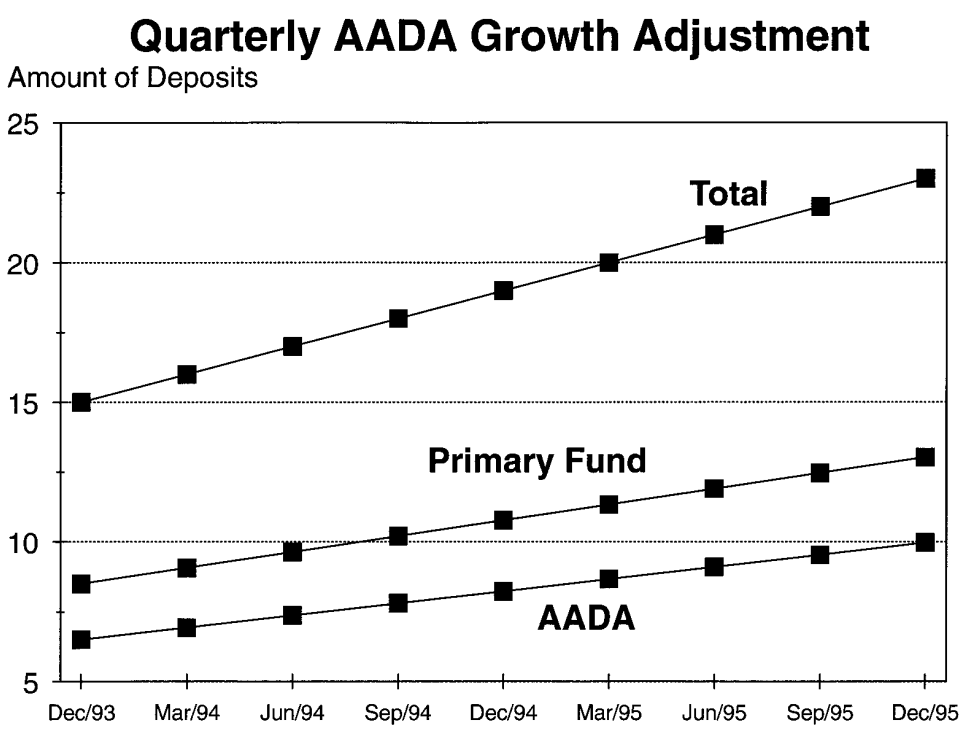
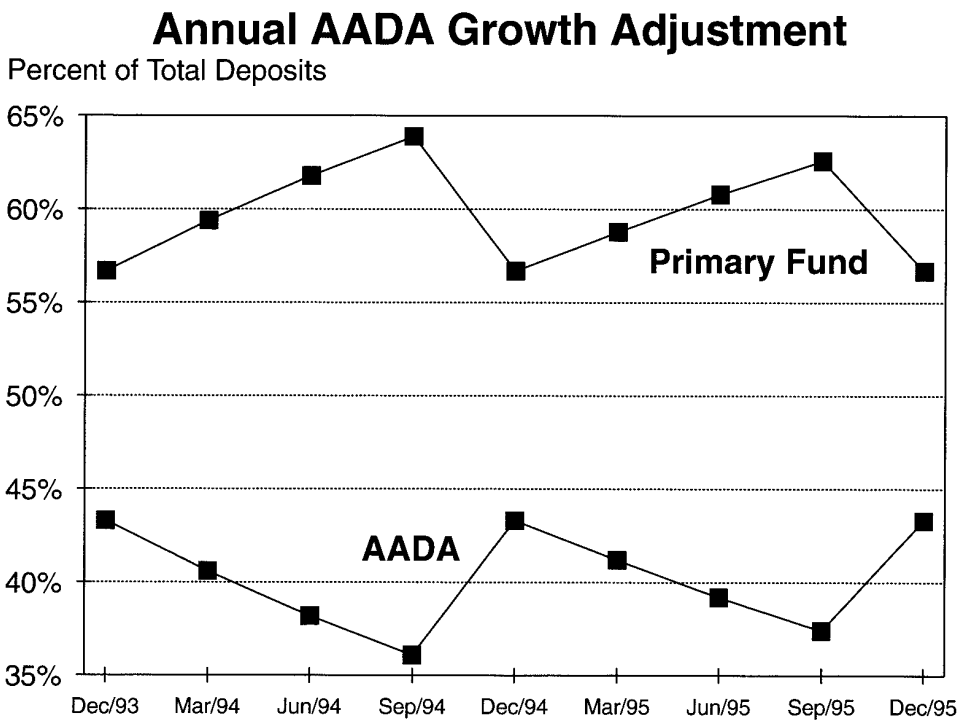
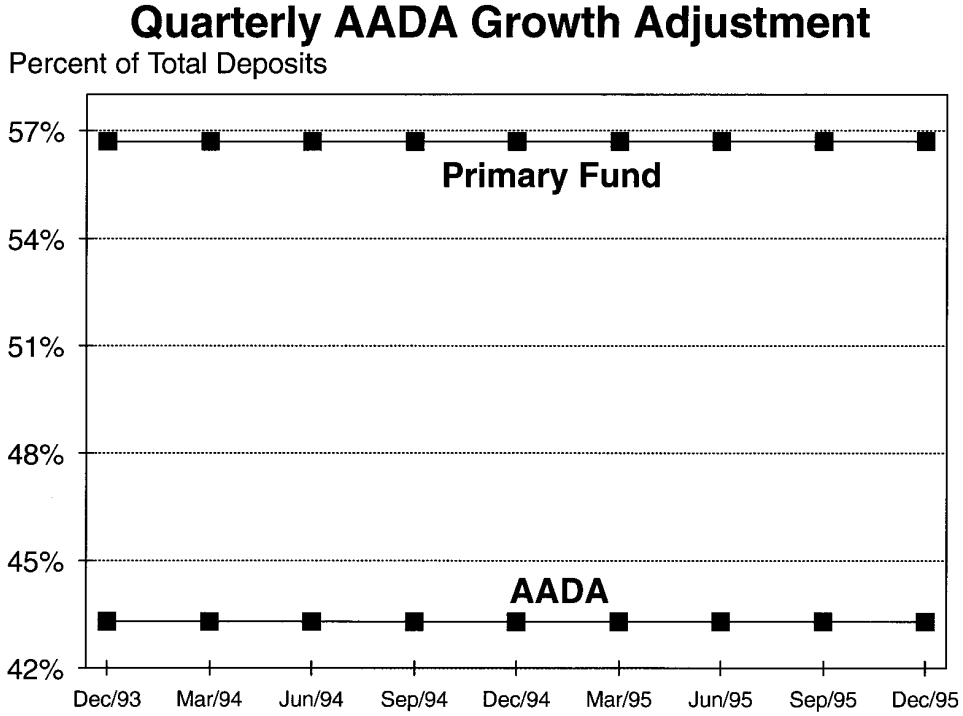




Since an AADA remains constant until a growth adjustment is applied, any change in total deposits is reflected in the institution's primary-fund deposits in the annual-adjustment method, while primary-fund deposits and the AADA vary together with total deposits in the quarterly-adjustment method.

The following graphs express this difference in terms of percents of total deposits.



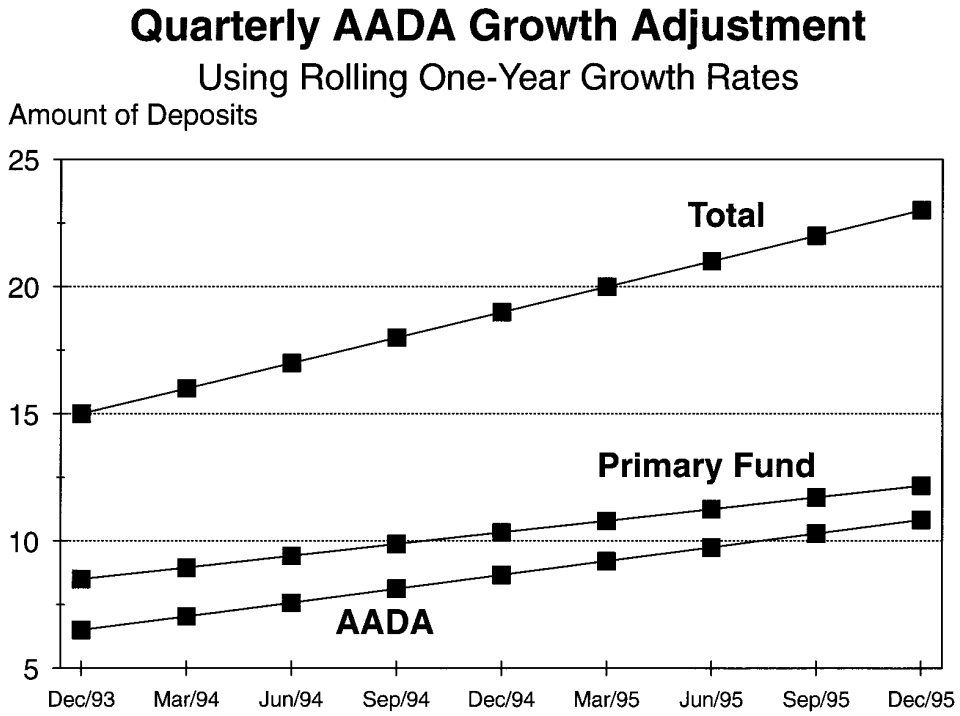


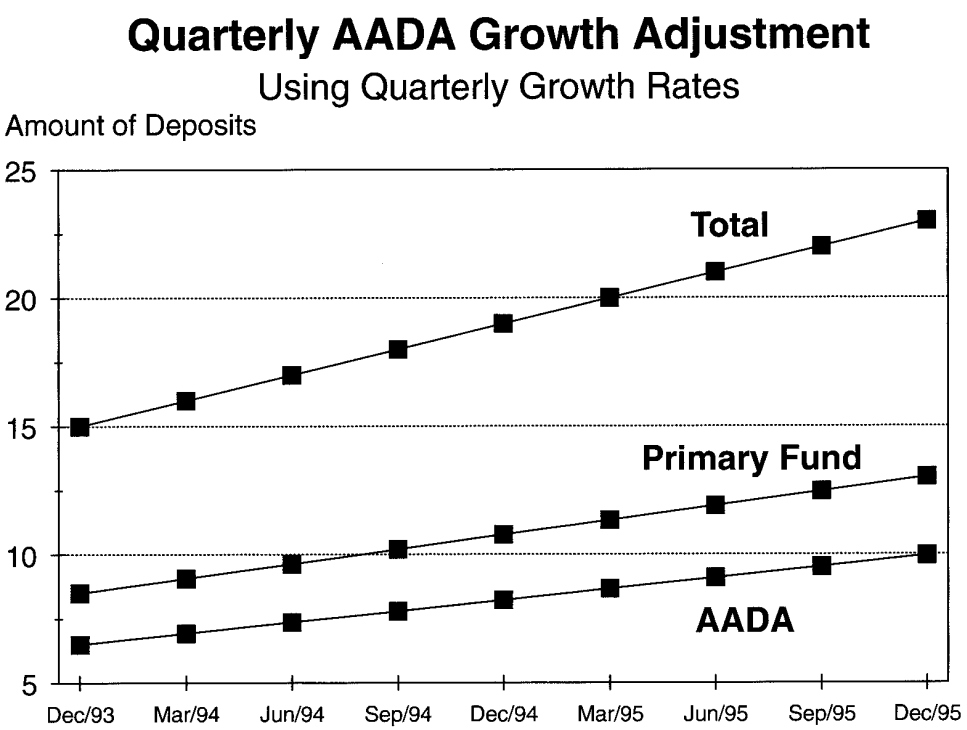
In the annual-adjustment method, the AADA becomes a smaller percent of total deposits as the total grows. In the quarterly-adjustment method, the AADA and the primary-fund deposits remain constant percents of total deposits.

The FDIC considered an alternative approach: using the rate of growth in the institution's deposit base for the prior four quarters, measured from the current quarter. This technique would be as consistent with the letter of the statute as the current method. But the four-prior-quarters method would preserve the lag between the AADA and the deposit base.

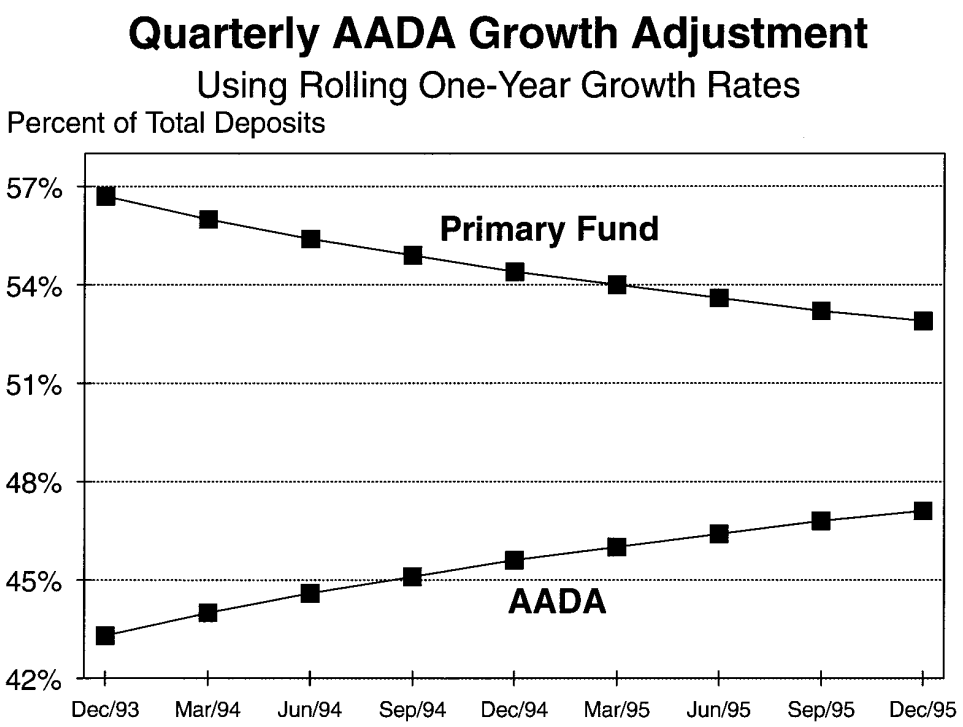
Comparison of Quarterly AADA Adjustments Using Different Growth Rate Bases

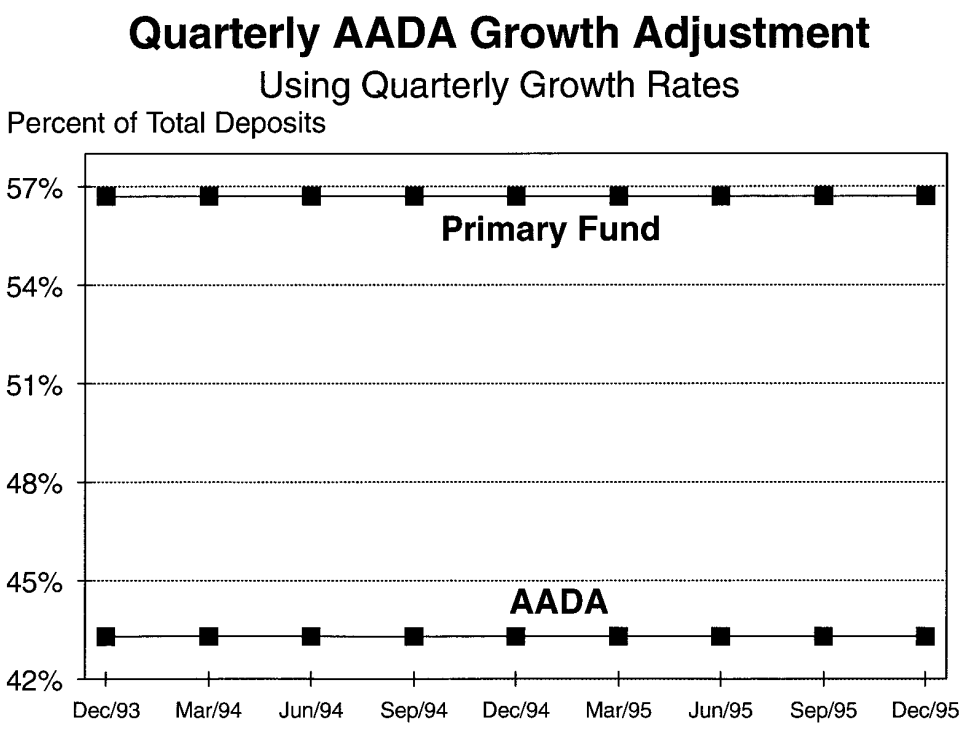
Consider the same Oakar institution with beginning total deposits of $15 and constant growth of $1 per quarter. The following graphs illustrate the effects on deposits of using total-deposit growth rates on two different bases: rolling one-year growth rates, and quarter-to-quarter growth rates.





In both cases, the primary-fund deposits and the AADA appear to vary together with total deposits, but it is difficult to discern their precise relationship. Graphs of the same effects in terms of percents of total deposits are more illustrative:





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In the percent-of-deposits graphs, the AADA and the primary-fund deposits are shown to converge when the AADA growth adjustment is based on rolling one-year growth rates. In this particular example, the effect occurs because the institution's constant growth of $1 per quarter results in a steadily decreasing rate of growth of total deposits. Therefore, a rolling one-year growth rate of those total deposits at any point in time will be more than the actual rate of growth over the quarter to which the rolling rate is being applied. While different growth characteristics for total deposits would yield different relationships between the AADA and the primary fund over time, the general point is that the relationships of the AADA and the primary-fund deposits can vary when the AADA is adjusted, unless the total-deposit rate of growth used for the adjustment is drawn from the same period for which the rate is applied to the AADA.

As shown in the right-hand graph, applying the actual quarterly growth rate for total deposits to the AADA results in stable percents of total deposits for the AADA and primary fund deposits.

In sum, the FDIC considers that the quarterly approach is permissible under the statute, and is preferable to any approach that relies on a yearly interval to determine growth in the AADA.

D. Negative Growth of the AADA

One element of an Oakar institution's AADA for a current semiannual period is ''the amount by which [the AADA for the preceding semiannual period][3] would have increased during the preceding semiannual period if such increase occurred at a rate equal to the annual rate of growth of [the Oakar institution's] deposits''. 12 U.S.C. 1815(d)(3)(C)(iii). The FDIC is proposing to codify its view that the terms ''growth'' and ''increase'' encompass negative growth (shrinkage). But the FDIC is proposing to change its interpretation by excluding shrinkage due to deposit sales.

1. Negative Growth in General

The 1989 version of the Oakar Amendment focused on an Oakar bank's underlying rate of growth for the purpose of determining the Oakar bank's AADA. The 1989 version of the Amendment set a minimum growth rate for an AADA of 7 percent. The Amendment then specified that, if an Oakar bank's deposit base grew at a higher rate, the AADA would grow at the higher rate too. But the Amendment excluded growth attributable to mergers, branch purchases, and other acquisitions of deposits from other BIF members: the deposits so acquired were to be subtracted from the Oakar bank's total deposits for the purpose of determining the growth in the Oakar bank's deposit base (and therefore the rate of growth of the AADA). *See* 12 U.S.C. 1813(d)(3)(C)(3)(iii) (Supp. I 1989).

The 1989 version of the Oakar Amendment spoke only of ''growth'' and ''increases'' in the AADA. *Id.* The statute was internally consistent in this regard, because AADAs could never decrease.

Congress eliminated the minimum growth rate as of the start of 1992. FDICIA section 501 (a) & (b), 105 Stat. 2389 & 2391. As a result, the Oakar Amendment now specifies that an Oakar institution's AADA grows at the same rate as its domestic deposits (excluding mergers, branch acquisitions, and other acquisitions of deposits). 12 U.S.C. 1813(d)(3)(C).

The modern version of the Oakar Amendment continues to speak only of ''growth'' and ''increases,'' however. Congress has not—at least not explicitly—modified it to address the case of an institution that has a shrinking deposit base. Nor has Congress addressed the case of an institution that transfers deposits in bulk to another insured institution.

The FDIC regards this omission as a gap in the statute that requires interpretation. The FDIC does so because, if the statute were read to allow only increases in AADAs, the statute would generate a continuing shift in the relative insurance burden toward the SAIF. Most Oakar institutions—and nearly all large Oakar institutions—are BIF-member Oakar banks. If an Oakar bank's deposit base were to shrink through ordinary business operations, but its AADA could not decline in proportion to that shrinkage, the SAIF's share of the risk presented by the Oakar bank would increase. But the reverse would not be true: if an Oakar bank's deposit base increased, its AADA would rise as well, and the SAIF would continue to bear the same share of the risk. The result would be a tendency to displace the insurance burden from the BIF to the SAIF.[4]

The FDIC further considers that the main themes of the changes that Congress made to the Oakar Amendment in 1991 are those of simplification, liberalization, and symmetry. Congress allowed savings associations to acquire banks, as well as the other way around. Congress allowed institutions to deal with one another directly, eliminating the requirement that the institutions must belong to the same holding company (and the need for approval by an extra federal supervisor). Congress established a mirror-image set of rules for assessing Oakar banks and Oakar thrifts. As noted above, Congress repealed the 7 percentum floor on AADA growth, thereby eliminating the most prominent cause of divergence between an Oakar institution's assessment base and its deposit base. Congress expanded the scope of the Oakar Amendment and made it congruent with the relevant provisions of section 5(d)(2). See FDICIA section 501(a), 105 Stat. 2388–91 (Dec. 19, 1991).

In keeping with this view of the 1991 amendments, the FDIC interprets the growth provisions of the Oakar Amendment symmetrically: that is, to encompass negative growth rates as well as positive ones. The FDIC takes the position that an Oakar institution's AADA grows and shrinks at the same underlying rate of growth as the institution's domestic deposits.

The FDIC considers that this interpretation is appropriate because it accords with customary usage in the banking industry, and because it is consistent with the purposes and the structure of the statute. Under the FDIC's interpretation, each fund continues to bear a constant share of the risk posed by the institution, and continues to draw assessments from a constant proportion of the institution's deposit base.

Moreover, the FDIC's interpretation encourages banks to make the investment that Congress wished to promote. If ''negative increases'' were disallowed, Oakar banks would see their SAIF assessments (which currently carry a much higher rate) grow disproportionately when their deposits shrank through ordinary business operations.

Finally, the interpretation is designed to avoid—and has generally avoided—the anomaly of an institution having an AADA that is larger than its total deposit base.

2. Negative Growth Due to Deposit-Transfers

As noted above, for the purpose of analyzing deposit sales, the FDIC

[3] Theoretically, the growth rate is not applied directly to the prior AADA, but rather to an amount that is computed afresh each time—which amount is the sum of the various elements of the prior AADA.

[4] A shrinking Oakar thrift would have the opposite effect: The BIF's exposure would increase, and the SAIF's exposure would decrease. The Oakar thrifts are comparatively rare, however. The net bias would run against the SAIF.

follows the deposit-attribution principles set forth in the Rankin letter: the Oakar institution transfers its primary-fund deposits until they have been exhausted, and only then transfers its secondary-fund deposits. The FDIC further considers that—consistent with the moratorium imposed by section 5(d)(2)—the deposits continue to have the same status for insurance purposes after the deposit sale as before. The industry-wide stock of BIF-insured and SAIF-insured deposits should remain the same.

The FDIC's procedure for calculating the growth of the AADA upsets that balance, however. The deposit sale reduces the Oakar bank's total deposit base by a certain percentage: accordingly, the Oakar bank's AADA—and therefore its volume of SAIF-insured deposits—is reduced by the same percentage. Its BIF-insured deposits increase correspondingly. In effect, SAIF deposits are converted into BIF deposits, in violation of the moratorium.

This effect occurs without regard for whether the transferred deposits are primary-fund or secondary-fund deposits. Even when a BIF-member Oakar bank transfers deposits to another BIF-member bank—a transfer that, under the Rankin letter, would only involve BIF-insured deposits—the deposit sale serves to shrink the transferring bank's AADA.

The FDIC is proposing to cure this defect by excluding deposit sales from the growth computation. The FDIC continues to believe that the terms ''growth'' and ''increase'' as used in the statute are broad enough to refer to a negative rate as well as a positive one. But the FDIC does not consider that it is required to extend these terms beyond reasonable limits. In particular, the FDIC does not believe that it must necessarily interpret these terms to include a decrease that is attributable to a bulk transfer of deposits. The statute itself excludes the effect of an acquisition or other deposit-assumption from the computation of growth. The FDIC considers that it has ample authority to make an equivalent exclusion for deposit sales.

The FDIC believes its proposed interpretation is sound because deposit sales do not—in and of themselves—represent any change in the industry-wide deposit base of each fund. It is inappropriate for the FDIC to generate such a change on its own as a collateral effect of its assessment procedures. Moreover, the proposed interpretation is in accord with the tenor of the amendments made by the FDICIA, because it treats deposit sales symmetrically with deposit-acquisitions.

E. Value of an Initial AADA

The Oakar Amendment says that an Oakar institution's initial AADA is equal to ''the amount of any deposits acquired by the institution in connection with the transaction (as determined at the time of such transaction)''. *Id.* 1815(d)(3)(C). The FDIC has by regulation interpreted the phrase ''deposits acquired by the institution''. 12 CFR 327.32(a)(4). The regulation distinguishes between cases in which a buyer assumes deposits from a healthy seller (healthy-seller cases), and cases in which the FDIC is serving as conservator or receiver for the seller at the time of the transaction (troubled-seller cases).[5]

The FDIC proposes to retain but refine its interpretation with respect to healthy-seller cases. The FDIC also proposes to codify its ''conduit'' rule for certain deposits that a buyer promptly retransfers to a third party. The FDIC proposes to eliminate the special provisions for troubled-seller cases.

1. The ''Nominal Amount'' Rule

The general rule is that a buyer's initial AADA equals the full nominal amount of the assumed deposits. 12 CFR 327.32(a)(3)(4).

The FDIC is proposing to retain the substance of this provision. The proposed rule would continue to emphasize the point that the amount of the transferred deposits is to be measured by focusing on the volume divested by the seller. The purpose of the rule is to make it clear that post-transaction events—such as deposit run-off—have no bearing on the calculation of the buyer's AADA.

The FDIC considers that the nominal-value rule is appropriate for two chief reasons. Most importantly, it reflects the manifest intent of the statute, which says that the volume of the acquired deposits are to be ''determined at the time'' of the transaction. Second, the nominal-value rule has the virtues of clarity and precision. A buyer and a seller will both know precisely the value of an AADA that is generated in an Oakar transaction. The buyer's expected secondary-fund assessments can be an important cost for the parties to consider when deciding on an acceptable price. The FDIC considers that the nominal-value rule reduces uncertainty on this point.

The proposed rule would update this aspect of the regulation in two minor ways. The existing rule is somewhat obsolete: it presumes that the buyer assumes all the seller's deposits, and that all such deposits are insured by the buyer's secondary fund. The reason for these presumptions is purely historical. At the time the regulation was adopted, the Oakar Amendment only spoke of cases in which the seller merged into or consolidated with the buyer, or in which the buyer acquired all the seller's assets and liabilities. *See* 12 U.S.C. 1815(d)(3)(A) (Supp. I 1989). The Amendment did not allow for less comprehensive Oakar transactions (*e.g.*, branch sales). Nor did it contemplate a transaction in which the seller was an Oakar institution in its own right.

The proposed rule would make it clear that the nominal-amount rule applies to all Oakar transactions. The proposed rule would also specify that the AADA is only equal to the nominal amount of the transferred deposits that are insured by the secondary fund of the buyer, not necessarily all the transferred deposits. Both these points represent the current view of the FDIC.

2. Deposits Acquired From Troubled Institutions

The FDIC's current regulation provides various discounts that serve to reduce the buyer's AADA when the seller is in conservatorship or receivership at the time of the sale. *See* 12 CFR 327.32(a)(3)(4). The FDIC is proposing to eliminate the discounts, on the ground that they are no longer needed.

In adopting the rule, the FDIC observed that the deposits that a buyer assumes from a troubled seller are quite volatile: the buyer generally loses a certain percentage of the deposits almost immediately. The FDIC characterized the lost deposits as ''phantom deposits'', and said it would make no sense to require the bank to continue to pay assessments on them. The FDIC further said that such a requirement would impair its ability to transfer the business of such thrifts to healthy enterprises, to the detriment of the communities the thrifts were serving. *See* 54 FR at 51373. The FDIC accordingly adopted an interpretive rule stating that the nominal amount of the deposits transferred in such cases were to be discounted for the purpose of computing the AADA generated in the transaction, as follows:

—*Brokered deposits:* All brokered deposits are subtracted from the nominal volume of the transferred deposits.

—*The ''80/80'' rule:* Each remaining deposit is capped at $80,000. The

[5] The regulation also refers to the Resolution Trust Corporation (RTC). The reference is obsolete, as the RTC no longer exists.

AADA is equal to 80% of the aggregate of the deposits as so capped.

The FDIC explained that these discounts reflected its actual experience—that is, its experience with arranging purchase-and-assumption transactions for institutions in receivership. *Id.* But the discounts were not intended to represent the actual run-off that an individual Oakar institution would sustain in a particular case. Rather, they were an approximation or estimate of the run-off that Oakar institutions ordinarily sustain in troubled-seller cases.

As an historical matter, the FDIC determined that it was appropriate to provide the discounts because the funding decisions for troubled thrift institutions were subject to constraints and considerations that fell outside the normal range of factors influencing such decisions in the market place for healthy thrifts. The sellers had often been held in conservatorship for some time. In order to maintain the assets in such institutions, it often was necessary for the conservator to obtain large and other high-yielding deposits for funding purposes. Both the size of the discounts, and the fact that the discounts were restricted to troubled-seller cases, were known publicly in 1989 and were relevant to every potential buyer's decision to acquire and price a thrift institution.

Although healthy sellers in unassisted transactions also sometimes relied upon volatile deposits for funding, these funding decisions were part of a strategy to maximize the profits of a going concern, and the management of the purchasing institutions were accountable to shareholders. The comparable decisions for troubled sellers in assisted transactions were made by managers of government conservatorships that were subject to funding constraints, relatively inflexible operating rules (necessary to control a massive government effort to sell failed thrifts), and other considerations outside the scope of the typical private transaction.

While the FDIC recognized that it was incumbent upon any would-be buyer to evaluate and price all aspects of a transaction, the FDIC determined that it would be counterproductive to require bidders to price the contingencies related to volatile deposits in assisted transactions, given that these deposits primarily were artifacts of government conservatorships. Considering the objective of attracting private capital in order to avoid additional costs to the taxpayer, the FDIC sought to avoid the potential deterrent effect of including these artificial elements in the pricing equation. In order to reflect the volatile deposits acquired in assisted transactions, the FDIC determined to provide the above-described discounts.

The FDIC adopted this interpretive rule at a time when troubled and failed thrifts were prevalent, and the stress on the safety net for such institutions was relatively severe. The stress has been considerably relieved, however. The FDIC considers that, under current conditions, there is no longer any need to maintain a special set of rules for troubled-seller cases.

Moreover, the discounts are, at bottom, simply another factor that helps to determine the price that a buyer will pay for a troubled institution. The FDIC ordinarily must contribute its own resources to induce buyers to acquire such institutions. Any reduction in future assessments that the FDIC offers as an incentive merely reduces the amount of money the FDIC must contribute at the time of the transaction. The simpler and more straightforward approach is to reflect all such considerations in the net price that buyers pay for such institutions at the time of the transaction.

3. Conduit Deposits

The FDIC staff has taken the position that, under certain circumstances, when an Oakar institution re-transfers some of the secondary-fund deposits it has assumed in the course of an Oakar transaction, the re-transferred deposits will not be counted as ''acquired'' deposits for purposes of computing the Oakar institution's AADA. The Oakar institution is regarded as a mere conduit for the re-transferred deposits. The deposits themselves retain their original status as BIF-insured or SAIF-insured after the re-transfer: whatever their status in the hands of the original transferor, the deposits have that status in the hands of the ultimate transferee.

The FDIC has applied its ''conduit'' principle only in very narrow circumstances. The FDIC has done so only when the Oakar institution has been required to commit to re-transfer specified branches as a condition of approval of the acquisition of the seller; the commitment has been enforceable; and the re-transfer has been required to occur within six months after consummation of the initial Oakar transaction. *See, e.g.*, FDIC Advisory Op. 94–48, 2 FED. DEPOSIT INS. CORP., LAW, REGULATIONS, RELATED ACTS 4901–02 (1994).

The FDIC is proposing to codify and refine this view. As codified, secondary-fund deposits would have the status of ''conduit'' deposits in the hands of an Oakar institution only if a Federal banking supervisory agency or the United States Department of Justice explicitly ordered the Oakar institution to re-transfer the deposits within six months, if the institution's obligation to make the re-transfer was enforceable, and if the re-transfer had to be completed in the six-month grace period.

Conduit deposits would be included in the Oakar institution's AADA only on a temporary basis: for one semiannual period, or in some cases two periods, but no more. The deposits would be counted in the ''amount of deposits acquired'' by the Oakar institution—and therefore in its AADA—during the semiannual period in which the transaction occurs. The AADA so computed would be used to determine the assessment due for the following semiannual period. In addition, if the Oakar institution retained the deposits during part of that following period, the deposits would again be included in the ''amount of deposits acquired''—and would again be part of the institution's AADA—for the purpose of computing the assessment for the semiannual period after that. But thereafter the deposits would be excluded from the ''amount of deposits acquired'' by the Oakar institution.

If the conditions were not satisfied, the conduit principle would not come into play, and the deposits would be regarded as having been assumed by the Oakar institution at the time of the original Oakar transaction. Any subsequent transfer of the deposits would be treated as a separate transaction, and analyzed independently of the Oakar transaction.

The FDIC is currently considering alternative methodologies for attributing any deposits that an Oakar institution might transfer to another institution. The conduit principle's economic impact is somewhat greater in the context of one such methodology than in that of the other.

The FDIC currently takes the view that, when an Oakar institution transfers deposits to another institution, the seller transfers its primary-fund deposits until they have been exhausted, and only then transfers its secondary-fund deposits. A BIF-member Oakar bank has a comparatively strong incentive to invoke the conduit principle under this methodology. If an Oakar bank can succeed in characterizing re-transferred deposits as conduit deposits, the bank will escape the full impact of the SAIF assessment on those deposits, which is comparatively high at the present time.

The FDIC is also considering a ''blended'' approach, however. Under

this methodology, whenever an Oakar institution transferred any deposits to another institution, the transferred deposits would be regarded as consisting of a blend of primary-fund and secondary-fund deposits. The ratio of the blend would be the same as that of the institution as a whole. This methodology would reduce the incentive for Oakar banks to invoke the conduit principle to some extent, particularly in the case of Oakar banks having large AADAs. An Oakar bank's AADA would shrink as a result of any transfer of deposits, even one that did not involve conduit deposits. The comparative benefit of invoking the conduit rule would be correspondingly reduced.

F. Transitional Considerations

1. Freezing Prior AADAs

In theory, an Oakar institution's AADA is computed anew for each semiannual period. An AADA for a current semiannual period is equal to the sum of three elements:

—*Element 1:* The volume of secondary-fund deposits that the institution originally acquired in the Oakar transaction;

—*Element 2:* The aggregate of the growth increments for all semiannual periods prior to the one for which Element 3 is being determined; and

—*Element 3:* The growth increment for the period just prior to the current period (i.e., just prior to the one for which the assessment is due). Element 3 is calculated on a base that equals the sum of elements 1 and 2.

The FDIC has consistently interpreted its existing rules to mean that, when a growth increment has already been determined for an AADA for a semiannual period, the growth increment continues to have the same value thereafter. *See, e.g.*, FDIC Advisory Op. 92- 19, 2 FED. DEPOSIT INS. CORP., LAW, REGULATIONS, RELATED ACTS 4619, 4620–21 (1992). The net effect has been to ''freeze'' AADAs— and their elements—for prior semiannual periods. The proposed rule would codify this principle.

Accordingly, the new interpretations set forth in the proposed rule would apply on a purely prospective basis. They would come into play only for the purpose of computing future elements of future AADAs. The new interpretations would not affect AADAs already computed for prior semiannual periods (or the assessments that Oakar institutions have already paid on them). Nor would they affect the prior-period elements of AADAs that are to be determined for future semiannual periods. In short, the proposed rule would ''leave prior AADAs alone''.

2. 1st-Half 1997 Assessments: Excluding Deposit Sales From the Growth Calculation

The FDIC proposes to follow its existing procedures in computing AADAs for the first semiannual period of 1997, with one exception. In particular, an institution's AADA for the first semiannual period of 1997 would be based on the growth of the institution's deposits as measured over the entire calendar year 1996. The AADA so determined would be used to compute both quarterly payments for the first semiannual period of 1997.

The exception is that, when computing the growth rate for deposits during the second semiannual period of 1996, the FDIC would apply its new interpretation of ''negative'' growth, and would decline to consider shrinkage attributable to transactions that occurred during July–December 1996.

The FDIC acknowledges that its proposed new interpretation would make a significant break with the past. The FDIC further recognizes that the new interpretation could affect the business considerations that the parties must evaluate when they enter into deposit-transfer transactions. The FDIC considers that the industry has ample notice of the proposed exclusion, however, and that the parties to any such transaction can factor in any costs that the exclusion might produce.

At the same time, the FDIC agrees that it would be inappropriate to apply its new interpretation retroactively to transactions that have been completed earlier in 1996. The parties to these transactions did not have notice of the FDIC's proposal. The FDIC would therefore include shrinkage attributable to deposit sales that occurred during the first semiannual period of 1996 when determining the annual growth rate to be used in computing Oakar institutions' AADAs for the first semiannual period of 1997.

3. 2nd-Half 1997 Assessments: Use of Quarterly AADAs

The FDIC proposes to begin measuring AADAs on a quarterly basis during the first semiannual period of 1997. The first payment that would be computed using a quarterly component of an AADA would be the initial payment for the next semiannual period—the payment due at the end of June.

The first time the FDIC would identify and measure a quarterly component of a semiannual AADA would be as of March 31, 1997. The quarterly component with respect to that date would reflect the basic rate of growth of the institution's deposits during the first calendar quarter of 1997 (January–March). The quarterly AADA component so measured would be used to determine the institution's first quarterly payment for the second semiannual period in 1997 (the June payment).

The second quarterly AADA component would reflect the basic rate of growth of the institution's deposits during the second calendar quarter of 1997 (April–June). The quarterly AADA component so measured would be used to determine the institution's second quarterly payment for the second semiannual period in 1997 (the September payment).

G. Simplification and Clarification of the Regulation

In some respects, the proposed rule would simplify and clarify the current regulation without changing its meaning. The FDIC is doing so in response to two initiatives. Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, 108 Stat. 2160 (Sept. 23, 1994), requires federal agencies to streamline and modify their regulations. In addition, the FDIC has voluntarily committed itself to review its regulations on a 5-year cycle. *See* Development and Review of FDIC Rules and Regulations, 2 FED. DEPOSIT INS. CORP., LAW, REGULATIONS, RELATED ACTS 5057 (1984). The FDIC considers that subpart B of part 327 is a fit candidate for review under each of these initiatives.

The proposed rule would clarify subpart B by defining and using the terms ''primary fund'' and ''secondary fund''. An Oakar institution's primary fund would be the fund to which it belongs; it would be the other insurance fund. Using these terms, the FDIC is proposing to simplify paragraphs (1) and (2) of § 327.32(a) by eliminating redundant language; the changes would not alter the meaning of these provisions.

In addition, the FDIC would clarify § 327.6(a) by changing the nomenclature used therein. ''Deposit-transfer transaction'' would be replaced by ''terminating transaction;'' ''acquiring institution'' would be replaced by ''surviving institution;'' and ''transferring institution'' would be replaced by ''terminating institution''. The terms now found in § 327.6(a) are also used in other provisions of part 327, where they have different and less specialized meaning. The change in nomenclature in § 327.6(a) is intended

to avoid any confusion that the current terminology might cause.

III. Proposed Effective Date

Section 302(b) of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, 108 Stat. 2160, 2214–15 (1994), requires that new and amended regulations imposing additional reporting, disclosure, or other new requirements on insured depository institutions must generally take effect on the first day of a calendar quarter. In keeping with this requirement, the FDIC is proposing that the rule, if adopted, would take effect on January 1, 1997.

IV. Request for Public Comment

The FDIC hereby solicits comment on all aspects of the proposed rule. In particular, the FDIC solicits comment on the following points: attributing deposits that an Oakar institution transfers to another institution according to principles articulated in the Rankin letter, or treating the transferred deposits as a blend of deposits insured by both funds; having the FDIC, rather than individual institutions, compute AADAs using information provided by the institutions; interpreting AADAs as consisting of quarterly components, and computing the growth of AADAs on a quarterly cycle rather than an annual one; retaining the concept of negative growth for the purpose of computing AADAs; excluding deposit sales from the computation of growth; applying the nominal-amount principle for determining initial AADAs in all cases, including troubled-seller cases; and preserving the conduit-deposit concept.

In addition, in accordance with section 3506(c)(2)(B) of the Paperwork Reduction Act, 44 U.S.C. 3506(c)(2)(B), the FDIC solicits comment for the following purposes on the collection of information proposed herein:

—to evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the FDIC, including whether the information has practical utility;

—to evaluate the accuracy of the FDIC's estimate of the burden of the proposed collection of information;

—to enhance the quality, utility, and clarity of the information to be collected; and

—to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

The FDIC also solicits comment on all other points raised or options described herein, and on their merits relative to the proposed rule.

V. Paperwork Reduction Act

Under the FDIC's existing procedures, each Oakar institution must compute its AADA at the end of each year, using a worksheet provided by the FDIC (annual growth worksheet). The annual growth worksheet shows the computation of the institution's AADA for the first semiannual period of the current year—that is, the AADA that is used to compute the assessment due for the first semiannual period of the current year—which is based on the institution's growth during the prior year. The institution must provide the annual growth worksheet to the FDIC as a part of the institution's certified statement.

In addition, whenever an institution is the buyer in an Oakar transaction, it must submit a transaction worksheet showing the total deposits acquired on the transaction date. If the seller is an Oakar institution, and if the buyer acquires the entire institution, the buyer must also report the seller's last AADA (as shown in the seller's last call report). The buyer must then subtract this number from the total deposits acquired in order to determine its new AADA.

The proposed rule would change this procedure for the annual growth worksheets for the first semiannual period of 1997 (*i.e.*, for the worksheets that show the growth of deposits during 1996). The change would only affect Oakar institutions that transferred deposits to other institutions during 1996. Such an institution would have to report the total amount of deposits that it transferred in transactions from July 1–December 31, 1996.

Thereafter the FDIC would compute the AADAs for all Oakar institutions, using information taken from their quarterly call reports. Institutions would not have to report additional information in most cases. An Oakar institution that neither acquired nor transferred deposits in the prior quarter would not have to provide any additional information at all. An Oakar institution that acquired deposits would have to provide the same information at the end of the quarter that it now provides at the end of the year; there would be a change in the timing, but no change in burden.

Only an Oakar institution that transferred deposits would have to provide additional information. The items of information needed, and the number of institutions affected, would depend on the deposit-attribution methodology chosen by the FDIC. Under the Rankin letter's approach, the FDIC presently anticipates that approximately 100 institutions per year would report deposit sales. Sellers would have to report the volume of deposits they transferred in the transaction. Under the ''blended deposits'' approach, the FDIC estimates that approximately 250 Oakar institutions per year would report deposit sales. Sellers would have to report both the volume of deposits transferred, and the date of the transaction. In either case, the information would be readily available: the extra reporting burden would be small.

The FDIC expects that the net effect would be to reduce the overall reporting burden on Oakar institutions. The burden of submitting extra information in deposit-sale cases would be more than offset by the elimination of the growth worksheet and by the FDIC's assumption of the burden of computing AADAs.

Accordingly, the FDIC is proposing to revise an existing collection of information. The revision has been submitted to the Office of Management and Budget for review and approval pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments on the accuracy of the burden estimate, and suggestions for reducing the burden, should be addressed to the Office of Management and Budget, Paperwork Reduction Project (3064–0057), Washington, D.C. 20503, with copies of such comments sent to Steven F. Hanft, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Room F–400, 550 17th St., N.W., Washington, D.C. 20429. The impact of this proposal on paperwork burden would be to require a one-time *de minimis* report from approximately 100 Oakar institutions for the first semiannual period in 1997, and thereafter to eliminate the annual growth worksheet for all 900 Oakar institutions, which takes an estimated two hours to prepare. The FDIC would then compute each Oakar institution's AADA from the deposit data in the institution's quarterly call report. The effect of this proposal on the estimated annual reporting burden for this collection of information is a reduction of 1,800 hours:

Approximate Number of Respondents: 900.

Number of Responses per Respondent: −1.

Total Annual Responses: 900.

Average Time per Response: 2 hours.

Total Average Annual Burden Hours: −1800 hours.

The FDIC expects the Federal Financial Institutions Examination Council to require (as needed) the information in the quarterly call reports, starting with the report for March 31, 1997. If the Council does recommend these changes, they will be submitted to the Office of Management and Budget for review and approval as part of the call report submission.

VI. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply to the proposed rule. Although the FDIC has chosen to publish general notice of the proposed rule, and to ask for public comment on it, the FDIC is not obliged to do so, as the proposed rule is interpretive in nature. *See id.* 553(b) and 603(a).

Moreover, the FDIC considers that the proposed rule would amount to a net reduction in burden for all Oakar institutions, as they would no longer have to prepare or file regular annual growth worksheets after the worksheet with respect to 1996. Instead, a limited number of Oakar institutions would have to submit one new piece of information, and would have to do so only for quarters in which they transferred deposits.

In addition, although the Regulatory Flexibility Act requires a regulatory flexibility analysis when an agency publishes a rule, the term ''rule'' (as defined in the Regulatory Flexibility Act) excludes ''a rule of particular applicability relating to rates''. *Id.* 601(2). The proposed rule relates to the rates that Oakar institutions must pay, because it addresses various aspects of the method for determining the base on which assessments are computed. The Regulatory Flexibility Act is therefore inapplicable to this aspect of the proposed rule.

Finally, the legislative history of the Regulatory Flexibility Act indicates that its requirements are inappropriate to this aspect of the proposed rule. The Regulatory Flexibility Act is intended to assure that agencies' rules do not impose disproportionate burdens on small businesses:

> Uniform regulations applicable to all entities without regard to size or capability of compliance have often had a disproportionate adverse effect on small concerns. The bill, therefore, is designed to encourage agencies to tailor their rules to the size and nature of those to be regulated whenever this is consistent with the underlying statute authorizing the rule.
>
> 126 Cong. Rec. 21453 (1980) (''Description of Major Issues and Section-by-Section Analysis of Substitute for S. 299'').

The proposed rule would not impose a uniform cost or requirement on all Oakar institutions regardless of size: to the extent that it imposes any costs at all, the costs have to do with the effects that the proposed rule would have on Oakar institutions' assessments. Assessments are proportional to an institution's size. Moreover, while the FDIC has authority to establish a separate risk-based assessment system for large and small members of each insurance fund, *see* 12 U.S.C. 1817(b)(1)(D), the FDIC has not done so. Within the current assessment scheme, the FDIC cannot ''tailor'' assessment rates to reflect the ''size and nature'' of institutions.

List of Subjects in 12 CFR Part 327

Assessments, Bank deposit insurance, Banks, banking, Financing Corporation, Reporting and recordkeeping requirements, Savings associations.

For the reasons set forth in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend 12 CFR part 327 as follows:

PART 327—ASSESSMENTS

1–2. The authority citation for part 327 is revised to read as follows:

Authority: 12 U.S.C. 1441, 1441b, 1815, 1817–1819.

3. In § 327.6 the section heading and paragraph (a) are revised to read as follows:

§ 327.6 Terminating transfers; other terminations of insurance.

(a) *Terminating transfer*—(1) *Assessment base computation.* If a terminating transfer occurs at any time in the second half of a semiannual period, each surviving institution's assessment base (as computed pursuant to § 327.5) for the first half of that semiannual period shall be increased by an amount equal to such institution's pro rata share of the terminating institution's assessment base for such first half.

(2) *Pro rata share.* For purposes of paragraph (a)(1) of this section, the phrase ''pro rata share'' means a fraction the numerator of which is the deposits assumed by the surviving institution from the terminating institution during the second half of the semiannual period during which the terminating transfer occurs, and the denominator of which is the total deposits of the terminating institution as required to be reported in the quarterly report of condition for the first half of that semiannual period.

(3) *Other assessment-base adjustments.* The Corporation may in its discretion make such adjustments to the assessment base of an institution participating in a terminating transfer, or in a related transaction, as may be necessary properly to reflect the likely amount of the loss presented by the institution to its insurance fund.

(4) *Limitation on aggregate adjustments.* The total amount by which the Corporation may increase the assessment bases of surviving or other institutions under this paragraph (a) shall not exceed, in the aggregate, the terminating institution's assessment base as reported in its quarterly report of condition for the first half of the semiannual period during which the terminating transfer occurs.

* * * * *

4. Section 327.8 is amended by revising paragraph (h) and adding paragraphs (j) and (k) to read as follows:

§ 327.8 Definitions.

* * * * *

(h) As used in § 327.6(a), the following terms are given the following meanings:

(1) *Surviving institution.* The term *surviving institution* means an insured depository institution that assumes some or all of the deposits of another insured depository institution in a terminating transfer.

(2) *Terminating institution.* The term *terminating institution* means an insured depository institution some or all of the deposits of which are assumed by another insured depository institution in a terminating transfer.

(3) *Terminating transfer.* The term *terminating transfer* means the assumption by one insured depository institution of another insured depository institution's liability for deposits, whether by way of merger, consolidation, or other statutory assumption, or pursuant to contract, when the terminating institution goes out of business or transfers all or substantially all its assets and liabilities to other institutions or otherwise ceases to be obliged to pay subsequent assessments by or at the end of the semiannual period during which such assumption of liability for deposits occurs. The term *terminating transfer* does not refer to the assumption of liability for deposits from the estate of a failed institution, or to a transaction in which the FDIC contributes its own resources in order to induce a surviving institution to assume liabilities of a terminating institution.

* * * * *

(j) *Primary fund.* The *primary fund* of an insured depository institution is the

insurance fund of which the institution is a member.

(k) *Secondary fund.* The *secondary fund* of an insured depository institution is the insurance fund that is not the primary fund of the institution.

5. In § 327.32, paragraph (a) is amended by revising paragraphs (a)(1) and (a)(2), and by removing paragraphs (a)(4) and (a)(5), to read as follows:

§ 327.32 Computation and payment of assessment.

(a) *Rate of assessment*—(1) *BIF and SAIF member rates.* (i) Except as provided in paragraph (a)(2) of this section, and consistent with the provisions of § 327.4, the assessment to be paid by an institution that is subject to this subpart B shall be computed at the rate applicable to institutions that are members of the primary fund of such institution.

(ii) Such applicable rate shall be applied to the institution's assessment base less that portion of the assessment base which is equal to the institution's adjusted attributable deposit amount.

(2) *Rate applicable to the adjusted attributable deposit amount.* Notwithstanding paragraph (a)(1)(i) of this section, that portion of the assessment base of any acquiring, assuming, or resulting institution which is equal to the adjusted attributable deposit amount of such institution shall:

(i) Be subject to assessment at the assessment rate applicable to members of the secondary fund of such institution pursuant to subpart A of this part; and

(ii) Not be taken into account in computing the amount of any assessment to be allocated to the primary fund of such institution.

* * * * *

6. New §§ 327.33 through 327.36 are added to read as follows:

§ 327.33 ''Acquired'' deposits.

This section interprets the phrase ''deposits acquired by the institution'' as used in § 327.32(a)(3)(i).

(a) *In general.* (1) *Secondary-fund deposits.* The phrase ''deposits acquired by the institution'' refers to deposits that are insured by the secondary fund of the acquiring institution, and does not include deposits that are insured by the acquiring institution's primary fund.

(2) *Nominal dollar amount.* Except as provided in paragraph (b) of this section, an acquiring institution is deemed to acquire the entire nominal dollar amount of any deposits that the transferring institution holds on the date of the transaction and transfers to the acquiring institution.

(b) *Conduit deposits*—(1) *Defined.* As used in this paragraph (b), the term ''conduit deposits'' refers to deposits that an acquiring institution has assumed from another institution in the course of a transaction described in § 327.31(a), and that are treated as insured by the secondary fund of the acquiring institution, but which the acquiring institution has been explicitly and specifically ordered by the Corporation, or by the appropriate federal banking agency for the institution, or by the Department of Justice to commit to re-transfer to another insured depository institution as a condition of approval of the transaction. The commitment must be enforceable, and the divestiture must be required to occur and must occur within 6 months after the date of the initial transaction.

(2) *Exclusion from AADA computation.* Conduit deposits are not considered to be acquired by the acquiring institution within the meaning of § 327.32(a)(3)(i) for the purpose of computing the acquiring institution's adjusted attributable deposit amount for a current semiannual period that begins after the end of the semiannual period following the semiannual period in which the acquiring institution re-transfers the deposits.

§ 327.34 Application of AADAs.

This section interprets the meaning of the phrase ''an insured depository institution's 'adjusted attributable deposit amount' for any semiannual period'' as used in the opening clause of § 327.32(a)(3).

(a) *In general.* The phrase ''for any semiannual period'' refers to the current semiannual period: that is, the period for which the assessment is due, and for which an institution's adjusted attributable deposit amount (AADA) is computed.

(b) *Quarterly components of AADAs.* An AADA for a current semiannual period consists of two quarterly AADA components. The first quarterly AADA component for the current period is determined with respect to the first quarter of the prior semiannual period, and the second quarterly AADA component for the current period is determined with respect to the second quarter of the prior period.

(c) *Application of AADAs.* The value of an AADA that is to be applied to a quarterly assessment base in accordance with § 327.32(a)(2) is the value of the quarterly AADA component for the corresponding quarter.

(d) *Initial AADAs.* If an AADA for a current semiannual period has been generated in a transaction that has occurred in the second calendar quarter of the prior semiannual period, the first quarterly AADA component for the current period is deemed to have a value of zero.

(e) *Transition rule.* Paragraphs (b), (c) and (d) of this section shall apply to any AADA for any semiannual period beginning on or after July 1, 1997.

§ 327.35 Grandfathered AADA elements.

This section explains the meaning of the phrase ''total of the amounts determined under paragraph (a)(3)(iii)'' in § 327.32(a)(3)(ii). The phrase ''total of the amounts determined under paragraph (a)(3)(iii)'' refers to the aggregate of the increments of growth determined in accordance with § 327.32(a)(3)(iii). Each such increment is deemed to be computed in accordance with the contemporaneous provisions and interpretations of such section. Accordingly, any increment of growth that is computed with respect to a semiannual period has the value appropriate to the proper calculation of the institution's assessment for the semiannual period immediately following such semiannual period.

§ 327.36 Growth computation.

This section interprets various phrases used in the computation of growth as prescribed in § 327.32(a)(3)(iii).

(a) *Annual rate.* The annual rate of growth of deposits refers to the rate, which may be expressed as an annual percentage rate, of growth of an institution's deposits over any relevant interval. A relevant interval may be less than a year.

(b) *Growth; increase; increases.* Except as provided in paragraph (c) of this section, references to ''growth,'' ''increase,'' and ''increases'' may generally include negative values as well as positive ones.

(c) *Growth of deposits.* ''Growth of deposits'' does not include any decrease in an institution's deposits representing deposits transferred to another insured depository institution, if the transfer occurs on or after July 1, 1996.

(d) *Quarterly determination of growth.* For the purpose of computing assessments for semiannual periods beginning on July 1, 1997, and thereafter, the rate of growth of deposits for a semiannual period, and the amount by which the sum of the amounts specified in § 327.32(a)(3) (i) and (ii) would have grown during a semiannual period, is to be determined by computing such rate of growth and such sum of amounts for each calendar quarter within the semiannual period.

7. Section 327.37 is added to read as follows:

ALTERNATIVE ONE

§ 327.37 Attribution of transferred deposits.

This section explains the attribution of deposits to the BIF and the SAIF when one insured depository institution (acquiring institution) acquires deposits from another insured depository institution (transferring institution). For the purpose of determining whether the assumption of deposits (assumption transaction) constitutes a transaction undertaken pursuant to section 5(d)(3) of the Federal Deposit Insurance Act, and for the purpose of computing the adjusted attributable deposit amounts, if any, of the acquiring and the transferring institutions after the transaction:

(a) *Transferring institution*—(1) *Transfer of primary-fund deposits.* To the extent that the aggregate volume of deposits that is transferred by a transferring institution in a transaction, or in a related series of transactions, does not exceed the volume of deposits that is insured by its primary fund (primary-fund deposits) immediately prior to the transaction (or, in the case of a related series of transactions, immediately prior to the initial transaction in the series), the transferred deposits shall be deemed to be insured by the institution's primary fund. The primary institution's volume of primary-fund deposits shall be reduced by the aggregate amount so transferred.

(2) *Transfer of secondary-fund deposits.* To the extent that the aggregate volume of deposits that is transferred by the transferring institution in a transaction, or in a related series of transactions, exceeds the volume of deposits that is insured by its primary fund immediately prior to the transaction (or, in the case of a related series of transactions, immediately prior to the initial transaction in the series), the following volume of the deposits so transferred shall be deemed to be insured by the institution's secondary fund (secondary-fund deposits): the aggregate amount of the transferred deposits minus that portion thereof that is equal to the institution's primary-fund deposits. The transferring institution's volume of secondary-fund deposits shall be reduced by the volume of the secondary-fund deposits so transferred.

(b) *Acquiring institution.* The deposits shall be deemed, upon assumption by the acquiring institution, to be insured by the same fund or funds in the same amount or amounts as the deposits were so insured immediately prior to the transaction.

ALTERNATIVE TWO

§ 327.37 Attribution of transferred deposits.

This section explains the attribution of deposits to the BIF and the SAIF when one insured depository institution (acquiring institution) assumes the deposits from another insured depository institution (transferring institution). On and after January 1, 1997, for the purpose of determining whether the assumption of deposits constitutes a transaction undertaken pursuant to section 5(d)(3) of the Federal Deposit Insurance Act, and for the purpose of computing the adjusted attributable deposit amounts, if any, of the acquiring and the transferring institutions after the transaction:

(a) *Attribution of the deposits as to the transferring institution.* The deposits shall be attributed to the primary and secondary funds of the transferring institution in the same ratio as the transferring institution's total deposits were so attributed immediately prior to the deposit-transfer transaction. The transferring institution's stock of BIF-insured deposits and of SAIF-insured deposits shall each be reduced in the appropriate amounts.

(b) *Attribution of deposits as to the acquiring institution.* Upon assumption by the acquiring institution, the deposits shall be attributed to the same insurance funds in the same amounts as the deposits were so attributed immediately prior to the transaction. The acquiring institution's stock of BIF-insured deposits and of SAIF-insured deposits shall each be increased in the appropriate amounts.

(c) *Ratio fixed at start of quarter.* For the purpose of determining the ratio specified in paragraph (a) of this paragraph for any transaction:

(1) *In general.* The ratio shall be determined at the beginning of the quarter in which the transaction occurs. Except as provided in paragraph (c)(2) of this section, the ratio shall not be affected by changes in the transferring institution's deposit base.

(2) *Prior acquisitions by a transferring institution.* If the transferring institution acquires deposits after the start of the quarter but prior to the transaction, the deposits so acquired shall be added to the transferring institution's deposit base, and shall be attributed to the transferring institution's primary and secondary funds in accordance with this section.

By order of the Board of Directors.

Dated at Washington, DC, this 17th day of June 1996.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 96–16349 Filed 7–2–96; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–266–AD]

RIN 2120–AA64

Airworthiness Directives; De Havilland Model DHC–8–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD), applicable to certain de Havilland Model DHC–8 series airplanes, that currently requires clearly marking the location and means of entering the lavatory. That AD was prompted by reports of passengers mistaking the airstair door operating handle for the means of gaining access to the lavatory. The actions specified by that AD are intended to prevent inadvertent opening of the airstair door and consequent depressurization of the airplane. This action would limit the applicability of the rule to fewer airplanes.

DATES: Comments must be received by July 29, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–266–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 Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Marc Goldstein, Aerospace Engineer, Systems and Equipment Branch, ANE–172, FAA, New York Aircraft Certification Office, Engine and

Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7513; fax (516) 568–2716.

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–266–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–266–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 22, 1988, the FAA issued AD 88–09–05, amendment 39–5908 (53 FR 15363, April 29, 1988), applicable to certain de Havilland Model DHC–8–100 series airplanes, to require clearly marking the location and means of entering the lavatory. That action was prompted by reports of passengers mistaking the airstair door operating handle for the means of gaining access to the lavatory. The requirements of that AD are intended to prevent inadvertent opening of the airstair door and consequent depressurization of the airplane.

Explanation of Relevant Service Information

Since the issuance of that AD, de Havilland has issued Revision 'B', dated July 1, 1988, and Revision 'C', dated September 29, 1995, of Service Bulletin S.B. 8–11–14. The modification procedures (Modification 8/0757) specified in these revisions are essentially identical to Revision 'A' of the service bulletin, which was referenced in AD 88–09–05 as the appropriate source of service information. However, the effectivity listing in Revisions 'B' and 'C' has been revised to eliminate certain airplanes on which Modification 8/0757 was installed during production; therefore, these airplanes are not affected by the addressed unsafe condition. The modification clearly marks the location and means of entering the lavatory.

Transport Canada Aviation, which is the airworthiness authority for Canada, classified these service bulletins as mandatory and issued Canadian airworthiness directive CF–87–07R1, dated June 30, 1995, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of the Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would revise AD 88–09–05 to continue to require clearly marking the location and means of entering the lavatory. This action would limit the applicability of the existing AD to fewer airplanes.

Cost Impact

There are approximately 30 de Havilland Model DHC–8–100 series airplanes of U.S. registry that would be affected by this proposed AD.

Since this proposed AD merely deletes airplanes from the applicability of the rule, it would add no additional costs, and would require no additional work to be performed by affected operators. The current costs associated with this proposed rule are reiterated below for the convenience of affected operators:

The actions that are currently required by AD 88–09–05, and retained in this proposal, take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts are supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $1,800, or $60 per airplane.

Regulatory Impact

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 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), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–5908 (53 FR 15363, April 29, 1988), and by adding a new airworthiness directive (AD), to read as follows:

De Havilland, Inc.: Docket 95–NM–266–AD. Revises AD 88–09–05, Amendment 39–5908.

Applicability: Model DHC–8 series airplanes, serial numbers 3 through 79, inclusive; on which Modification 8/0757 has not been installed; 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 request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent opening of the airstair door and consequent depressurization of the airplane, accomplish the following:

(a) Within 60 days after June 10, 1988 (the effective date of AD 88–09–05, amendment 39–5908), replace the labels marking the location and means of opening the lavatory, in accordance with the Accomplishment Instructions of de Havilland Service Bulletin 8–11–14, Revision 'A', dated July 31, 1987.

Note 2: Replacement accomplished in accordance with de Havilland Service Bulletin 8–11–14, Revision 'B', dated July 1, 1988, or Revision 'C', dated September 29, 1995, is considered acceptable for compliance with this paragraph.

(b) 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, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(c) 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 June 27, 1996.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–16952 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 96–AGL–11]

Establishment of Class E Airspace; Miller, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Miller Municipal Airport, Miller, SD, to accommodate a Nondirectional Radio Beacon (NDB) to serve Runway 15. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before August 5, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 96–AGL–11, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AGL–11.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Miller Municipal Airport, Miller, SD to accommodate a Nondirectional Radio Beacon to serve Runway 15. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other

aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 The Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL SD E5 Miller, SD [New]

Miller Municipal Airport, SD

(Lat. 44°31′31″N, long. 98°57′29″)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Miller Municipal Airport and that airspace extending upward from 1,200 feet above the surface bounded on the west and northwest by V–263, on the south by V–120, and on the east by V–15 excluding the Aberdeen, SD; the Pierre, SD; the Mitchell, SD; and the Huron, SD, 1,200 foot Class E airspace areas and all federal airways.

* * * * *

Issued in Des Plaines, Illinois on June 17, 1996.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 96–17041 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

[OJP No. 1091]

RIN 1121–AA39

OJJDP Formula Grants Regulation

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Proposed rule and request for public comment.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing for public comment proposed amendments to its Formula Grants Regulation, 28 CFR Part 31. The Formula Grants Regulation implements Part B of Title II of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended by the Juvenile Justice and Delinquency Prevention Amendments of 1992. The proposed amendments to the existing Regulation provide further clarification and guidance to States in the formulation, submission and implementation of State Formula Grant plans and determinations of State compliance with plan requirements. They are intended to provide additional flexibility and greater clarity to participating States with respect to key provisions related to the core requirements of the JJDP Act.

DATES: Interested persons are invited to submit written comments which must be received on or before August 19, 1996.

ADDRESSES: Address all comments to Mr. Shay Bilchik, Administrator, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Room 742, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Ms. Roberta Dorn, Director, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Room 543, Washington, DC 20531; (202) 307–5924.

SUPPLEMENTARY INFORMATION: The Office of Juvenile Justice and Delinquency Prevention is proposing revisions to the existing Regulation, codified at 28 CFR Part 31, and inviting public comment on the proposed changes. The proposed changes in the regulatory text accomplish the following:

(1) Revise § 31.303(d)(1)(i) to clarify the level of contact that is prohibited between juveniles in a secure custody status within an institution and incarcerated adults;

(2) Revise § 31.303(d)(1)(i) by providing an exception to the core requirement of separation with respect to brief, and inadvertent contact between juveniles in a secure custody status within an institution and incarcerated adults in nonresidential areas;

(3) Revise § 31.303(d)(1)(v) to permit the placement of an adjudicated delinquent in an institution with adults once the adjudicated delinquent reaches the State's age of full criminal responsibility, when authorized by State law;

(4) Revise § 31.303(e)(2) to permit the placement of an accused or adjudicated delinquent juvenile in an adult jail or lockup for up to six hours immediately before or after a court appearance for processing and transportation purposes;

(5) Revise § 31.303(e)(3) by eliminating the requirement for OJJDP concurrence in State approved collocated juvenile facilities, the requirement that a needs-based analysis precede a jurisdiction's request for State approval, and to permit time-phased use of nonresidential areas of collocated facilities;

(6) Revise § 31.303(f)(2) to expressly provide that accused status offenders can be placed in a secure juvenile detention facility for up to twenty-four hours, exclusive of weekends and holidays, prior to an initial court appearance and up to twenty-four hours, exclusive of weekends and holidays, following an initial court appearance;

(7) Revise § 31.303(f)(3)(vi) to eliminate the regulatory recommendation that a multi disciplinary team may be used to satisfy the ''public agency'' requirement, under the valid court order exception even if some members represent court or law enforcement agencies;

(8) Revise § 31.303(f)(4)(vi) to eliminate the requirement that States document and describe in their annual monitoring report to OJJDP the specific circumstances surrounding each use of distance/ground transportation and weather exceptions to the jail and lockup removal requirement;

(9) Revise § 31.303(f)(5)(i)(C) to define and clarify the scope of the exception to the deinstitutionalization of status offenders requirement for offenses under ''§ 922(x) of Title 18 or other similar State law'' (relating to possession of handguns by juveniles);

(10) Revise § 31.303(f)(6)(i) to eliminate portions of the section related to funding eligibility for fiscal year 1993 and prior years that are no longer applicable;

(11) Revise § 31.303(f)(6)(ii) to permit States that do not have a law, regulation, or court rule prohibiting the incarceration of all juvenile offenders in circumstances that would be in violation of the separation requirement to be eligible for a finding of compliance if reported violations do not constitute a pattern or practice and mechanisms are in place to prevent such violations from recurring in the future; and

(12) Revise § 31.303(j) to clarify the purpose of the Disproportionate Minority Confinement core requirement.

Contact With Incarcerated Adults

OJJDP recognizes that there has been a lack of clarity surrounding the issue of contact between juveniles and incarcerated adults in secure facilities. OJJDP finds that the term ''sight and sound contact'' needs to be clarified. In the 1992 amendments to the JJDP Act, Congress amended the existing ''regular'' contact standard that defined the level of permissible contact between juveniles and incarcerated adults by deleting the word ''regular''. OJJDP interpreted Congress' intent to be that ''haphazard and accidental contact'' between juveniles and incarcerated adults should be prohibited because this was the level of contact permitted under the regulation implementing the no ''regular contact'' prohibition in effect prior to the 1992 amendments. After further review, OJJDP believes that the no contact prohibition should be interpreted to preclude the systematic, procedural, and condoned contact between juveniles and incarcerated adults in secure areas of facilities. Consequently, OJJDP would not consider brief and inadvertent or accidental contact between juveniles and incarcerated adults in nonresidential areas of a secure facility to be a violation of the separation requirement. Specifically, OJJDP proposes to amend the regulation to provide that brief and inadvertent contact between juveniles and incarcerated adults in secure nonresidential areas of a facility such as dining, recreational, educational, vocational, health care, sallyports and passageways (hallways) should not be considered a violation of the JJDP Act separation requirement. However, in any secure residential area of a facility, any contact between juvenile offenders and adult inmates is prohibited.

Further, the regulation would provide definitions for sight and sound contact to assist in understanding what is permitted under § 223(a)(13). Sight contact is defined as clear visual contact between incarcerated adults and juveniles in close proximity of each other. For example, a detained juvenile who sees an adult inmate who is several hundred feet away is not in close proximity to the incarcerated adult. In this scenario, the juvenile is not exposed to any conceivable harm as a consequence of seeing an adult inmate several hundred feet away. A rule of reason should be exercised by jurisdictions in assessing whether a juvenile who is exposed visually to an incarcerated adult is in close proximity to that adult.

With respect to sound contact, the regulation would state that ''direct'' oral communication between incarcerated adults and juveniles is prohibited. This addition is intended to alleviate concerns over misinterpretation of this provision. The purpose of the provision is to prevent incarcerated adults from having direct oral communication with juveniles, thereby reducing the likelihood of intimidation and harassment. A rule of reason should also be exercised with sound contact. Direct oral communication such as conversations and yelling in close proximity is clearly prohibited. However, an incarcerated adult yelling at a juvenile who is several hundred feet away may not be engaged in direct oral communication with the juvenile.

Placement of Juveniles in Adult Facilities

Under the current regulation, States are prohibited from administratively reclassifying and transferring adjudicated delinquents to adult (criminal) correctional institutions. OJJDP recognizes that State laws are increasingly providing for the mandatory or permissible transfer of adjudicated delinquents to adult facilities once the delinquent has attained the age of full criminal responsibility under State law. Consequently, OJJDP proposes to amend the regulation to provide that it is not a violation of the separation requirement to transfer an adjudicated delinquent to an adult correctional institution once the adjudicated delinquent has reached the age of full criminal responsibility established by State law. The proposed regulation would permit the placement of an adjudicated delinquent who reaches the age of full criminal responsibility in an adult correctional facility only when such transfers are required or authorized by State law.

OJJDP also proposes to amend the regulation to permit the placement of an alleged or adjudicated delinquent in an adult jail or lockup for up to six hours immediately before or after a court appearance. Several States have advised OJJDP that the detention of a juvenile prior to a court appearance and the immediate transport of a juvenile after a court appearance creates a difficulty if there is more than one juvenile before the court on a given day or where separate facilities are not available. The secure detention of an alleged or adjudicated delinquent in a jail or lockup for up to six hours immediately before or after a court appearance would be permissible when circumstances warrant such a detention, and provided that such juveniles are separated from adult offenders.

Collocated Facilities

OJJDP currently requires that a needs-based analysis precede a jurisdiction's request for State approval and OJJDP's concurrence in order for a juvenile detention facility that is collocated with an adult jail or lockup to qualify as a separate juvenile detention facility. OJJDP finds that this requirement is best left to the State to determine whether a needs-based analysis should be required. In addition, OJJDP's concurrence with a State agency's decision to approve a collocated facility would no longer be required. The elimination of the needs-based analysis and OJJDP's concurrence does not negate the separation criteria set forth in § 31.303(e)(3)(D). The regularly scheduled review of State monitoring systems would insure that the facility continues to meet the separate juvenile detention facility criteria. Consequently, OJJDP proposes to modify § 31.303(e)(3) to reflect the elimination of the needs-based analysis and OJJDP's concurrence.

Under the current regulation, collocated facilities are prohibited from sharing common use nonresidential areas. Based on State and local input, OJJDP finds that common use nonresidential areas should be permissible in collocated facilities. This would require the utilization of time-phasing in order to allow both juveniles and adults access to available educational, vocational, and recreational areas of collocated facilities. The allowance of time-phased use would apply only to nonresidential areas in collocated facilities.

Deinstitutionalization of Status Offenders

OJJDP has found that confusion exists over the secure detention of accused status offenders and non-offenders. For purposes of clarification, OJJDP is adding a paragraph at the end of § 31.303(f)(2) to state clearly that it is permissible to hold an accused status

offender or a nonoffender in a secure juvenile detention facility for up to twenty-four hours, exclusive of weekends and holidays, prior to an initial appearance and up to twenty-four hours, exclusive of weekends and holidays, after an initial court appearance.

Valid Court Order

Under the current statute and regulation, an independent public agency (other than a court or law enforcement agency) is required to prepare and submit a written report to a court that is considering an order that directs or authorizes the placement of a status offender in a secure facility for the violation of a valid court order. A multi disciplinary review team that operates independently of a court is described in the regulation as one option for meeting the requirement, even where some members of the team may be law enforcement or court agency staff. Pretrial Service agencies are another option for jurisdictions to consider to meet the criteria of ''other than a court or law enforcement agency.'' These offices operate in various jurisdictions to assess and evaluate individuals who are before the court for a determination on pretrial release or custody. The intent of this multi disciplinary provision was to provide States with an example of a public agency that would meet the criteria where some members of a team were employed by the courts and/or law enforcement. Because the wording of this provision had led some States to the conclusion that multi disciplinary teams are required, the provision would be deleted from the regulation.

Removal Exception

States are required to document and describe, in their annual monitoring report to OJJDP, the specific circumstances surrounding each individual use of the distance/ground transportation and weather exceptions to the jail and lockup removal requirement. OJJDP finds this requirement to be overly burdensome on the States and therefore proposes that it be deleted from the regulation.

Reporting Requirement

The JJDP Act provides that juveniles may be securely detained or confined pursuant to 18 U.S.C. 922(x) or a similar State law. Section 922(x) was added to the Federal Criminal Code by the Youth Handgun Safety Act that was passed as a part of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103–322, 108 Stat. 1796 (1994), codified as amended at 42 U.S.C. 13701 et seq. Specifically, § 922(x) makes it a Federal delinquent offense for a juvenile to possess a handgun. The possession of a handgun by a juvenile is, however, a status offense in those States where possession of a handgun by an adult is permitted. Consequently, the Youth Handgun Safety Act specifically amended the JJDP Act to exclude from the deinstitutionalization of status offenders requirement a juvenile who has violated § 922(x) or a similar State law. For the purpose of clarification, where § 922(x) initially appears in the regulation, it is described as a federal law prohibiting the possession of a handgun by a juvenile and specifically excluding such a violation, or the violation of a similar State law, from the coverage of the deinstitutionalization of status offenders requirement.

Compliance

OJJDP would delete the first two sentences of § 31.303(f)(6)(i) because it pertains to States substantially complying with the deinstitutionalization of status offenders core requirement in fiscal year 1993 and prior years. The substantial compliance criteria allowed States to be eligible for formula grant funding during these years if the State had achieve a seventy five percent reduction in the aggregate number of status offenders and nonoffenders held in secure detention or correctional facilities and had made an unequivocal commitment to achieving full compliance. Because this standard does not apply to fiscal years beyond 1994, OJJDP would remove it from the regulation. However, the portion of the section that defines full compliance would remain.

Under the current regulation, compliance with the separation requirement is considered to be achieved when a State can demonstrate that in the last monitoring report, covering a full 12 months of data, no juveniles were incarcerated in circumstances in violation of the separation requirement. Also, compliance can be achieved where a State has a law, regulation, court rule, or other established executive or judicial policy clearly prohibiting the incarceration of juvenile offenders in circumstances that would be in violation of the separation requirement, and violations reported do not constitute a pattern or practice in the State. However, a State that has no law or policy that mirrors the JJDP Act separation requirement could not be in compliance if any juvenile was held in violation of the separation requirement. OJJDP proposes to modify this policy in order not to unfairly penalize States that have not enacted laws, rules, regulations or policies prohibiting the incarceration of all juvenile offenders under circumstances that would be in violation of the separation requirement. OJJDP proposes a single standard applicable to all States regardless of whether a law, regulation, rule or policy exists that prohibits the detention of juveniles with incarcerated adults. Specifically, compliance can be established under circumstances in which the instances do not indicate a pattern or practice and mechanisms or plans to address exist within the State to ensure that such instances are unlikely to recur in the future.

Minority Detention and Confinement

Several States have expressed concern over the Disproportionate Minority Confinement (§ 223(a)(23)) core requirement of the JJDP Act. Specifically, this core requirement has been criticized as requiring the establishment of numerical standards or quotas in order for a State to achieve or maintain compliance. This is not the purpose of the statute or its implementing regulation. In order to respond to this concern, two sentences have been added to § 31.303(j) of the regulation to state specifically that the purpose of the statute and regulation is to encourage States to address, programmatically, any features of its justice system that may account for the disproportionate detention or confinement of minority juveniles. The section states clearly that the Disproportionate Minority Confinement core requirement neither requires nor establishes numerical standards or quotas in order for a State to achieve or maintain compliance.

Executive Order 12866

This proposed rule is not a ''significant regulatory action'' for purposes of Executive Order 12866 because it does not result in: (1) An annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; and (4) does not raise novel legal or policy issues arising out of legal mandates, the President's priorities or the principles of Executive Order No. 12866. The Office of Management and

Budget has waived its review process for this rule under Executive Order 12866.

Regulatory Flexibility Act

This proposed rule, if promulgated, will not have a ''significant'' economic impact on a substantial number of small ''entities'' as defined by the Regulatory Flexibility Act. This action is intended to relieve existing requirements in the Formula Grants program and to clarify other provisions so as to promote compliance with its provisions by States participating in the program.

Paperwork Reduction Act

No collections of information requirements are contained in or affected by this regulation pursuant to the Paperwork Reduction Act, codified at 44 U.S.C. 3504(H).

Intergovernmental Review of Federal Programs

In accordance with Executive Order 12372 and the Department of Justice's implementing regulation 28 CFR Part 30, States must submit Formula Grant Program applications to the State ''Single Point of Contact,'' if one exists. The State may take up to 60 days from the application date to comment on the application.

List of Subjects in 28 CFR Part 31

Grant programs—law, Juvenile delinquency, Grant programs.

For the reasons set forth in the preamble, it is proposed to amend the OJJDP Formula Grants Regulation, 28 CFR Part 31, as follows:

PART 31—[AMENDED]

1. The authority citation for Part 31 would continue to read as follows:

Authority: 42 U.S.C. 5601 et seq.

2. Section 31.303 is amended by revising paragraphs (d)(1)(i) and (v) to read as follows:

§ 31.303 Substantive requirements.

* * * * *

(d)(1) * * *

(i) Separation. Describe its plan and procedure, covering the three-year planning cycle, for assuring that the requirements of this section are met. The term ''contact'' includes any physical or sustained sight or sound contact between juveniles in a secure custody status and incarcerated adults, including inmate trustees. A juvenile in a secure custody status is one who is physically detained or confined in a locked room or other area set aside or used for the specific purpose of securely detaining persons who are in law enforcement custody. Secure detention or confinement may result either from being placed in such a room or area and/or from being physically secured to a cuffing rail or other stationary object. Sight contact is defined as clear visual contact between incarcerated adults and juveniles within close proximity to each other. Sound contact is defined as direct oral communication between incarcerated adults and juveniles. Separation must be accomplished in all secure areas of the facility which include, but are not limited to, admissions, sleeping, toilet and shower, and other areas, as appropriate. Brief and inadvertent or accidental contact between juveniles in a secure custody status and incarcerated adults, in secure nonresidential areas of a facility such as dining, recreational, educational, vocational, health care, sally ports or other entry areas, and passageways (hallways) would not require a State to document or report such contact as a violation. However, any contact in a residential area of a secure facility between juveniles and incarcerated adults would be a reportable violation.

* * * * *

(v) Assure that adjudicated delinquents are not reclassified administratively and transferred to an adult (criminal) correctional authority to avoid the intent of separating juveniles from adult criminals in jails or correctional facilities. A State is not prohibited from placing or transferring an alleged or adjudicated delinquent who reaches the State's age of full criminal responsibility to an adult facility when required or authorized by State law. However, the administrative transfer, without statutory direction or authorization, of a juvenile offender to an adult correctional authority, or a transfer within a mixed juvenile and adult facility for placement with adult criminals, either before or after a juvenile reaches the age of full criminal responsibility, is prohibited. A State is also precluded from transferring adult offenders to a juvenile correctional authority for placement in a juvenile facility. This neither prohibits nor restricts the waiver or transfer of a juvenile to criminal court for prosecution, in accordance with State law, for a criminal felony violation, nor the detention or confinement of a waived or transferred criminal felony violator in an adult facility.

* * * * *

3. Section 31.303(e) is amended by revising paragraphs (e)(2), (e)(3) introductory text and (e)(3)(i) to read as follows:

§ 31.303 Substantive requirements.

* * * * *

(e) * * *

(2) Describe the barriers that a State faces in removing all juveniles from adult jails and lockups. This requirement excepts only those alleged or adjudicated juvenile delinquents placed in a jail or a lockup for up to six hours from the time they enter a secure custody status or immediately before or after a court appearance, those juveniles formally waived or transferred to criminal court and against whom criminal felony charges have been filed, or juveniles over whom a criminal court has original or concurrent jurisdiction and such court's jurisdiction has been invoked through the filing of criminal felony charges.

(3) Collocated facilities. (i) Determine whether or not a facility in which juveniles are detained or confined is an adult jail or lockup. The JJDP Act prohibits the secure custody of juveniles in adult jails and lockups, except as otherwise provided under the Act and implementing OJJDP regulations. Juvenile facilities collocated with adult facilities are considered adult jails or lockups unless paragraphs (e)(3)(i)(C)(*1*) through (*4*) criteria established in this section are complied with.

(A) A collocated facility is a juvenile facility located in the same building as an adult jail or lockup, or is part of a related complex of buildings located on the same grounds as an adult jail or lockup. A complex of buildings is considered ''related'' when it shares physical features such as walls and fences, or services beyond mechanical services (heating, air conditioning, water and sewer), or the specialized services that are allowable under paragraph (e)(3)(i)(C)(*3*) of this section.

(B) The State must determine whether a collocated facility qualifies as a separate juvenile detention facility under the four criteria set forth in paragraphs (e)(3)(i)(C)(*1*) through (*4*) of this section for the purpose of monitoring compliance with § 223(a)(12)(A), (13) and (14) of the JJDP Act.

(C) Each of the following four criteria must be met in order to ensure the requisite separateness of a juvenile detention facility that is collocated with an adult jail or lockup:

(*1*) Separation between juveniles and adults such that there could be no sight or sound contact between juveniles and incarcerated adults in the facility. Separation can be achieved architecturally or through time-phasing of common use nonresidential areas; and

(*2*) Separate juvenile and adult programs, including recreation, education, vocation, counseling, dining, sleeping, and general living activities. There must be an independent and comprehensive operational plan for the juvenile detention facility which provides for a full range of separate program services. No program activities may be shared by juveniles and incarcerated adults. Time-phasing of common use nonresidential areas is permissible to conduct program activities. Equipment and other resources may be used by both populations subject to security concerns; and

(*3*) Separate staff for the juvenile and adult populations, including management, security, and direct care staff. Staff providing specialized services (medical care, food service, laundry, maintenance and engineering, etc.) who are not normally in contact with detainees, or whose infrequent contacts occur under conditions of separation of juveniles and adults, can serve both populations (subject to State standards or licensing requirements). The day to day management, security and direct care functions of the juvenile detention center must be vested in a totally separate staff, dedicated solely to the juvenile population within the collocated facilities; and

(*4*) In States that have established standards or licensing requirements for juvenile detention facilities, the juvenile facility must meet the standards (on the same basis as a free-standing juvenile detention center) and be licensed as appropriate. If there are no State standards or licensing requirements, OJJDP encourages States to establish administrative requirements that authorize the State to review the facility's physical plant, staffing patterns, and programs in order to approve the collocated facility based on prevailing national juvenile detention standards.

* * * * *

4. Section 31.303 is amended by revising paragraphs (f)(2), (3)(vi), and (4)(vi) to read as follows:

§ 31.303 Substantive requirements.

* * * * *

(f) * * *

(2) For the purpose of monitoring for compliance with section 223(a)(12)(A) of the Act, a secure detention or correctional facility is any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders or non-offenders, or used for the lawful custody of accused or convicted adult criminal offenders. Accused status offenders or non offenders in lawful custody can be held in a secure juvenile detention facility for up to twenty-four hours, exclusive of weekends and holidays, prior to an initial court appearance and for an additional twenty-four hours, exclusive of weekends and holidays, following a court appearance.

(3) * * *

(vi) In entering any order that directs or authorizes the placement of a status offender in a secure facility, the judge presiding over an initial probable cause hearing or violation hearing must determine that all the elements of a valid court order (paragraphs (f)(3)(i), (ii) and (iii) of this section) and the applicable due process rights (paragraph (f)(3)(v) of this section) were afforded the juvenile and, in the case of a violation hearing, the judge must obtain and review a written report that: reviews the behavior of the juvenile and the circumstances under which the juvenile was brought before the court and made subject to such order; determines the reasons for the juvenile's behavior; and determines whether all dispositions other than secure confinement have been exhausted or are clearly inappropriate. This report must be prepared and submitted by an appropriate public agency (other than a court or law enforcement agency).

* * * * *

(4) * * *

(vi) Pursuant to section 223(a)(14) of the JJDP Act, the non-MSA (low population density) exception to the jail and lockup removal requirement as described in paragraphs (f)(4)(i) through (v) of this section will remain in effect through 1997, and will allow for secure custody beyond the twenty-four-hour period described in paragraph (f)(4)(i) of this section when the facility is located where conditions of distance to be traveled or the lack of highway, road, or other ground transportation do not allow for court appearances within twenty-four hours, so that a brief (not to exceed an additional forty-eight hours) delay is excusable; or the facility is located where conditions of safety exist (such as severely adverse, life-threatening weather conditions that do not allow for reasonably safe travel), in which case the time for an appearance may be delayed until twenty-four hours after the time that such conditions allow for reasonably safe travel. States may use these additional statutory allowances only where the precedent requirements set forth in paragraphs (f)(4)(i) through (v) of this section have been complied with. This may necessitate statutory or judicial (court rule or opinion) relief within the State from the twenty-four hours initial court appearance standard required by paragraph (f)(4)(i) of this section.

* * * * *

5. Section 31.303(f)(5)(i)(C) is revised to read as follows:

§ 31.303 Substantive requirements.

* * * * *

(f) * * *

(5) * * *

(i) * * *

(C) The total number of accused status offenders and nonoffenders, including out-of-State runaways and Federal wards, held in any secure detention or correctional facility for longer than twenty-four hours (not including weekends or holidays), excluding those held pursuant to the valid court order provision as set forth in paragraph (f)(3) of this section or pursuant to section 922(x) of Title 18, United States Code (which prohibits the possession of a handgun by a juvenile), or a similar State law. A juvenile who violates this statute, or a similar state law, is excepted from the deinstitutionalization of status offenders requirement;

* * * * *

6. Section 31.303 is amended by revising paragraphs (f)(6)(i) and (ii) to read as follows:

§ 31.303 Substantive requirements.

* * * * *

(f) * * *

(6) * * *

(i) Full compliance with section 223(a)(12)(A) is achieved when a State has removed 100 percent of status offenders and nonoffenders from secure detention and correctional facilities or can demonstrate full compliance with de minimis exceptions pursuant to the policy criteria contained in the Federal Register of January 9, 1981 (46 FR 2566–2569).

(ii) Compliance with section 223(a)(13) has been achieved when a State can demonstrate that:

(A) The last submitted monitoring report, covering a full 12 months of data, demonstrates that no juveniles were incarcerated in circumstances that were in violation of section 223(a)(13); or

(B)(*1*) The instances reported under paragraph (f)(6)(ii)(A) of this section do not indicate a pattern or practice but rather constitute isolated instances; and

(*2*) Existing mechanisms or plans to address these incidences are such that they are unlikely to recur in the future.

* * * * *

7. Section 31.303 is amended by inserting the following sentences after the 2nd sentence of paragraph (j) introductory text:

§ 31.303 Substantive requirements.

* * * * *

(j) * * * The purpose of the statute and regulation is to encourage States to address, programmatically, any features of its justice system, and related laws and policies, which may account for the disproportionate detention or confinement of minority juveniles in secure detention facilities, secure correctional facilities, jails and lockups. The Disproportionate Minority Confinement core requirement neither establishes nor requires numerical standards or quotas in order for a State to achieve or maintain compliance.

* * *

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Dated: June 26, 1996.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 96–16842 Filed 7–2–96; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 154 and 155

[CGD 94–032 and 94–048]

RIN 2115–AE87 and 2115–AE88

Tank Vessel and Facility Response Plans, and Response Equipment for Hazardous Substances

AGENCY: Coast Guard, DOT.

ACTION: Notice of public hearings.

SUMMARY: The Coast Guard is holding two public meetings on its proposed regulations under the Oil Pollution Act of 1990 (OPA 90) relating to the preparation of hazardous substance response plans to minimize the impact of a discharge or release of hazardous substances into the navigable waters of the United States. There is substantial public interest in the rulemaking. The Coast Guard is conducting the public meetings to receive view on what should be regulated and what appropriate regulations should be.

DATES: The meetings will be held on July 30, 1996, and August 5, 1996. The meetings will begin at 9:00 a.m. Comments must be received on or before September 3, 1996.

ADDRESSES: The July 30, 1996, meeting will be held in room 6200, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. The August 5, 1996, meeting will be held in the lecture hall of the Center for Advanced Space Studies, 3600 Bay Area Boulevard, Clear Lake, TX 77058. Written comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 94–032 and 94–048), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001 or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number if (202) 267–1477

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: LT Cliff Thomas, Project Manager, Office of Standards Evaluation and Development, at (202) 267–1099. This number is equipped to record messages on a 24-hour basis. Copies of the advanced notice of proposed rulemaking (ANPRM) may be obtained by submitting a request by facsimile at (202) 267–4547.

SUPPLEMENTARY INFORMATION:

Background Information

Response Plans for Hazardous Substances

The advanced noticed of proposed rulemaking (ANPRM) (61 FR 20084), published on May 3, 1996, solicited comments on 96 questions to assist in the development of a notice of proposed rulemaking for vessels and a notice of proposed rulemaking for marine transportation-related facilities (MTR).

Section 311(j)(5) of the Federal Water Pollution Control Act (FWPCA) [33 U.S.C. 1321(j)(5)], as amended by section 4202(a) of OPA 90, requires owners and operators of tank vessels, offshore facilities, and onshore facilities that could reasonably be expected to cause harm to the environment to prepare and submit plans for responding, to the maximum extent practicable, to a worst case discharge, or a substantial threat of such a discharge, of oil or hazardous substance. Section 4202(b)(4) of OPA 90 establishes an implementation schedule for these requirements with regard to oil. However, section 4202(b)(4) did not establish a compliance date requiring response plans for hazardous substances.

The Coast Guard issued two separate final rules: one requiring response plans for tank vessels carrying oil in bulk and another requiring response plans for marine transportation-related facilities (MTR) that handle, store, or transport oil in bulk. These final rules define many concepts such as ''marine transportation-related facility,'' ''maximum extent practicable,'' and ''worst case discharge.'' The rules also provide a specific format for these response plans; however, they allow for deviations from this format as long as the required information is included and there is a cross reference sheet identifying its location. The Coast Guard is considering using these concepts or modifying them as necessary in the regulations for response plans for hazardous substances.

Public Meeting

The Coast Guard will hold two public meetings, the first on July 30, 1996, and the second on August 5, 1996. The public is invited to comment on the issues discussed in the 96 questions listed in the ANPRM. The general areas in which the Coast Guard seeks public comment are response plan contents and format, carriage of response equipment, training requirements, and economic impacts.

Attendance is open to the public. Persons who are hearing impaired may request sign translation by contacting the person under **FOR FURTHER INFORMATION CONTACT** at least one week before the meeting. With advance notice, and as time permits, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should notify the person listed above under **FOR FURTHER INFORMATION CONTACT** no later than the day before the meeting. Written material may be submitted prior to, during, or after the meeting. Persons unable to attend the public meetings are encouraged to submit written comments as outlined in the ANPRM prior to September 3, 1996.

Dated: June 27, 1996.

Joseph J. Angelo,

Director, of Standards, Marine Safety and Environmental Protection.

[FR Doc. 96–17002 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–5531–1]

Use of Alternative Analytical Test Methods in the Reformulated Gasoline Program

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This proposal would amend the deadline for the use of certain alternative analytical test methods in the reformulated gasoline (RFG) program. Currently, the deadline for the use of these alternative test methods expires on January 1, 1997. This proposed amendment would extend the deadline for the use of alternative test methods in the reformulated gasoline program to September 1, 1998.

EPA is considering expanding the ability of industry to use various alternative analytical test methods. Extension of this deadline will allow refiners and others to continue using the currently approved alternative analytical test methods pending a final decision by EPA on additional alternatives. This proposed extension would result in greater flexibility for the regulated industry and reduce costs to all interested parties.

The RFG program reduces motor vehicle emissions of volatile organic compounds (VOC), oxides of nitrogen (NOx) and certain toxic pollutants. This proposed change in the deadline for the use of certain alternative test methods under § 80.46 preserves the status quo of the RFG program and will have no change in the emission benefits that result from the RFG program.

DATES: Comments on this proposed rule must be received by August 2, 1996.

ADDRESSES: Written comments on this proposed action should be addressed to Public Docket No. A–96–29, Waterside Mall (Room M–1500), Environmental Protection Agency, Air Docket Section, 401 M Street, S.W., Washington, D.C. 20460. Materials relevant to this rulemaking have been placed in Docket A–96–29. Documents may be inspected between the hours of 8:00 a.m. to 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Joseph R. Sopata, Chemist, U.S. Environmental Protection Agency, Office of Air and Radiation, (202) 233–9034.

SUPPLEMENTARY INFORMATION:

Regulated Entities. Entities potentially regulated by this action are those that use analytical test methods to comply with the Reformulated Gasoline Program. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Oil refiners, gasoline importers, oxygenate blenders, analytical testing laboratories.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware that could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your business is regulated by this action, you should carefully examine the applicability criteria in § 80 of title 40 of the Code of Federal Regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Introduction

A. RFG Standards

Section 211(k) of the Clean Air Act (the Act) requires that EPA establish standards for RFG to be used in specified ozone nonattainment areas (covered areas), as well as standards for non-reformulated, or conventional, gasoline used in the rest of the country, beginning in January, 1995. The Act requires that RFG reduce VOC and toxics emissions from motor vehicles, not increase NOx emissions, and meet certain content standards for oxygen, benzene and heavy metals. EPA promulgated the final RFG regulations on December 15, 1993.[1] See 40 CFR part 80, subpart D.

B. Test Methods Utilized at § 80.46

Refiners, importers and oxygenate blenders are required, among other things, to test RFG for various gasoline parameters or qualities, such as sulfur levels, aromatics, benzene, and so on. During the federal RFG rulemaking, and in response to comments by the regulated industry, EPA concluded that it would be appropriate to temporarily allow the use of alternative analytical test methods for measuring the parameters of aromatics and oxygenates. See 40 CFR 80.46. EPA adopted this provision because the designated analytical test methods for each of these parameters were costly and relatively new, leaving the industry little time to fully implement the designated analytical test methods. EPA therefore provided flexibility to the regulated industry by allowing the use of alternative analytical test methods for the two above mentioned parameters until January 1, 1997. After that date, use of the designated analytical test methods was required. Table 1 lists the designated analytical test method for each parameter measured under the RFG program.

TABLE 1.—DESIGNATED ANALYTICAL TEST METHOD UNDER THE RFG PROGRAM

RFG gasoline parameter	Designated analytical test method
Sulfur	ASTM D–2622–92, entitled ''Standard Test Method for Sulfur in Petroleum Products by X-Ray Spectrometry''.
Olefins	ASTM D–1319–93, entitled ''Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Absorption''.
Reid Vapor Pressure	Method 3, as described in 40 CFR part 80, appendix E.
Distillation	ASTM D–86–90, entitled ''Standard Test Method for Distillation of Petroleum Products''.[1]
Benzene	ASTM D–3606–92, entitled ''Standard Test Method for Determination of Benzene and Toluene in Finished Motor and Aviation Gasoline by Gas Chromatography''.[2]
Aromatics	Gas Chromatography as described in 40 CFR part 80.46(f).[3]
Oxygen and Oxygenate content analysis.	Gas Chromatography as described in 40 CFR part 80.46(g).[4]

[1] Except that the figures for repeatability and reproducibility given in degrees Fahrenheit in Table 9 in the ASTM method are incorrect, and shall not be used.

[2] Except that Instrument parameters must be adjusted to ensure complete resolution of the benzene, ethanol and methanol peaks because ethanol and methanol may cause interference with ASTM standard method D–3606–92 when present.

[1] 59 FR 7812, February 16, 1994.

[3] Prior to January 1, 1997, any refiner or importer may determine aromatics content using ASTM standard test method D–1319–93 entitled ''Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Absorption'' for the purpose of meeting any testing requirement involving aromatics content. *Note:* The January 1, 1997 deadline is the subject of today's notice.

[4] Prior to January 1, 1997, and when oxygenates present are limited to MTBE, ETBE, TAME, DIPE, tertiary-amyl alcohol, and C_1 and C_4 alcohols, any refiner, importer, or oxygenate blender may determine oxygen and oxygenated content using ASTM standard method D–4815–93, entitled ''Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol and C_1 and C_4 Alcohols in Gasoline by Gas Chromatography. *Note:* The January 1, 1997 deadline is the subject of today's notice.

C. NPRA, API and Mobil Request To Extend the Deadline for the Use of Alternative Analytical Test Methods at § 80.46 Beyond January 1, 1997

Mobil Oil Corporation, the American Petroleum Institute (API) and the National Petroleum Refiners Association (NPRA) have requested that EPA extend the deadline for the use of alternative analytical test methods for the measurement of aromatics and oxygenates as specified in § 80.46. Currently, the ability to use alternative analytical test methods under § 80.46 expires on January 1, 1997. In a September 25, 1995 letter to EPA, API and NPRA jointly urged extension of the deadline for the use of alternative analytical test methods at § 80.46 beyond January 1, 1997. They argued an extension would allow industry to avoid the burden of ordering costly equipment that would be more difficult to operate and maintain, in order to comply with the designated analytical test method. They also contended that the designated analytical test method will not necessarily improve test results.

EPA intends to undertake a rulemaking to consider establishing a performance based analytical test method approach for the measurement of the reformulated gasoline (RFG) parameters at § 80.46. Under this approach, quality assurance specifications would be developed under which the performance of alternate analytical test methods would be deemed acceptable for compliance. The Agency envisions that this approach would provide additional flexibility to the regulated industry in their choice of analytical test methods to be utilized for compliance under the RFG and conventional gasoline programs for analytical test methods that differ from the designated analytical test method. EPA expects to finalize action on such a rulemaking by September 1, 1998.

In the meantime, EPA today is proposing to extend the deadline for the use of the alternative analytical test procedures for aromatics and oxygenates under § 80.46(f)(3) and § 80.46(g)(9) until September 1, 1998. The Agency believes that it would be more appropriate to allow parties to continue using these alternative analytical test methods until a final decision is made on the performance based analytical test method approach in order that parties may make long-term purchase decisions based on all the testing options that could be available at the conclusion of this rulemaking.

II. Environmental Impact

The RFG program, as required by the Act, obtains emission reductions for VOC, NO_X and toxic emissions from motor vehicles. This proposed change in the deadline for the use of certain alternative test methods under § 80.46 preserves the status quo of the RFG program and will result in no change in the emission benefits of the RFG program.

III. Economic Impact

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that Federal Agencies examine the impacts of their regulations on small entities. The act requires an Agency to prepare a regulatory flexibility analysis in conjunction with notice and comment rulemaking, unless the Agency head certifies that the rule will not have a significant impact on a substantial number of small entities. 5 U.S.C. 605(b). This proposed rule provides for flexibility in allowing the regulated industry to use certain alternative analytical test methods at § 80.46 for eighteen additional months. This proposed rule is not expected to result in any additional compliance cost to regulated parties and may be expected to reduce compliance cost for regulated parties because it continues to provide a choice for the procurement of test methods for aromatics and oxygenates under the RFG program. This analysis applies to regulated parties that are small entities, as well as other regulated parties. Based on this, the Administrator certifies that this proposed rule will not have a significant impact on a substantial number of small entities.

IV. Executive Order 12866

Under Executive Order 12866,[2] the Agency must determine whether a regulation is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments of communities;

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

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

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.[3]

It has been determined that this proposed rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

V. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''UMRA''), P.L. 104–4, EPA must prepare a budgetary impact statement to accompany any general notice of proposed rulemaking or final rule that includes a Federal mandate which 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, for any rule subject to Section 202 EPA generally must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Under Section 203, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must take steps to inform and advise small governments of the requirements and enable them to provide input.

EPA has determined that this proposed rule does not include a federal mandate as defined in UMRA. This proposed rule does not include a Federal mandate that may result in estimated annual costs to State, local or tribal governments in the aggregate, or to the private sector, of $100 million or more, and it does not establish regulatory requirements that may

[2] 58 FR 51735, October 4, 1993.

[3] *Id.* at section 3(f)(1)–(4).

significantly or uniquely affect small governments.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Gasoline, Reformulated gasoline, Conventional gasoline, Motor vehicle pollution.

Dated: June 26, 1996.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 80 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

Section 80.46 is amended by revising the paragraphs under (f)(F)(3)(i) and (g)(G)(9)(i) to read as follows:

§ 80.46 Measurement of reformulated gasoline fuel parameters.

* * * * *

(f) * * *

(3) Alternative Test Method. (i) Prior to September 1, 1998, any refiner or importer may determine aromatics content using ASTM standard method D–1319–93, entitled ''Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption.'' For purposes of meeting any testing requirement involving aromatic content, provided that

* * * * *

(g) * * *

(9)(i) Prior to September 1, 1998, and when the oxygenates present are limited to MTBE, ETBE, TAME, DIPE, tertiary-amyl alcohol, and C1 to C4 alcohols, any refiner, importer, or oxygenate blender may determine oxygen and oxygenate content using ASTM standard method D–4815–93, entitled ''Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol and C1 to C4 Alcohols in Gasoline by Gas Chromatography,'' for purposes of meeting any testing requirement; provided that

* * * * *

[FR Doc. 96–17027 Filed 7–2–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 90

[FRL–5530–8]

Revised Carbon Monoxide (CO) Standard for Class I and II Nonhandheld New Nonroad Phase 1 Small Spark-Ignition Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: Today EPA is proposing a revision of the Phase 1 carbon monoxide (CO) emission standard for Class I and II new nonroad spark-ignition (SI) engines at or below 19 kilowatts. Today's action would increase the standard from 469 grams per kilowatt-hour (g/kW-hr) to 519 g/kW-hr. This proposed action is necessary to address the CO emission difference between oxygenated and nonoxygenated fuels that was not reflected when the Agency previously set the CO standard for these nonhandheld engines in a final rule published July 3, 1995. This correction of the nonhandheld engine CO standard would ensure that the CO standard for manufacturers of Class I and II small SI engines used to power equipment such as lawnmowers is achievable and otherwise appropriate under the Clean Air Act and that it is technically feasible for manufacturers to certify their engine models to the Phase 1 emission standards and make them commercially available for the 1997 model year.

In addition, today's action proposes to give the Administrator the option to permit the use of open crankcases in engines used exclusively to power snowthrowers. This proposed change will give EPA the flexibility to allow certain engine manufacturers to certify engines to be used in snowthrowers without making technological changes that would severely impair the ability of the engine to function or that would be economically prohibitive.

DATES: Written comments on this NPRM must be submitted by August 2, 1996. EPA will hold a public hearing on this NPRM sometime between [Insert date 15 days from date of publication] and August 2, 1996. If one is requested by July 15, 1996.

ADDRESSES: Written comments should be submitted (in duplicate, if possible) to: EPA Air and Radiation Docket, Attention Docket No. A–96–02, room M–1500 (mail code 6102), 401 M St., SW, Washington, D.C. 20460. Materials relevant to this rulemaking are contained in docket no. A–93–25 and docket no. A–96–02, and may be viewed from 8:00 a.m. until 5:30 p.m. weekdays. The docket may also be reached by telephone at (202) 260–7548. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for photocopying. Members of the public may call the contact person indicated below to find out whether a hearing will be held and if so, the exact location. Requests for a public hearing should be directed to the person indicated below. The hearing, if requested, will be held in Michigan.

FOR FURTHER INFORMATION CONTACT: Laurel Horne, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone: (313) 741–7803. FAX: (313) 741–7816. Electronic mail: horne.laurel@epamail.epa.gov

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those which manufacture engines used in nonhandheld applications, such as lawnmowers, and those which manufacture engines used exclusively to power snowthrowers. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Manufacturers of small (at or below 19 kW) nonroad engines used in nonhandheld applications such as lawnmowers.
Do	Manufacturers of small nonroad engines used exclusively to power snowthrowers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your company is regulated by this action, you should carefully examine the applicability criteria in section 90.1 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding ''FOR FURTHER INFORMATION CONTACT'' section.

II. Obtaining Electronic Copies of Documents

Electronic copies of the preamble and the regulatory text of this notice of proposed rulemaking are available electronically from the EPA Internet site and via dial-up modem on the Technology Transfer Network (TTN), which is an electronic bulletin board system (BBS) operated by EPA's Office

of Air Quality Planning and Standards. Both services are free of charge, except for your existing cost of Internet connectivity or the cost of the phone call to TTN. Users are able to access and download files on their first call using a personal computer and modem per the following information.

Internet:

World Wide Web:

http://www.epa.gov/OMSWWW

Gopher:

gopher://gopher.epa.gov/ Follow menus for: Offices/Air/OMS

FTP:

ftp://ftp.epa.gov/ Change Directory to pub/gopher/OMS TTN BBS: 919–541–5742

(1200–14400 bps, no parity, 8 data bits, 1 stop bit) Voice Help line: 919–541–5384.

Off-line: Mondays from 8:00 AM to 12:00 noon EST.

A user who has not called TTN previously first will be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following menu choices from the Top Menu to access information on this rulemaking.

<T> GATEWAY TO TTN TECHNICAL AREAS (Bulletin Boards)

<M> OMS—Mobile Sources Information

<K> Rulemaking and Reporting

<6> Non-Road

<2> Non-road Engines

At this point, the system will list all available files in the chosen category in reverse chronological order with brief descriptions. To download a file, select a transfer protocol that is supported by the terminal software on your own computer, then set your own software to receive the file using that same protocol.

If unfamiliar with handling compressed (i.e. ZIP'ed) files, go to the TTN top menu, System Utilities (Command: 1) for information and the necessary program to download in order to unZIP the files of interest after downloading to your computer. After getting the files you want onto your computer, you can quit the TTN BBS with the <G>oodbye command.

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

III. Legal Authority

Authority for the actions set forth in this rule is granted to EPA by sections 213 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7547 and 7601(a)).

IV. The Carbon Monoxide Standard and Fuel Specification Issue

On March 4, 1996, Briggs and Stratton Corporation submitted to EPA a petition requesting reconsideration and revision of the certification fuel requirements and carbon monoxide (CO) emission standard for nonhandheld engines. The petition asks the Agency to amend its July 3, 1995 final rule, Emission Standards for New Nonroad Spark-ignition (SI) Engines At or Below 19 Kilowatts, hereafter referred to as the Phase 1 small SI engine regulations.[1] Specifically, the petition requests that the Agency amend the Phase 1 small SI engine rule to either: (1) permit the use of appropriate oxygenated gasolines for emissions certification testing as a direct alternative to Indolene[2] under the current CO standard, or (2) revise the CO standard for nonhandheld small engines from 469 grams per kilowatt-hour (g/kW-hr) to 536 g/kW-hr, in order to reflect the emission characteristics of these engines when tested on nonoxygenated gasolines. Nonhandheld engines are intended for use in nonhandheld applications and fall under one of two classes based on engine displacement.[3] Class I engines are less than 225 cubic centimeters (cc) displacement, and Class II engines are greater than or equal to 225 cc displacement.[4] In response to the Briggs and Stratton petition, EPA is revising the Phase 1 small SI engine regulation by increasing the CO standard for Class I and II nonhandheld small SI engines from 469 g/kW-hr to 519 g/kW-hr.

To help the reader understand EPA's response to the petitioner's request, the following text provides background on prior actions taken by the State of California's Air Resources Board (CARB), EPA, and industry relating to the fuel requirements and the CO standard for nonhandheld small SI engines.

Both EPA and CARB have regulations that pertain to nonhandheld small SI engines. Nonhandheld small SI engines manufactured for sale in the United States must meet EPA emission regulations starting with the 1997 model year. Engines produced for sale in California must also meet regulatory requirements specified by CARB. The small engine industry and other stakeholders have been actively involved in the development of EPA and CARB nonroad engine regulations.

CARB's CO Standard and Fuel Specifications

CARB began the process of developing emission regulations for small nonroad engines under the authority of the California Clean Air Act of 1988. In December 1990, the California Regulations for 1995 and Later Utility and Lawn and Garden Equipment Engines (hereafter referred to as the utility engine regulations) were initially approved. Among other requirements, CARB's Tier 1 utility engine regulations, as formally adopted in March 1992, specified that Class I and Class II engines produced from January 1, 1995, through December 31, 1998, must certify to a 300 gram per brake horsepower-hour (g/bhp-hr)carbon monoxide exhaust emission standard.[5]

In regard to certification fuel specifications, CARB's utility engine regulations referenced CARB on-road vehicle certification fuel specifications, which were adopted in 1987 and amended in July 1991. Consequently, engine manufacturers could select to certify their engines using either Indolene Clear or California Phase 1 Reformulated Gasoline. A later amendment to the utility engine regulations revised the certification fuel specifications to incorporate the most recent on-road motor vehicle fuel specification, California Phase II Reformulated gasoline. In a related mail-out, CARB stated that it had intended for engine test fuel specifications to be consistent with the on-road motor vehicle fuel specifications[6]; in the future, approved amendments to the CARB on-road vehicle fuel specifications will be immediately

[1] 60 FR 34582, July 3, 1995, codified at 40 C.F.R. part 90. The docket for the Phase 1 small SI engine rulemaking, EPA Air Docket #A–93–25, is incorporated by reference.

[2] See section 90.308(b) and page 34589 of the preamble for the certification fuel specification for the Phase 1 small SI engine rulemaking. Indolene is one possible federal certification fuel. Indolene is not the only eligible fuel, but it is within the eligible range specified in part 86 (section 86.1313–94(a)) to which the Phase 1 small SI engine rule refers. The Phase 1 small SI engine rulemaking provides for a range and based on experience with the on-highway program, EPA expects that engine manufacturers will use Indolene. California Phase II Reformulated Gasoline and other oxygenated fuels are not within the range specified in the Phase 1 small SI engine rule.

[3] For additional discussion of engine classes and handheld engine qualifications, see 60 FR 34585, July 3, 1995.

[4] Class I engines are predominantly found in lawnmowers. Class II engines primarily include engines used in generator sets, garden tractors, and commercial lawn and garden equipment.

[5] Throughout its utility engine regulations, CARB uses horsepower (hp) measurements, while in its small SI engine regulations, EPA refers to kilowatts (kW). To convert kilowatts to horsepower multiply kW by 1.34 and round to the same number of significant digits. In this case, 300 g/bhp-hr = 402 g/kW-hr.

[6] See CARB Mail-out #94–20, May 4, 1994, Utility and Lawn and Garden Equipment Engine Test Fuel Specifications.

applicable to engine certification test fuels.

In July, 1995, Briggs and Stratton Corporation petitioned CARB to amend its 300 g/bhp-hr CO standard for Class I and II engines to 350 g/bhp-hr. The company argued that it was not technically feasible to meet the 300 g/bhp-hr CO standard. After consideration of Briggs and Stratton's petition, CARB prepared a notice of public hearing and an accompanying staff report.[7] While expressing several concerns about the petition in the staff report, CARB staff recommended that the Board approve Briggs and Stratton's request. At a public hearing on January 25, 1996, the Board granted Briggs and Stratton's request, and adopted the recommended amendment to raise the Class I and II CO exhaust emission standard to 350 g/bhp-hr (equivalent to 469 g/kw-hr).[8]

EPA's CO Standard and Fuel Specifications

Not long after CARB began developing its utility engine regulations, EPA decided to adopt a phased approach for regulating emissions from small SI engines under the authority of section 213(a) of the Clean Air Act. For the first phase, EPA determined that the regulations would be similar to the CARB's Regulation for 1995 and Later Utility and Lawn and Garden Equipment Engines. EPA published its proposed rules on May 16, 1994. One provision of the proposal was that nonhandheld engines would be required to certify to a CO standard set at 402 g/kW-hr—equivalent to CARB's original CO standard of 300 g/bhp-hr. However, the certification test fuel specified in the Phase 1 proposal was different from CARB's. In its notice of proposed rulemaking (NPRM), EPA specified a fuel referred to as Clean Air Act Baseline (CAAB).[9] EPA noted in its preamble that although oxygenated and reformulated gasoline fuel was available in different areas around the United States, the availability varied widely.[10] Reformulated or oxygenated gasoline was therefore not specified as a certification test fuel for the Phase 1 NPRM.

Following publication of the Phase 1 NPRM, Briggs and Stratton submitted proprietary engine development data and analysis to EPA. The company argued that the data established a need for an increase to the nonhandheld CO standard from the proposed level of 402 g/kW-hr. The Engine Manufacturers Association (EMA) also provided comments in support of increasing the CO emission standard for Class I and II nonhandheld engines from the proposed 402 g/kw-hr to 469 g/kw-hr. EMA argued that it is not technically feasible for a significant percentage of the market to meet the more stringent proposed standard.

On July 3, 1995, EPA published its Phase 1 small SI engine final rulemaking.[11] The final provisions for both the nonhandheld CO emission standard and the certification fuel specifications differed from the proposed provisions. Based on its own review and analysis of the data submitted by Briggs and Stratton following publication of the NPRM, EPA decided to raise the CO standard for nonhandheld engines from the proposed level of 402 g/kw-hr to 469 g/kw-hr. The rationale for the increase of the nonhandheld CO standard is discussed in further detail in the final rule response to comments document.[12]

In the preamble to its final Phase 1 small SI engine rule, EPA discussed the provisions for the type of fuel to be used for certification and confirmatory testing. In response to comments received on the NPRM, the Agency decided to expand the range of specifications for certification fuels such that the fuel commonly referred to as Indolene Clear, in addition to the Clean Air Act Baseline (CAAB) fuel that was discussed in the proposal, would be allowed.[13] Indolene is the trade name for the gasoline fuel specified at 40 CFR 86.113 and 40 CFR 86.1313 for most on-highway federal compliance test procedures. Since the CARB regulation allows the use of either Indolene or Phase 2 fuel, a test performed using Indolene could be used to satisfy both federal and CARB requirements for small SI engines. Unknown by the Agency at the time EPA finalized the rule, Briggs and Stratton's data supporting the increased standard was based on testing conducted with oxygenated fuels, rather than the federal fuel specified in the NPRM.

In sum, while EPA had hoped its allowance of Indolene as a test fuel would facilitate consistency with CARB's program and allow manufacturers to conduct a single test for both the federal and CARB program, the Agency in fact set a standard that only engines tested on oxygenated fuel had been demonstrated to meet. In conjunction with a test fuel like Indolene the 469 g/kW-hr nonhandheld CO emission standard set in the Phase 1 small SI engine regulations is more stringent than the Agency intended because it did not take into account the effect of the oxygenated fuel used in the test data on which EPA based the standard.

Again, at the time EPA set the standard, the Agency did not know Briggs and Stratton's data had been generated through testing with oxygenated fuels. In addition, when CARB decided to relax its CO standard to 350 g/bhp-hr (469 g/kW-hr) in January 1996, it noted that the standard would be less stringent than federal regulations due to CARB's allowance of oxygenated, reformulated gasoline for certification. Although the CARB 350 g/bhp-hr CO standard and the federal 469 g/kW-hr CO standard are numerically equivalent, the latter does not allow for the use of oxygenated fuels such as Phase II reformulated gasoline, and is therefore more stringent than EPA believes is appropriate in light of the factors EPA is directed to consider in CAA section 213(a)(3). The Agency believes it is important to correct its nonhandheld CO emission standard to align with CARB's new standard, and more importantly, to ensure that the federal standard is technologically achievable and otherwise appropriate under section 213(a) by accounting for the CO emission offset between nonoxygenated and oxygenated fuels.

Following publication of the Phase 1 small SI engine final rule, Briggs and Stratton raised concerns in meetings with EPA that the Class I and II 469 g/kW-hr CO emission standard was not technologically feasible given the finalized certification fuel provisions. The Agency indicated in a letter to the EMA on November 3, 1995, that any change to the CO standard necessary to reflect differences in fuel effects would require that the Agency initiate a notice and comment rulemaking process.[14] Additionally, EPA stated in correspondence on January 24, 1996, that if Briggs and Stratton submitted an adequately supported petition to reconsider the final rule on this issue, EPA would initiate a rulemaking to raise the Phase 1 CO standard for nonhandheld engines by the amount of the emission offset.[15] On March 4, 1996, Briggs and Stratton formally petitioned

[7] See CARB Mail-out #95–43, Notice of January 25, 1996 Public Hearing.

[8] CARB Resolution 96–1, January 25, 1996.

[9] See Table 3 in Appendix A to Subpart D of Part 90 of the proposed Phase 1 regulations, available in EPA Air Docket #A–93–25, item III–A–2.

[10] 59 FR 25419, May 16, 1994.

[11] 60 FR 34584, July 3, 1995.

[12] See Response to Comments on the NPRM, in EPA Air Docket #A–93–25, item V–C–01.

[13] See 40 CFR 90.308(b)(1).

[14] Letter from Chester France, EPA to Jed Mandel, EMA, November 3, 1995. A copy of this letter is included in the docket for this rulemaking.

[15] Letter from Paul Machiele, EPA to Addresses, January 24, 1996. A copy of this letter is included in the docket for this rulemaking.

the Agency to amend the Phase 1 small SI engine regulations in one of two ways: To permit the use of oxygenated fuels for certification while maintaining the 469 g/kW-hr CO standard, or to raise the CO standard for nonhandheld engines to 536 g/kW-hr.

Basis for the Briggs and Stratton Petition

In its petition, Briggs and Stratton describes the grounds on which it believes the Agency should grant its petition. The company argues that the Clean Air Act requires EPA to grant the petition and that granting the petition will further the primary purposes of the Phase 1 small SI engine regulations by enhancing the in-use control of NO_X emissions in small engine exhaust.

Briggs and Stratton states in its petition that the Agency is compelled by statute and by its prior findings to grant the petition. The company points out that the Clean Air Act specifies that the emission standards must be achievable giving appropriate consideration to the cost of applying available technology within the period of time available to manufacturers. EPA decided in its Phase 1 small SI engine final rule, states Briggs and Stratton, that the 469 g/kW-hr CO standard was the most stringent achievable CO standard for Class I and II nonhandheld engines when taking into account cost and leadtime concerns. Briggs and Stratton additionally argues that the law requires that the feasibility and stringency of federal emission standards depend upon the test procedures used to measure compliance. Because the data supplied by Briggs and Stratton and used by EPA to set the 469 g/kW-hr CO standard for nonhandheld engines was data collected using oxygenated fuels, while EPA's final rule does not allow for the use of an oxygenated certification test fuel, Briggs and Stratton argues that the rule must be revised to allow for the effect of the fuel difference.

In general, EPA agrees with Briggs and Stratton's argument that a change to the nonhandheld Phase 1 CO emission standard is necessary based on the Clean Air Act's requirement that the standard reflect the greatest degree of emission reduction achievable through the application of technology which EPA determines will be available for the regulated engines, giving appropriate consideration to the cost of applying such technology and other factors.[16] The Agency did determine that the 469 g/kW-hr CO standard for nonhandheld engines was appropriate based in part on test data supplied by Briggs and Stratton. Prior to publication of the final rule it was never indicated to EPA that the fuel these tests were conducted on was something other than what EPA had proposed in its NPRM. Absent any indication to the contrary, EPA had assumed that Briggs and Stratton had used a nonoxygenated fuel such as Clean Air Act Baseline when conducting the tests that generated the data the Agency used to set its nonhandheld CO emission standard. Had EPA been made aware of the fact that Briggs and Stratton had in fact used oxygenated fuel as the test fuel, the Agency would have taken the difference in the effect of the fuel into account when setting its final CO standard for nonhandheld engines. Analysis of data recently supplied by Briggs and Stratton of comparison testing using oxygenated and nonoxygenated fuels substantiates the company's claim that the fuel type affects CO emissions. EPA's analysis of Briggs and Stratton's data and of data collected in testing conducted by the Agency after publication of the Phase 1 small SI engine final rule indicates that nonhandheld engine CO emissions are indeed lower when run on oxygenated fuels than they are when run on nonoxygenated fuels.

Briggs and Stratton also argues, as grounds for EPA granting its petition, that allowing the use of oxygenated fuel would improve in-use control of NO_X in small engine exhaust. However, Briggs and Stratton's argument is theoretical, and not supported by any data analysis. As shown in the Regulatory Support Document (RSD) for this rule, the Agency's analysis of the test data recently supplied by Briggs and Stratton and of EPA's own test data indicate that the differences of changes in NO_X and HC depending on the use of oxygenated or nonoxygenated fuels are minimal.

V. Snowthrower Open Crankcase Issue

Specific engine manufacturers and the Engine Manufacturers Association (EMA) have raised concerns about the closed crankcase certification requirement specified in the Phase 1 small SI engine final rule at section 90.109. The Agency specified in its Phase 1 small SI proposal that crankcases must be closed as a requirement of certification in order to eliminate emissions that would otherwise occur when a crankcase is vented to the atmosphere. It was EPA's understanding that since most currently produced engines do have closed crankcases, this requirement would impact relatively few manufacturers. No comments were submitted in response to EPA's NPRM on this issue, and EPA finalized the provision requiring closed crankcases. Subsequent to publication of the Phase 1 small SI engine final rule, however, the Agency has been made aware of concerns specific to manufacturers of engines used exclusively in snowthrowers. These manufacturers have indicated that it is necessary to maintain an open crankcase in order to prevent the freeze up of the intake which would likely occur if a crankcase breather hose was required. Additionally, these manufacturers have provided evidence that the cost to close these crankcases and prevent freeze up would be prohibitively expensive—possibly in excess of the cost of the engine. Furthermore, they have argued that the emissions benefit does not justify the cost. $HC + NO_X$ emissions resulting from having the crankcase open for snowthrower equipment will have no impact on summer ozone concentrations. Manufacturers claim that the CO emission impact on CO nonattainment will also be minor due to the limited numbers of these pieces of equipment and the small impact opening the crankcase has on overall CO emissions from this small number of engines. The Agency seeks additional and more detailed comment on the cost and emission impacts of open crankcases on engines used exclusively to power snowthrowers.

At this time the Agency has not received notification from any other parties regarding similar difficulties. The Agency seeks comment on whether there are engines used in other equipment types that face similar difficulties in meeting the closed crankcase requirement. The Agency requests that if such situations are identified, commenters submit documentation regarding the technical and economic need for utilizing an open crankcase.

The Agency is convinced by the arguments presented by the manufacturers of engines used exclusively in snowthrowers that a change to the closed crankcase requirement is appropriate. Therefore, EPA proposes that the Administrator be given the flexibility to allow open crankcases in certain circumstances for engines used exclusively in snowthrowers. The Administrator would consider allowing open crankcases for these engines if adequate demonstrations are made by the manufacturers that the applicable emission standards would be met and that the cost of abating emissions from an open crankcase would be prohibitive. The Agency seeks comment on this proposed provision and on what criteria the Administrator might apply in

[16] See 42 U.S.C. 7547(a)(3).

determining whether costs are prohibitive.

VI. Provisions of This Rulemaking

In response to the petition submitted by Briggs and Stratton Corporation, EPA has decided to propose revising the CO emission standard for Class I and II nonhandheld small SI engines from 469 g/kW-hr to 519 g/kW-hr. The underlying technical analysis and a description of the data on which it is based is presented in the Regulatory Support Document, a copy of which is in the public docket for this rulemaking.

Given that the Agency, had it known that Briggs and Stratton had used an oxygenated test fuel to generate the test data which EPA used to set the Class I and II nonhandheld standard, would have taken fuel effects into account when determining the CO standard, the Agency believes that it is appropriate, now knowing about the fuel differences, to revise the Phase 1 final rule to reflect the fuel effect on CO emissions.

Briggs and Stratton suggested two options that the Agency might take to revise the Phase 1 rule in a way that would address the company's concerns. The first suggested option was for the Agency to permit the use of appropriate oxygenated gasolines for emissions certification testing as a direct alternative to Indolene under the current CO standard. The Agency has decided not to take this approach for several reasons. While the Agency based its nonhandheld Class I and II emission standards on Briggs and Stratton test data, which it now knows was run on oxygenated fuels, the same cannot be said for the data EPA used to set its standards for Classes III, IV, and V engines. The Agency's greatest concern regarding the allowance of oxygenated fuels generally is the effect on the stringency of the emission standards. If the Agency were to allow certification testing on oxygenated fuels but maintain its current standards, it would not be certain of the benefits of HC and NO_X emission reductions described in the final rule when the engines are run on nonoxygenated fuels in the field. In addition, the Agency has concerns about the nationwide availability of oxygenated fuel. While it is required in certain nonattainment areas, those areas of the country that are in attainment may not have reformulated or oxygenated fuels commercially available. Correcting the CO standard is also the simplest and least complicated solution to address the problem presented by Briggs and Stratton's petition in a timely manner, which is critical so that engine manufacturers will be able to certify their model year 1997 production engines. Therefore, the Agency has decided to address the issue of the appropriateness of the nonhandheld CO emission standard by proposing to revise the CO standard for Class I and II engines while retaining the specified certification test fuel.

To determine the amount by which to propose a revision to the standard, EPA analyzed the comparative test data recently supplied by Briggs and Stratton. When Briggs and Stratton submitted the data, the company noted in a cover letter that the use of oxygenated fuels reduced CO emissions by up to 47 g/kW-hr. However, Briggs and Stratton requested in its petition that the Agency revise its CO standard upward by 67 g/kW-hr, which would mean a new standard of 536 g/kW-hr. No additional data was supplied to the Agency to support such an increase. The rationale given by Briggs and Stratton for requesting an additional 20 g/kW-hr is that the test data supplied represents a limited number of engine tests, and does not account for production variability. EPA's response to the petitioner's argument is that the Agency took production variability into account when setting the original 469 g/kW-hr standard for the Phase 1 final rule. Any change to the CO emission standard should thus be based solely on differences in fuel type.

Analysis of Briggs and Stratton data and of EPA test data indicates that indeed there are cases where the effects of fuel differences on the CO standard may be as much as 50 g/kW-hr. Given the limited quantity of data, EPA considered quantifying the difference in fuel types and the resultant change in CO emission standard by comparing the two means from sample data using the two fuel types. As explained in the RSD, statistical tests comparing the means of the two populations (oxygenated fuel and nonoxygenated fuel) indicate an average difference of 30.6 g/kW-hr for Class I engines, and 26.6 g/kW-hr for Class II engines. However, EPA determined that it is most appropriate, and in keeping with its approach for establishing the 469 g/kW-hr standard in the final rule,[17] to adjust the standard to take into account the largest offsets observed in the Briggs and Stratton and EPA data, and to ensure harmonization with CARB. The Agency thus concludes that in order for engine manufacturers to achieve the greatest CO emission reduction with the technology available within the given time limits of the Phase 1 small SI engine regulation that it is appropriate to increase the nonhandheld CO standard by 50 g/kW-hr to 519 g/kW-hr. In reaching this conclusion, EPA has attempted to determine an appropriate offset attributable to the effect of oxygenated fuel, while preserving to the greatest extent possible the balance made by the final Phase 1 rule of various factors such as technical feasibility, cost, lead time, and harmonization with CARB.

This proposed action will further harmonize the Class I and II CO standard with California's analogous standard, considering CARB's recent action to increase its CO standard to 350 g/bhp-hr (469 g/kW-hr). The Agency considers a nonhandheld CO emission standard of 519 g/kW-hr with the use of a nonoxygenated fuel such as Indolene to be roughly equivalent to CARB's Class I and II CO standard of 350 g/bhp-hr with the use of an oxygenated fuel such as California Phase II.

As indicated in EPA's November 3, 1995, letter to EMA, the Agency already provides a mechanism for those manufacturers who certify in California using oxygenated fuel and wish to use those test results for certification with EPA. Manufacturers may apply to EPA under the alternative test procedures provision contained in the Phase 1 small SI engine final rule (section 90.120(b)). If a manufacturer's submitted data indicates that its test engine would comply with the applicable federal emission standard using federal fuel, EPA would determine that the engine family meets the requirements of Phase 1 and issue a certificate of conformity. EPA has stated[18] that it will work with manufacturers to assist them in making the required technical demonstrations under the alternative certification procedures.

This proposed action would also provide the Administrator with the option of permitting open crankcases on engines used exclusively to power snowthrowers, provided that the affected engine complies with applicable standards and the manufacturer demonstrates that the cost of closing the crankcase is prohibitive.

VII. Environmental Benefit Assessment

Although the change in the nonhandheld CO standard results in a change from the 7% reduction in CO estimated in the final rule to a 2% reduction in the CO inventory, the Agency has concluded that this rule has no effect on the HC + NO_X inventory and minimal effect on the CO inventory in nonattainment areas. The majority of equipment powered by the Class I and

[17] See the Response to Comments document in EPA Air Docket # A–93–25.

[18] Letter from Chester France, EPA to Jed Mandel, EMA, November 3, 1995.

II nonhandheld engines subject to this rule is used during the summer months, when CO nonattainment is generally not a concern. Many nonhandheld engine models are expected to have CO emission levels well below the standard since CO levels are controlled in meeting the HC + NO_X emission standards which are not affected by this action.

The provision to provide the Administrator with the option of permitting open crankcases in engines used exclusively to power snowthrowers will require manufacturers seeking to demonstrate the need for open crankcases to show compliance with applicable standards. The Agency expects, therefore, that the proposed open crankcase option will not affect the emission inventory or the emission reductions to be achieved by the Phase 1 small SI engine final rule.

VIII. Economic Effects

The Agency anticipates that this rule will have minimal, if any, affect on the costs or benefits of the Phase 1 small SI engine final rule. Industry costs are unlikely to change because engine manufacturers will not need to make additional modifications to meet the relaxed CO standard. As there will be no additional cost for industry to pass on to the consumer as a result of this rulemaking, EPA is convinced that consumer cost impacts will remain unchanged. The Agency therefore concludes that the economic effects of this rulemaking are negligible.

IX. Effective Date

EPA is proposing to make these regulations effective upon signature of the final rule because these regulations will not require any lead time for compliance.

X. Public Participation

A. Comments and the Public Docket

The Agency welcomes comments on all aspects of this proposed rulemaking. All comments (preferably in duplicate), with the exception of proprietary information, should be directed to the EPA Air Docket Section, Docket No. A–96–02 (see **ADDRESSES**). Commenters who wish to submit proprietary information for consideration should clearly separate such information from other comments by:

- labeling proprietary information ''Confidential Business Information'' and
- sending proprietary information directly to the contact person listed (see **FOR FURTHER INFORMATION CONTACT**) and not to the public docket.

This will help ensure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to use a submission labeled as confidential business information as part of the basis for the final rule, then a nonconfidential version of the document, which summarizes the key data or information, should be sent to the docket.

Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, the submission may be made available to the public without notifying the commenters.

B. Public Hearing

Anyone wishing to present testimony about this proposal at the public hearing, should one be requested, (see DATES) should, if possible, notify the contact person (see **FOR FURTHER INFORMATION CONTACT**) at least two business days prior to the day of the hearing. The contact person should be given an estimate of the time required for the presentation of testimony and notification of any need for audio/visual equipment. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling those who have not notified the contact earlier. This testimony will be scheduled on a first-come, first-served basis, and will follow the testimony that is arranged in advance.

The Agency recommends that approximately 50 copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, EPA would find it helpful to receive an advance copy of any statement or material to be presented at the hearing at least two business days before the scheduled hearing date. This is to give EPA staff adequate time to review such material before the hearing. Such advance copies should be submitted to the contact person listed.

XI. Administrative Requirements

A. Administrative Designation

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

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

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

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

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

EPA has determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This rule does not contain any new information requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., nor does it change the information collection requirements the Office of Management and Budget (OMB) has previously approved. OMB has previously assigned OMB control number 2060–0338 to the requirements associated with the nonroad small SI engine certification information collection request (ICR); this action does not change those requirements in any way.

C. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (signed into law on March 22, 1995) requires that EPA prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 of the Unfunded Mandates Reform Act requires EPA to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, EPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. EPA must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless EPA explains why this alternative is not selected or the

selection of this alternative is inconsistent with law.

Because the rule proposed here is expected to result in the expenditure by state, local, and tribal governments or the private sector of less than $100 million in any one year, EPA has not prepared a budgetary impact statement or specifically addressed selection of the least costly, most cost-effective or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, EPA is not required to develop a plan with regard to small governments.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601) requires EPA to consider potential impacts of proposed regulations on small business. If a preliminary analysis indicates that a proposed regulation would have a significant adverse economic impact on a substantial number of small business entities, a regulatory flexibility analysis must be prepared.

This rule decreases the stringency of the CO exhaust emission standard for Class I and II nonhandheld engines, thereby potentially creating beneficial effects on small businesses by easing one provision required of small engine manufacturers by the Phase 1 small SI engine regulations. As a result, EPA certifies that this rulemaking will not have a significant adverse effect on a substantial number of small entities. Consequently, EPA has not prepared a regulatory flexibility analysis for this rule.

List of Subjects in 40 CFR Part 90

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Environmental protection, Imports, Incorporation by reference, Labeling, Nonroad source pollution, Reporting and recordkeeping requirements.

Dated: June 26, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 90 of title 40 of the Code of Federal Regulations is amended as follows:

PART 90—CONTROL OF EMISSIONS FROM NONROAD SPARK-IGNITION ENGINES

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)).

Subpart B—[Amended]

2. Section 90.103 is amended by revising the table in paragraph (a) introductory text to read as follows:

§ 90.103 Exhaust emission standards.

(a) * * *

EXHAUST EMISSION STANDARDS

[Grams per kilowatt-hour]

Engine displacement class	Hydrocarbon plus oxides of nitrogen	Hydrocarbon	Carbon monoxide	Oxides of nitrogen
I	16.1	.....	519	.....
II	13.4	.....	519	.....
III	.....	295	805	5.36
IV	.....	241	805	5.36
V	.....	161	603	5.36

* * * * *

3. Section 90.109 is amended by adding new paragraph (c) to read as follows:

§ 90.109 Requirement of certification—closed crankcase.

* * * * *

(c) Notwithstanding paragraph (a) of this section, the Administrator may exercise the option to permit open crankcases for engines used exclusively to power snowthrowers based upon a manufacturer's demonstration, approved in advance by the Administrator, that all applicable emission standards will be met by the engine and that the cost of closing the crankcase is prohibitive.

[FR Doc. 96–16856 Filed 7–02–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–119; RM–8667]

Radio Broadcasting Services; Dafter, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses a petition filed by Dafter Community Broadcasters proposing the allotment of Channel 293A to Dafter, Michigan. *See* FR 38539, July 27, 1995. Petitioner failed to provide sufficient information to establish community status for Dafter. Therefore, in keeping with Commission policy to refrain from allotting channels to communities lacking community status, we have dismissed the petiton for Dafter. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* MM Docket No. 95–119, adopted May 8, 1996, and released June 21, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
John A. Karousos,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 96–16767 Filed 7–2–96; 8:45 am]
BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 96–140, RM–8824]

Radio Broadcasting Services; Hemphill, TX

AGENCY: Federal Communications Commission.
ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Phillip Burr proposing the allotment of Channel 280A at Hemphill, Texas, as the community first local FM service. Channel 280A can be allotted to Hemphill in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.2 kilometers (1.4 miles) north in order to avoid a short-spacing conflict with the licensed site of Station KBIU(FM), Channel 279C1, Lake Charles, Louisiana. The coordinates for Channel 280A at Hemphill are 31–21–30 and 93–51–24.
DATES: Comments must be filed on or before August 19, 1996, and reply comments on or before September 3, 1996.
ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Cary S. Tepper, Booth, Freret & Imlay, P.C., 1233 20th Street, NW., Suite 204, Washington, DC 20554 (Counsel for petitioner).
FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.
SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 96–140, adopted June 21, 1996, and released June 28, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.
Federal Communications Commission.
John A. Karousos,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 96–16958 Filed 7–2–96; 8:45 am]
BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 950725189–6182–03; I.D. 060696A]

RIN 0648–AI92

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Changes in Catch Limits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.
ACTION: Proposed rule; request for comments.

SUMMARY: In accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP), NMFS proposes commercial vessel trip limits for the Atlantic migratory group of king mackerel. The intended effects of this rule are to preclude an early closure of the commercial fishery, protect king mackerel from overfishing, and maintain healthy stocks while still allowing catches by important commercial fisheries.
DATES: Written comments must be received on or before July 18, 1996.
ADDRESSES: Comments must be mailed to Mark F. Godcharles, Southeast Region, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Send requests for copies of the regulatory amendment document (dated June 1995) and its supplement (dated February 1996), which include the environmental assessment and regulatory impact review for this action, to the South Atlantic Fishery Management Council, Southpark Building, One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fisheries for coastal migratory pelagic resources are regulated under the FMP. The FMP was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils and is implemented by regulations at 50 CFR part 642.

In accordance with the framework procedures of the FMP, the South Atlantic Council (Council) recommended to the Director, Southeast Region, NMFS (Regional Director), a regulatory amendment, which, among other changes, included establishment of commercial vessel trip limits for the Atlantic migratory group of king mackerel. These vessel trip limits were included in a proposed rule published on August 3, 1995 (60 FR 39698). A final decision by NMFS on whether the trip limits were consistent with the National Standards of the Magnuson Fishery Conservation and Management Act (Magnuson Act) was deferred, and the reasons for the deferral were published in the final rule implementing the approved measures of the regulatory amendment (60 FR 5768, November 17, 1995). The Council revised the proposed trip limits to address cited deficiencies, took additional public comment, and resubmitted a supplemented regulatory amendment for NMFS' review and approval.

The Council proposes daily trip limits for vessels harvesting under the commercial allocation for Atlantic group king mackerel. This segment of the fishery has not been subject to trip limits. As revised, the daily possession/landing limit for a vessel using non-prohibited gear and having a Federal commercial mackerel permit would be 3,500 lb (1,588 kg) of king mackerel in or from the exclusive economic zone (EEZ) year-round in the northern area (i.e., between the New York/Connecticut and Flagler/Volusia County, FL boundaries). Off Volusia County, FL, the daily trip limit would be 3,500 lb (1,588 kg) of king mackerel in or from the EEZ from April 1 through October 31. South of there, between the Volusia/Brevard and Dade/Monroe County boundaries, the daily trip limit would be 500 lb (227

kg) of king mackerel in or from the EEZ from April 1 through October 31. In the southernmost area, off Monroe County (Florida Keys), the daily trip limit would be 1250 lb (567 kg) of king mackerel in or from the EEZ from April 1 through October 31. All trip limits proposed for the Atlantic group king mackerel are daily landing/possession limits that would be reduced to zero for that group when the annual commercial allocation is reached.

The Council desires implementation as soon as possible in the fishing year that began April 1, 1996, to preclude excessive early season harvest of king mackerel, early closure, disproportionate harvest of the allocation by regional fisheries, subsequent negative socioeconomic impacts, recruitment overfishing, and waste.

In its resubmitted proposal, the Council revised the original trip limit proposals by converting limits on the number of fish that may be possessed or landed to equivalent pounds of fish. The Council determined that this change was necessary to prevent waste caused by high-grading (i.e., the act of discarding smaller fish and replacing them with larger ones to maximize aggregate poundage landed while complying with the daily trip limit on the number of fish landed). Such waste causes estimates of release and fishing mortality to be lower than the actual mortality and results in an inaccurate evaluation of the status of the stocks and of the fishery impacts on the resource.

Trip limits were first proposed in conjunction with a proposed decrease in total allowable catch (TAC) from 10.0 million lb (4,536 metric tons (mt)) to 7.3 million lb (3,311 mt) for the Atlantic group king mackerel for the 1995/96 fishing year (August 3, 1995, 60 FR 39698). The reduced TAC was approved by NMFS and implemented through a final rule (November 17, 1995, 60 FR 57686). Further decreases were expected for the 1996/97 fishing year . The 7.3–million lb TAC decreased the commercial allocation for the 1995–96 fishing year from the previous level of 3.71 million lb (1,683 mt) to 2.70 million lb (1,225 mt). The Council reduced TAC to the lower range of the acceptable biological catch (ABC) in anticipation of a lower ABC for the 1996/97 fishing year, and expressed concerns about the status of both the Atlantic and Gulf groups of king mackerel and recent low catches.

As the Council expected and the 1995 Mackerel Stock Assessment Panel Report projected, the 1996 Report of the Mackerel Stock Assessment Panel presented lower estimates of the spawning potential ratio (SPR) and the ABC for Atlantic group king mackerel. Although some of the decreases in these parameters may be attributed to new analytical methods, most are attributable to the inclusion of more accurate estimates for the mortality of juvenile and subadult mackerels taken as incidental bycatch in the Atlantic shrimp trawl fishery off southeastern states. The 1996 modal SPR estimate of 32 percent is down by about 36 percent from the approximate 50 percent level estimated for previous years, and the 1996 ABC is about half of 1995 estimates. The 1996 ABC range estimate is 4.1 - 6.8 million lb (mode: 5.5 million lb) (1,860 - 3,084 mt, mode: 2,495 mt) compared to the 1995 estimate of 7.3 - 15.5 million lb (mode: 10.9 million lb) (3,311 - 7,031 mt, mode: 4,944 mt). The Council sets TAC within the ABC range usually at or below the modal value suggesting that the 1996/97 TAC will be even lower than last year's 7.3 million lb (3,311 mt) that yielded commercial and recreational allocations of 2.70 (1.225 mt) and 4.60 M (2.087 mt), respectively.

Although the 1996 estimate of SPR indicates that the Atlantic group king mackerel is not overfished, the lower SPR value suggests, as the Council previously suspected, that stock size may not be as large as previous estimates indicated. The modal 1996 SPR estimate is reduced to 32 percent, well below the 1995 estimate of 55 percent and just above the 30 percent overfished level currently defined in the FMP. Even though the estimated 32 percent SPR level is well above the overfishing level of 20 percent SPR proposed in FMP Amendment 8, it is below the Council's proposed target SPR of 40 percent for achieving maximum sustainable yield or long-term optimum yield (OY). Moreover, the actual total catch (commercial and recreational combined) may have reached its lowest level (5.92 million lb; 2,685 mt) in 15 years during the 1994/95 season; preliminary estimates indicate that the 1995/96 catch will remain at this same low level. In the past nine years, total catch has exceeded 7.30 million lb (3,311 mt) four times.

The Council also proposed the trip limits, in anticipation of increased effort in the fishery, to prevent excessive harvest of pre-spawning and spawning fish and recruitment overfishing. The Council is concerned that a number of new entrants may join the fishery as a result of the recent prohibition on gillnet use in Florida waters (July 1, 1995) and New England fishery closures.

The Council recommended the trip limits not only to provide increased protection for Atlantic group king mackerel but also for the Gulf group. The trip limits would prevent the detrimental effects of excessive catches of the Atlantic group throughout the spring/summer spawning season and of the Gulf group during April. King mackerel harvest in April, unrestricted by daily vessel trip limits, could result in the unintentional taking of large quantities of Gulf group king mackerel when such fish are still located within the boundaries of the Atlantic group. Tag and recapture information indicate that king mackerel off south Florida from late fall through early spring, particularly off the Florida Keys, mostly belong to the Gulf migratory group.

The fishing season for Atlantic group king mackerel fishery opens annually on April 1, and vessels targeting fish with hook-and-line, run-around gillnet, and purse seine gear are not restricted by trip limits. Consequently, excessive capture of Gulf group king mackerel could occur off south Florida in April if conditions delay emigration to spring/summer spawning grounds.

The Council considers such catches ''double-dipping'' (i.e., overrunning of quotas that have already been harvested). In the past two years, hook-and-line and run-around gillnet quotas for Gulf group king mackerel were reached or exceeded, and respective fisheries were closed, after large February catches off the Florida Keys. The Gulf group king mackerel stock is still considered overfished; preliminary calculations for the 1996/97 fishing year suggest that this group would remain in the overfished status even under the less restrictive overfished/overfishing definitions proposed in Amendment 8.

Excessive capture of king mackerel, unrestrained by trip limits and under a reduced commercial allocation, could result in a disproportionately large harvest off south Florida and an early closure of the commercial fishery for the Atlantic group. Fishery participants in the northern area might then lose the opportunity to harvest their traditional and equitable share of the allocation. Atlantic group king mackerel support an important fall fishery off North Carolina. An early fishery closure would adversely affect these traditional fisheries and could lead to severe socioeconomic impacts and subsequent requests for relief through emergency action.

To keep the recreational catch within the reduced allocation of 4.6 million lb (2,087 mt), the recreational bag limit for the EEZ from New York through Georgia was reduced on January 1, 1996, from

five to three fish per person. The Council determined that this reduction would be sufficient to maintain catch within the decreased allocation without changing the two-fish bag limit off Florida. Recreational catch estimates indicated that the bag limit reduction in the northern area (Georgia through New York) would provide about a 10 percent reduction in catch. In addition, 1995 catch estimates for the 1988/89 through 1990/91 fishing years, when the bag limit was three fish in the northern area and two fish off Florida, were below 4.6 million lb (2,087 mt).

Although a recreational bag limit reduction was approved to reduce catch in alignment with the decreased 1995/96 recreational allocation, NMFS deferred the decision to approve or disapprove the collateral commercial vessel trip limits until certain analytical and procedural deficiencies were corrected. The Council has addressed the deficiencies and revised and resubmitted the trip limit proposals. In conjunction with the public review of Amendment 8 to the FMP, additional public hearings were conducted to review the proposed trip limits. Thereafter, the Council revised its proposal to convert the units for the trip limits from numbers of fish to pounds of fish to reduce waste from the practice of high-grading and to allow vessels operating in the commercial fishery off Monroe County (Florida Keys) from April 1 though October 31 to possess or land up to 1250–lb (567–kg) per trip, thus reducing socioeconomic impacts on that sector. Preliminary review of the revised supporting documents indicates that the Council has addressed the deficiencies previously noted in the initial analyses. As discussed below, NMFS' preliminary review of the Council's re-submission did not reveal any inconsistencies with the national standards.

Consistency with the National Standards

In regard to the original trip limit proposals, as discussed in the preamble to the final rule implementing the approved measures of the Council's regulatory amendment (60 FR 57686; November 17, 1995), inaccuracies and inconsistencies in the analyses of impacts and inadequate opportunity for public comment prevented NMFS from determining if the proposals were consistent with the National Standards (N.S.). Some letters received during the comment period, which was announced in the proposed rule (60 FR 39698; August 3, 1995), contended that the trip limit proposals would preclude achievement of OY (N.S. 1), were not based on the best available information (N.S. 2), would be unfair and inequitable to fishery participants throughout the management area (N.S. 4), would unnecessarily promote harvest inefficiency (N.S. 5), and would constitute unjustifiable administrative costs and burdens (N.S. 7).

After reviewing the revised impact analyses, findings of the 1996 mackerel stock assessment concerning the status of the Atlantic group king mackerel, and results from additional public hearings, NMFS has made a preliminary determination that the proposed commercial vessel trip limits are consistent with the N.S. as discussed below. Previous problems related to the Council's analyses of the potential impacts of the 50–fish trip limit on the Florida Keys fishery and not providing sufficient notice to impacted fishermen appear to have been corrected. Impact analyses were revised and the Council held additional public hearings. In response to the comments received at those hearings, the Council increased the proposed trip limit for the Florida Keys area from 500 to 1250 pounds (initially proposed as 50 to 125 fish) per vessel per day.

National Standard 1

Newly available information contained in the 1996 Report of the Mackerel Stock Assessment Panel probably will compel the Council to recommend further reductions in TAC for Atlantic group king mackerel. The forthcoming TAC recommendation for the 1996/97 fishing year probably would reduce both commercial and recreational allocations to levels that have been harvested during the past two years. Consequently, NMFS expects that TAC will be taken and OY achieved for the 1996/97 fishing year even with the imposition of trip limits. To provide the socioeconomic benefits that the Council intends while preventing overfishing, the proposed trip limits appear necessary.

National Standard 2

Recent review of the proposed trip limits and supporting documents, increased effort and king mackerel landings off southwest Florida this April (1996), and findings of the 1996 stock assessment indicate that the proposed trip limits are based on the best available scientific information. In a recent review, NMFS Southeast Fisheries Science Center (Center) advised that the revised proposed trip limits appear to be based on the best available scientific information. Further, the Center advised that the proposals clearly are risk averse in that they would maintain stock levels that would not be at risk of recruitment overfishing.

Although the 1996 SPR estimate indicates that the Atlantic group king mackerel is not overfished, the lower estimated value suggests, as the Council previously suspected, that stock size may not be as large as previous estimates indicated. The 1996 SPR estimate is reduced to 32 percent, near the 30 percent SPR overfished level currently defined in the FMP and above the 20 percent level in proposed Amendment 8. Nevertheless, the current 32 percent SPR estimate is below the proposed SPR target of 40 percent for achieving maximum sustainable yield (MSY) or long-term OY. Therefore, the best available scientific information is not inconsistent with the Council's recommendations for more conservative management measures that reduce fishing mortality and, thus, prevent early closure and quota overruns, and decrease the risk of recruitment overfishing.

National Standard 4

NMFS believes the revised proposed trip limits have the potential to maintain traditional harvest and quota distribution among user groups. Initially, the proposed trip limit for the Florida Keys fishery was 50 fish throughout the Florida east and southwest coast areas. The 50–fish limit was requested and was strongly supported by many southeast Florida king mackerel fishermen.

In response to comments received at public hearings, the Council increased the proposed trip limit for the Florida Keys to 1250–lb (567–kg) to provide sufficient revenue to operate in the April fishery near the Dry Tortugas. This proposal is equivalent to the 125–fish trip limit for the Gulf group king mackerel hook-and-line fishery that begins in that area on November 1. Consequently, the proposed 1250–lb (567 kg) trip limit would appear to provide fair access while preventing excessive catches, early closures, and quota overruns, and thus satisfies the requirements of N.S. 4 regarding fairness and equity to all fishery participants throughout the management area.

For the fishery from northeast Florida through New York, the Council proposed the 3500–lb (1588–kg) trip limit. Available landings information reviewed by the Council indicates that proposal would have essentially no effect on harvest. Moreover, the Council does not expect the proposed increased trip limit for this area to alter the status quo or provide increased harvesting advantage. If inordinate large northern

landings do occur in the future, the Council will reconsider and revise the 3500–lb (1588–kg) trip limit to prevent inequitable quota distribution and recruitment overfishing.

National Standard 5

The Council's impact analyses indicate that the proposed trip limits would have restricted less than 6 percent of the trips in any given area. However, the 500–lb (227–kg) and 1250–lb (567–kg) trip limits proposed for south Florida would have substantially reduced some individual vessel landings and total catch for those areas for some years. Data examined by the Council indicated that the 3500–lb (1,588 kg) trip limit would have impacted no trips off Volusia County (Florida) and would have only minimally impacted trips between the Volusia/Flagler County (Florida) and New York/Connecticut boundaries. Such impacted trips landed at North Carolina ports would have exceeded that state's landing limit (i.e., 3500 lb). The Council's analyses were based on landings estimates for Florida (1991/92 through 1994/95 seasons) and North Carolina.

National Standard 7

The revised proposed trip limits appear consistent with a management strategy to balance costs and benefits; the Council's impact analyses indicate that the trip limits will not inordinately affect costs or place an undue economic and regulatory burden on fishermen or fisheries.

The Regional Director initially concurs that the Council's recommendations are necessary to protect king mackerel stocks and prevent overfishing and that they are consistent with the objectives of the FMP, the N.S., and other applicable law. Accordingly, the Council's proposed revised trip limits are published for comment.

Classification

This proposed rule 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 Chief Counsel of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Historical landings data for the last four fishing seasons indicate that the percentage of fishing trips that would have been affected by the proposed trip limits ranged from 0 to 5.4 percent. Although it is not possible to directly translate number of fishing trips into number of fishing firms impacted, it appears that less than 20 percent of the small business entities involved in harvest of Atlantic king mackerel would be affected. The proposed trip limits are estimated to reduce the harvest of Atlantic king mackerel and the associated net revenue by about five percent. Compliance costs will not be affected by this action. There are no differential small and large business impacts because all affected entities are small entities. No capital costs of compliance are expected, and there is no information indicating that two or more percent of the existing harvesting firms will cease business operations as a result of this rule. The proposed trip limits are designed, in part, to moderate the rate of harvest, thereby minimizing the probability of early closures and the associated adverse socioeconomic impacts. Therefore, the trip limits are expected to provide small increases in long-term benefits to the industry. For these reasons, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 27, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 642 is proposed to be amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 642 continues to read as follows:

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

2. In § 642.7, paragraphs (q) and (r) are revised to read as follows:

§ 642.7 Prohibitions.

* * * * *

(q) Exceed a commercial trip limit for Atlantic group king or Spanish mackerel, as specified in § 642.27(a) or (b).

(r) Transfer at sea from one vessel to another an Atlantic group king or Spanish mackerel subject to a commercial trip limit, as specified in § 642.27(f).

* * * * *

3. In § 642.27, paragraphs (a) through (e) are redesignated as paragraphs (b) through (f), respectively; in newly redesignated paragraph (b), the introductory text is removed; in newly redesignated paragraphs (c) and (d), the references to ''paragraph (a)(2) of this section'' are removed and ''paragraph (b)(2) of this section'' is added in their places; in newly redesignated paragraph (f) introductory text and in newly redesignated paragraph (f)(2) the term ''Spanish mackerel'' is removed and ''king or Spanish mackerel'' is added in its place; the section heading is revised; and paragraph (a) and newly redesignated paragraph (b) heading are added to read as follows:

§ 642.27 Commercial trip limits for Atlantic group king and Spanish mackerel.

(a) *Atlantic group king mackerel.* (1) North of a line extending directly east from the Volusia/Flagler County, Florida boundary (29°25' N. lat.) to the outer limit of the EEZ, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 3,500 lb (1,588 kg).

(2) In the area between lines extending directly east from the northern and southern boundaries of Volusia County, Florida (29°25' N. lat. and 28°47.8' N. lat., respectively) to the outer limit of the EEZ, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 3,500 lb (1,588 kg) from April 1 through October 31.

(3) In the area between lines extending directly east from the Volusia/Brevard County, Florida boundary (28°47.8' N. lat.) to the outer limit of the EEZ and directly east from the Dade/Monroe County, Florida boundary (25°20.4' N. lat.) to the outer boundary of the EEZ, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 500 lb (227 kg) from April 1 through October 31.

(4) In the area between lines extending directly east from the Dade/Monroe County, Florida boundary (25°20.4' N. lat.) to the outer boundary of the EEZ and directly west from the Monroe/Collier County, Florida boundary (28°48' N. lat.) to the outer boundary of the EEZ, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 1250 lb (567 kg) from April 1 through October 31.

(b) *Atlantic group Spanish mackerel.*

* * * * *

[FR Doc. 96–16880 Filed 6–28–96; 9:44 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 129
Wednesday, July 3, 1996

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

Forest Service

Huckleberry Land Exchange With Weyerhaeuser Company, Mt. Baker-Snoqualmie National Forest, Skagit, Snohomish, King, Pierce, Lewis, Kittitas and Cowlitz Counties, WA

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: This is a revision to the notice which appeared in the Federal Register on July 14, 1995 (60 FR 36257), for the Huckleberry Land Exchange with Weyerhaeuser Company. The revision is needed to identify a change to the proposed action and responsible official. The proposed action has been modified to include exchange of about 6,770 acres of Federally owned subsurface mineral estate to Weyerhaeuser Company. Weyerhaeuser Company or another private entity currently owns the surface lands. Approximately 5,210 acres of the severed minerals are administered by the Bureau of Land Management (BLM) in King and Cowlitz Counties, Washington. About 1,560 acres are administered by the Gifford Pinchot and the Mt. Baker-Snoqualmie National Forests in Lewis County, Washington.

This revised notice serves BLM requirements for land exchanges under Title 43 Code of Federal Regulations (CFR) Part 2200 that lands or interest in lands are being considered for exchange. This notice and the environmental analysis for this exchange will constitute a planning analysis for BLM lands under 43 CFR 1610.8(b)(2).

The lead agency is the Forest Service. Wendy M. Herrett, Director of Recreation, Lands, and Mineral Resources, Pacific Northwest Region, is the responsible official for the Forest Service. Elaine Zielinski, State Director Oregon and Washington BLM, is the responsible official for the BLM. The Forest Service will prepare a Record of Decision for lands under its jurisdiction and the BLM will prepare a Record of Decision for lands or interest in lands under its jurisdiction upon completion of the final environmental impact statement (EIS) and selection of the preferred alternative by the responsible official.

The draft EIS is expected to be filed in July 1996. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the Federal Register. The final EIS is scheduled to be completed in September 1996.

FOR FURTHER INFORMATION CONTACT: Doug Schrenk, NEPA Coordiantor, North Bend Ranger District, 42404 S.E. North Bend Way, North Bend, Washington 98045, telephone (206) 888–1421.

Dated: June 25, 1996.

Wendy M. Herrett,

Director, Recreation, Lands, and Mineral Resources.

[FR Doc. 96–16944 Filed 7–2–96; 8:45 am]

BILLING CODE 3410–11–M

Oregon Coast Provincial Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Oregon Coast Provincial Advisory Committee (PAC) will meet on July 19, 1996, in Tillamook, Oregon, at the Shilo Inn (Wilson River Room), 2515 Main Street. The meeting will begin at 9 a.m. and continue until 3:30 p.m. Agenda items to be covered include: (1) Updates on current events, (2) northern Coast Range Area Adaptive Management Area activities, (3) overview of recreation in the Coast Range Province, (4) recreation user initiatives and stewardship/co-management, (5) recreation user fees, and (6) open public forums. All Oregon Coast Provincial Advisory Committee meetings are open to the public. Two ''open forums'' are scheduled; one at 10:30 a.m. and another near the conclusion of the meeting. Interested citizens are encouraged to attend. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Rick Alexander, Public Affairs Officer, at (541) 750–7075, or write to Forest Supervisor, Siuslaw National Forest, P.O. Box 1148, Corvallis, Oregon 97339.

Dated: June 26, 1996.

James R. Furnish,

Forest Supervisor.

[FR Doc. 96–16980 Filed 7–2–96; 8:45 am]

BILLING CODE 3410–11–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement for the Continuation of a Project Titled: ''Your Town: Designing its Future''

AGENCY: National Endowment for the Arts.

ACTION: Notificaton of availability.

SUMMARY: The National Endowment for the Arts requests proposals leading to the award of a Cooperative Agreement for the continuation of the workshops successfully carried out from 1991 to 1995 by the National Trust for Historic Preservation under the project ''Your Town: Designing its Future.'' The purpose of ''Your Town'' is to address the needs of rural communities, and to help rural Americans to learn how to identify, protect, and enhance their towns and landscapes by promoting the benefits of good design, encouraging the sharing of successful techniques, and providing a support system for those who are working on community design problems. Responsibilities under the Cooperative Agreement will include operating a national center to coordinate the ''Your Town'' activities, including three workshops, publishing a biannual newsletter, and producing a publication focusing on three or four case study communities. Those interested in receiving the Solicitation should reference Program Solicitation PS 96–04 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 96–04 is scheduled for release approximately July 19, 1996 with proposals due on August 19, 1996.

ADDRESS: Requests for the Solicitation should be addressed to National Endowment for the Arts, Grants & Contracts Office, Room 618, 1100 Pennsylvania Ave., NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William I. Hummel, Grants and Contracts Office, National Endowment for the Arts, 1100 Pennsylvania Ave., NW., Washington, DC 20506 (202/682–5482).

William I. Hummel,

Coordinator, Cooperative Agreements and Contracts.

[FR Doc. 96–16902 Filed 7–2–96; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Sharon I. Block, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meeting is for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that this meeting will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. DATE: July 12, 1996.
TIME: 8:30 a.m. to 6:00 p.m.
ROOM: 415.
PROGRAM: This meeting will review applications for Challenge Grants submitted to the Division of Challenge Grants for projects at the May 1, 1996 deadline.
2. DATE: July 22, 1996.
TIME: 8:30 a.m. to 6:00 p.m.
ROOM: 415.
PROGRAM: This meeting will review applications for Challenge Grants submitted to the Division of Challenge Grants for projects at the May 1, 1996 deadline.
3. DATE: July 23, 1996.
TIME: 8:30 a.m. to 5:30 p.m.
ROOM: 415.
PROGRAM: This meeting will review applications for Fellowships for University Teachers in American History and Studies, submitted to the Division of Research and Education Programs, for projects at the May 1, 1996 deadline.
4. DATE: July 23, 1996.
TIME: 8:30 a.m. to 5:30 p.m.
ROOM: 317.
PROGRAM: This meeting will review applications for Fellowships for University Teachers and Fellowships for College Teachers and Independent Scholars in European History, submitted to the Division of Research and Education Programs, for projects at the May 1, 1996 deadline.
5. DATE: July 24, 1996.
TIME: 8:30 a.m. to 5:30 p.m.
ROOM: 415.
PROGRAM: This meeting will review applications for Fellowships for University Teachers and Fellowships for College Teachers and Independent Scholars in Art History I, submitted to the Division of Research and Education Programs, for projects at the May 1, 1996 deadline.
6. DATE: July 24, 1996.
TIME: 8:30 a.m. to 5:30 p.m.
ROOM: 317.
PROGRAM: This meeting will review applications for Fellowships for University Teachers and Fellowships for College Teachers and Independent Scholars in Art History II, submitted to the Division of Research and Education Programs, for projects at the May 1, 1996 deadline.
7. DATE: July 28, 1996.
TIME: 8:30 a.m. to 6:00 p.m.
ROOM: 415.
PROGRAM: This meeting will review applications for Challenge Grants submitted to the Division of Challenge Grants for projects at the May 1, 1996 deadline.
8. DATE: July 29, 1996.
TIME: 8:30 a.m. to 5:30 p.m.
ROOM: 317.
PROGRAM: This meeting will review applications for Fellowships for College Teachers and Independent Scholars in British Literature, submitted to the Division of Research and Education Programs, for projects at the May 1, 1996 deadline.
9. DATE: July 29, 1996.
TIME: 8:30 a.m. to 6:00 p.m.
ROOM: 415.
PROGRAM: This meeting will review applications for Challenge Grants submitted to the Division of Challenge Grants for projects at the May 1, 1996 deadline.
10. DATE: July 30, 1996.
TIME: 8:30 a.m. to 5:30 p.m.
ROOM: 317.
PROGRAM: This meeting will review applications for Fellowships for University Teachers and Fellowships for College Teachers and Independent Scholars in Anthropology, submitted to the Division of Research and Education Programs, for projects at the May 1, 1996 deadline.
11. DATE: July 31, 1996.
TIME: 8:30 a.m. to 5:30 p.m.
ROOM: 415.
PROGRAM: This meeting will review applications for Fellowships for University Teachers and Fellowships for College Teachers and Independent Scholars in Religious Studies, submitted to the Division of Research and Education Programs, for projects at the May 1, 1996 deadline.

Michael S. Shapiro,

Acting Advisory Committee Management Officer.

[FR Doc. 96–16985 Filed 7–2–96; 8:45 am]

BILLING CODE 7536–01–M

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1996 Community Census – Special Place Facility Questionnaire.

Form Number(s): DT–351.

Agency Approval Number: 0607–0786.

Type of Request: Reinstatement, with change, of a previously approved

collection for which approval has expired.

Burden: 10 hours.

Number of Respondents: 40.

Avg Hours Per Response: 15 minutes.

Needs and Uses: Planning is currently underway for the 1996 Community Census, which is an integral part of the overall planning process for the 2000 decennial census. The Census Bureau must provide everyone in our test sites the opportunity to be counted, including individuals living in group quarters (GQs) (student dorms, shelters, group homes, etc.) and in housing units (HUs) that are part of/or associated with special places (SPs). We are conducting this operation by phoning each SP and conducting interviews to identify and collect updated information about the GQs and HUs at each SP. This operation replaces the Special Place Prelist field operation conducted in previous censuses. The goal of this operation is to make improvements over the 1990 Special Place Prelist operation. We expect to improve the quality/accuracy of assigning the correct GQ type code and the associated geographic coding compared to the 1990 census Special Place Prelist operation. We also expect to apply some new/improved GQ type codes. We plan to make additional modifications to our questionnaire, instructions, and letters based on results of using these forms in the 1996 Community Census.

Affected Public: Businesses or other for profit, Individuals or households, Not–for–profit institutions.

Frequency: One time.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: June 27, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–16941 Filed 7–2–96; 8:45 am]

BILLING CODE 3510–07–F

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA).

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE

[For period 5/21/96–06/19/96]

Firm name	Address	Date petition accepted	Product
Brahmin Leather Works, Inc	77 Alden Road, Fairhaven, MA 02719	06/18/96	Leather Handbags, belts and accessories.
Foundation Steel & Wire Mf., Inc	3050 West 26th St., Houston, TX 77008.	06/10/96	Wire mesh for concrete.
Health-Pak, Inc	2005 Beechgrove Place, Utica, NY 13501.	06/10/96	Lab coats and jackets; nonwoven disposable apparel for use in hospitals, clinics and labs.
Hoy Shoe Co	4970 Kemper Ave., St. Louis, MO 63139.	5/29/96	Sandals for girls.
Mainelli Tool & Die, Inc	30 Houghton St., Providence, RI 02904	06/18/96	Jewelry findings.
Maynard Steel Casting Co	2856 South 27th Street, Milwaukee, WI 53215.	06/18/96	Cast steel mining equipment components, construction equipment components and railroad components.
Mid-States Uniform & Lettering, Inc	715 South Minnesota Ave., P.O. Box 519, SD 57101.	06/18/96	T-shirts.
Raintree Buckles & Jewelry, Inc	7115 Laurel Canyon Blvd., North Hollywood, CA 91605.	05/29/96	Belt buckles and insignia.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, Room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: June 21, 1996.

Lewis R. Podolske,

Director, Trade Adjustment Assistance Division.

[FR Doc. 96–17054 Filed 7–2–96; 8:45 am]

BILLING CODE 3510–24–M

International Trade Administration

[A–428–810]

High-Tenacity Rayon Filament Yarn From Germany; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review

SUMMARY: In response to a request from the North American Rayon Corporation (petitioner), and from Akzo Nobel Faser A.G., Akzo Nobel Industrial Fibers Inc., and Akzo Nobel Fibers Inc. (collectively, Akzo; respondent), the Department of Commerce (the Department) is conducting an administrative review of the antidumping order on high-tenacity rayon filament yarn from Germany. This review covers one manufacturer of the subject merchandise to the United States during the June 1, 1994 through May 31, 1995 period of review (POR).

We have preliminarily determined that U.S. sales have been made below normal value (NV) during the POR. If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service (Customs) to assess antidumping duties equal to the difference between the United States price (USP) and the NV. In accordance with section 353.25(a)(2)(i) of the Department's regulations, we do not intend to revoke the antidumping duty order with respect to Akzo, as requested, because even if we find a *de minimis* margin in the final results of this review, it would mark only the second consecutive year in which Akzo sold the subject merchandise at not less than NV, and therefore, the conditions for revocation have not been satisfied. Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) A statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: July 3, 1996.

FOR FURTHER INFORMATION CONTACT: Matthew Blaskovich or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–5253.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 225130).

Background

The Department published an antidumping duty order on high-tenacity rayon filament yarn from Germany on June 30, 1992 (57 FR 29062). The Department published a notice of ''Opportunity to Request an Administrative Review'' of the antidumping order for the 1994–95 review period on June 6, 1995 (60 FR 29821). On June 30, 1995, both petitioner and respondent requested that the Department conduct an administrative review of the antidumping duty order on high-tenacity rayon filament yarn from Germany. In its June 30, 1995 letter, Akzo requested revocation of the order pursuant to section 353.25(b) of the Department's regulations. We initiated the review on July 14, 1995 (60 FR 36260).

The Department fully extended the time limits for the deadlines for the preliminary and final results of review, because of the scheduling difficulties in arranging the mandatory verification for this review. See Antidumping Duty Administrative Reviews; Time Limits, 60 FR 11613 (March 21, 1996). See also, Memorandum from Joseph A. Spetrini to Susan G. Esserman (March 14, 1996). The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

The product covered by this administrative review is high-tenacity rayon filament yarn from Germany. During the review period, such merchandise was classifiable under Harmonized Tariff Schedule (HTS) item number 5403.10.30.40. High-tenacity rayon filament yarn is a multifilament single yarn of viscose rayon with a twist of five turns or more per meter, having a denier of 1100 or greater, and a tenacity greater than 35 centinewtons per tex. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage. This review covers Akzo and the period June 1, 1994, through May 31, 1995.

Verification

In accordance with section 353.25(c)(2)(ii) of the Department's regulations, we verified information provided by Akzo using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification reports.

United States Price

We based our margin calculations on export price (EP), as defined in section 772(a) of the Act, because the merchandise was sold to unaffiliated U.S. purchasers prior to the date of importation. EP sales were based on packed, f.o.b. prices to unaffiliated purchasers in the United States. We made adjustments, where applicable, for U.S. and foreign inland freight, brokerage and handling, U.S. duty, foreign insurance, and international freight, in accordance with section 772(c) of the Act, because these expenses were incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States. We made an additional adjustment to certain EP sales to account for post-sale price adjustments reported on a transaction-specific basis and granted by Akzo in connection with having obtained the services of a new U.S. sales agent. No other adjustments to EP were claimed or allowed.

Normal Value

A. Viability

In order to determine whether there was sufficient volume of sales in the home market (HM) to serve as a viable basis for calculating NV, we compared Akzo's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because Akzo's aggregate volume of HM sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the HM provides a viable basis for calculating NV for Akzo, pursuant to section 773(a)(1)(C) of the Act.

B. Cost of Production Analysis

In the last review, we disregarded Akzo's sales found to be below the cost of production (COP). Therefore, in accordance with section 773(b)(2)(A)(ii) of the Act, the Department has reasonable grounds to believe or suspect that sales below the COP may have occurred during this review period. Thus, pursuant to section 773(b) of the Act, we initiated a COP investigation of Akzo in this review. Before making any fair value comparisons, we conducted the COP analysis described below.

1. Calculation of COP

We calculated the COP based on the sum of Akzo's cost of materials and fabrication employed in producing the foreign like product, plus amounts for home market selling, general, and administrative expenses (SG&A) and packing costs in accordance with section 773(b)(3) of the Act. We relied on the home market sales and COP information provided by Akzo in its original and supplemental questionnaire responses.

2. Test of Home Market Prices

After calculating COP, we tested whether within an extended period of time home market sales of high-tenacity rayon filament yarn were made at prices below COP in substantial quantities, and whether such prices permit recovery of all costs within a reasonable period of time. We compared model-specific COP to the reported home market prices less any applicable movement charges, discounts, rebates, and direct and indirect selling expenses.

3. Results of COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of Akzo's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. We found that, for certain models of high-tenacity rayon filament yarn, 20 percent or more of the home market sales were sold at below-cost prices. Where 20 percent or more of home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because such sales were found to be made in substantial quantities during the POR (*i.e.*, within an extended period of time) at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act (*i.e.*, the sales were made at prices below the weighted average per unit COP for the POR). We used the remaining above-cost sales as the basis of determining NV if such sales existed, in accordance with section 773(b)(1). For those models of the subject merchandise for which there were no above-cost sales available for matching purposes, we compared EP to constructed value (CV).

C. Price-to-Price Comparisons

Pursuant to section 777(A)(d)(2), we compared the EP of individual transactions to the monthly weighted-average price of sales of the foreign like product where there were sales at prices above COP, as discussed above. We based NV on the f.o.b. price to unaffiliated purchasers in the HM. We made adjustments, where applicable, in accordance with section 773(a)(6) of the Act. Where applicable, we made adjustments to HM price for early payment discounts, other discounts, handling charges, rebates, inland freight (post-sale), inland insurance, interest revenue, and third party payments. To adjust for differences in circumstances of sale between the HM and the U.S., we deducted HM credit expenses from HM price, and increased HM price by an amount for technical services and credit expenses incurred in the U.S. In order to adjust for differences in packing between the two markets, we increased HM price by U.S. packing cost and reduced it by HM packing costs. Prices were reported net of value added taxes (VAT) and, therefore, no deduction for VAT was necessary.

Akzo reported that its sales in the home and U.S. markets were made at the same level of trade and channel of distribution (direct to end users/converters). Therefore, Akzo did not request a level of trade adjustment. Our analysis and verification of Akzo's response confirmed that the selling functions performed for EP sales are not sufficiently different than for home market sales to consider EP sales and home market sales to be at different level of trade. Therefore, in accordance with section 773(a)(7)(A) of the Act, we did not make a level of trade adjustment to NV for these preliminary results.

D. Constructed Value

In accordance with section 773(e) of the Act, we calculated CV based on the sum of Akzo's cost of materials and fabrication employed in producing the subject merchandise, SG&A and profit incurred and realized in connection with production and sale of the foreign like product, and U.S. packing costs. In accordance with section 773(e)(2)(A), we based SG&A and profit on the amounts incurred and realized by Akzo in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. We used the costs of materials, fabrication, and G&A as reported in the CV portion of Akzo's questionnaire response. We used the U.S. packing costs as reported in the U.S. sales portion of Akzo's response. We based selling expenses and profit on the information reported in the home market sales portion of Akzo's responses. See Certain Pasta from Italy; Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 61 FR 1344, 1349 (January 19, 1996). For selling expenses, we used the average of above-cost per-unit home market selling expenses weighted by the total quantity sold. For actual profit, we first calculated the difference between the home market sales value and home market COP for all above-cost home market sales, and divided the sum of these differences by the total HM COP for these sales. We then multiplied this percentage by the COP for each U.S. model to derive an actual profit.

We adjusted CV for technical services, credit expenses, and packing as reported in the U.S. sales portion of Akzo's original and supplemental questionnaire responses.

Preliminary Results

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists:

Manufacturer/exporter	Margin (percent)
Akzo Nobel Faser A.G., Akzo Nobel Industrial Fibers, Inc., Akzo Nobel Fibers, Inc. (Akzo)	0.54

Parties to this proceeding may request disclosure within five days of publication of this notice and any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. The Department will publish a notice of the final results of the administrative review, which will include the results of its analysis of issues raised in any such written comments or at the hearing, within 90

days from the issuance of these preliminary results.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Individual differences between USP and NV may vary from the percentage stated above. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties.

Furthermore, the following deposit requirements will be effective upon completion of the final results of these administrative reviews for all shipments of high-tenacity rayon filament yarn from Germany entered, or withdrawn from warehouse, for consumption on or after publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for Akzo will be that established in the final results of this review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original LTFV investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be the ''all others rate'' of 24.58 percent established in 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 Act.

Dated: June 24, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–17014 Filed 7–2–96; 8:45 am]

BILLING CODE 3510–DS–P

[C–549–802]

Ball Bearings and Parts Thereof From Thailand; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The countervailing duty order on Ball Bearings and Parts Thereof from Thailand was revoked effective January 1, 1995, as a result of a changed circumstances review and pursuant to section 782(h)(2) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (60 FR 40568). The Department is conducting an administrative review of this order to determine the appropriate assessment rate for entries made during the last review period prior to the revocation of the order (January 1, 1994, through December 31, 1994). For information on the net subsidy for reviewed companies and non-reviewed companies, please see the *Preliminary Results of Review* section of this notice. If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Preliminary Results of Review* section of this notice. Interested parties are invited to comment on these preliminary results. Because this order has been revoked, the Department will not issue further instructions with respect to cash deposits of estimated countervailing duties.

EFFECTIVE DATE: July 3, 1996.

FOR FURTHER INFORMATION CONTACT: Robert Copyak or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2209 and (202) 482–4126, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 1989, the Department published in the Federal Register (54 FR 19130) the countervailing duty order on Ball Bearings and Parts Thereof from Thailand. On May 10, 1995, the Department published a notice of ''Opportunity to Request an Administrative Review'' (60 FR 24831) of this countervailing duty order. We received a timely request for review, and we initiated the review, covering the period January 1 through December 31, 1994, on June 15, 1995 (60 FR 31447).

In accordance with section 355.22(a) of the Department's *Interim Regulations,* this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested (*see Antidumping and Countervailing Duties: Interim Regulations; Request for Comments,* 60 FR 25130 (May 11, 1995)) (*Interim Regulations*). This review was requested for the Minebea Group of Companies in Thailand, NMB Thai, Pelmec, and NMB Hi-Tech, which manufacture and export the subject merchandise. During this review, the Department learned of another Minebea company, NMB Precision Ball, Ltd., which manufactures balls. The company does not export to the United States but it does sell balls to the other three companies which in turn export finished ball bearings to the United States and elsewhere. This company, like the other three Minebea producers in Thailand, is a wholly-owned subsidiary of Minebea Japan, and because NMB Precision Ball, Ltd. received export subsidies during the period of review (see, ''Programs Conferring Subsidies'' section below) for its sales of balls to the related Thai ball bearing producers, we preliminarily determine that it is appropriate to include the subsidies to NMB Precision Ball, Ltd. in our calculations of the net subsidy.

On November 2, 1995, we extended the period for completion of the preliminary and final results pursuant to section 751(a)(3) of the Act (*see Extension of the Time Limit for Certain Countervailing Duty Administrative Reviews,* 60 FR 55699). As explained in the memoranda from the Assistant Secretary for Import Administration dated November 22, 1995, and January 11, 1996 (on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce), all deadlines were further extended to take into account the partial shutdowns of the Federal Government from November 15 through November 21, 1995, and December 15, 1995, through January 6, 1996. As a result of these extensions, the deadline for these preliminary results is no later than June 27, 1996, and the deadline for the final results of this

review is no later than 180 days from the date on which these preliminary results are published in the Federal Register.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department is conducting this administrative review in accordance with section 751(a) of the Act.

Calculation Methodology

In the first administrative review, respondents claimed that the F.O.B. value of the subject merchandise entering the United States is greater than the F.O.B. price charged by the companies in Thailand (57 FR 26646 (June 15, 1992)). They explained that this discrepancy is due to a mark-up charged by the parent company, located in a third country, through which the merchandise is invoiced. However, the subject merchandise is shipped directly from Thailand to the United States and is not transshipped, combined with other merchandise, or repackaged with other merchandise. In other words, for each shipment of subject merchandise, there are two invoices and two corresponding F.O.B. export prices: (1) The F.O.B. export price at which the subject merchandise leaves Thailand, and on which subsidies from the Royal Thai Government (RTG) are earned by the companies, and upon which the subsidy rate is calculated; and (2) the F.O.B. export price which includes the parent company mark-up, and which is listed on the invoice accompanying the subject merchandise as it enters the United States, and upon which the cash deposits are collected and the countervailing duty is assessed. In prior reviews, we verified on a transaction-specific basis the direct correlation between the invoice which reflects the F.O.B. price on which the subsidies are earned and the invoice which reflects the marked-up price that accompanies each shipment as it enters the United States.

Respondents argued that the calculated *ad valorem* rate should be adjusted by the ratio of the export value from Thailand to the export value charged by the parent company to the U.S. customer so that the amount of countervailing duties collected would reflect the amount of subsidies bestowed. The Department agreed and made this adjustment in prior administrative reviews (57 FR 26646, (June 15, 1992); and 58 FR 36392 (July 7, 1993)). Since the mark-up is not part of the export value upon which the respondents earn subsidies, the Department has followed the methodology adopted in prior administrative reviews, and calculated the *ad valorem* rate as a percentage of the original export value from Thailand and then multiplied this rate by the adjustment ratio—the original export value from Thailand divided by the marked-up value of the goods entering the United States.

NMB Thai, Pelmec, NMB Hi-Tech, and NMB Precision Ball, Ltd. are wholly-owned by one parent company, and are therefore affiliated companies within the meaning of section 771(33) of the Act. See Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') from Italy, 60 FR 30288, 30290 (June 14, 1996). Furthermore, all four sister companies produce the subject merchandise. As a result, these four companies warrant treatment as a single company with a combined rate. This is consistent with our approach in the investigation and all prior reviews of this order. See Ball Bearings and Parts Thereof from Thailand; Preliminary Results of Countervailing Duty Administrative Review, 60 FR 22563 (May 8, 1995); see also Ball Bearings and Parts Thereof from Thailand; Preliminary Results of Countervailing Duty Administrative Review, 60 FR 42532 (August 16, 1995). To avoid double counting, the sales value was adjusted to account for intercompany sales of subject merchandise. We calculated the countervailing duty rate by first totaling the benefits received by the four companies for each program used. Dividing these sums by the total Thai export value for the four companies, we calculated the unadjusted subsidy rate for each program used. As described above, we adjusted these rates by multiplying them by the ratio of the original export price from Thailand to the marked-up price of the goods entering the United States. Finally, we summed the adjusted subsidy rate for each program, to arrive at the total countervailing duty rate.

Scope of the Review

Imports covered by this review are ball bearings and parts thereof. Such merchandise is described in detail in the Appendix to this notice. The Harmonized Tariff Schedule (HTS) item numbers listed in the Appendix are provided for convenience and Customs purposes. The written description remains dispositive.

Verification

As provided in section 782(i) of the Act, we verified information submitted by the Royal Thai Government and the Minebea Group of companies. We followed standard verification procedures, including meeting with government and company officials and examination of relevant accounting and financial records and other original source documents. Our verification results are outlined in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Analysis of Programs

I. Program Conferring Subsidies

Investment Promotion Act of 1977—Sections 28, 31, 36(1), and 36(4)

The Investment Promotion Act of 1977 (IPA) is administered by the Board of Investment (BOI) and is designed to provide incentives to invest in Thailand. In order to receive IPA benefits, each company must apply to the BOI for a Certificate of Promotion (license), which specifies goods to be produced, production and export requirements, and benefits approved. These licenses are granted at the discretion of the BOI and are periodically amended or reissued to change benefits or requirements. Each IPA benefit for which a company is eligible must be specifically stated in the license.

We have previously determined that the BOI licenses of Pelmec, NMB Thai, and NMB Hi-Tech constitute export subsidies (58 FR 36392, July 7, 1993 and 60 FR 52374, October 6, 1995). No new information or evidence of changed circumstances has been provided to warrant reconsideration of this finding. NMB Precision Ball, Ltd. held one license during the period of review, and this license was tied to export performance and is, therefore, countervailable like the others.

In past reviews, the Minebea Group received benefits under sections 28, 31, and 36(1) of the IPA. In this review, they received benefits under these sections, as well as under section 36(4).

Section 28: Prior to the review period, IPA Section 28 allowed companies to import machinery free of import duties, the business tax and the local tax. However, effective January 1, 1992, the RTG eliminated both the business and the local tax and instituted a value added tax (VAT) system.

According to Section 21(4) of the VAT Act, if Section 28 benefits were granted by BOI to a company before January 1,

1992, that company, when importing fixed assets under Section 28, would continue to be subject to the business tax provisions under Chapter IV, Title II, of the Revenue Code before being amended by the VAT Act. In accordance with Section 21(4), the company would be required to pay the business and local taxes only if its BOI license requirements were violated. Section 21(4) of the VAT Act applies to Pelmec, NMB Thai, NMB Hi-Tech, and NMB Precision Ball, Ltd. because all of their licenses were granted before January 1, 1992, and contain Section 28 benefits.

The respondents have argued that given the provisions of the VAT Act and, specifically Section 21(4), their exemption from the business and local taxes no longer constitutes a benefit to the companies because: (1) no other companies are required to pay the business and local taxes; and (2) under Section 21(4), payment of the business and local taxes serves only as a penalty for noncompliance with BOI license requirements. We verified that under the new VAT law, companies are no longer required to pay business and local taxes with the exception of the noncompliance penalty noted above. For these reasons, we preliminarily determine that the business and local tax exemptions under Section 28 no longer constitute a countervailable benefit for companies subject to Section 21(4) of the VAT Act.

However, under provisions of Section 21(4) of the VAT Act, companies that were granted Section 28 benefits under the IPA before January 1, 1992, are not required to pay VAT on imports of fixed assets. The respondents have argued that this exemption from VAT on imports of fixed assets did not constitute a benefit to the companies because all companies, promoted and non-promoted alike, are effectively exempted from VAT on their imports of fixed assets. According to the Section 82 of the VAT Act, the VAT liability is computed by subtracting the ''input tax'' (the VAT paid) from the ''output tax'' (the VAT collected). Consequently, companies that pay VAT on imports of fixed assets are effectively exempted from this VAT payment as they receive a credit for the VAT they paid on purchases of inputs, including imports of fixed assets, when their monthly VAT liability is computed. We examined this issue through questionnaires and at verification. We confirmed that under the VAT system, companies receive credit for the VAT paid on the purchases of inputs and, as a result, no VAT is effectively paid by companies on these purchases. Since VAT liability is computed on a monthly basis, any possible time-value-of-money benefit under Section 21(4) of the VAT Act in the review would be insignificant. On this basis, we preliminarily determine that the exemption of the VAT on imports of fixed assets under Section 21(4) of the VAT Act does not constitute a countervailable benefit to the companies specified in Section 21(4).

Since the business and local tax exemptions under Section 28 of the IPA and the VAT exemption under Section 21(4) of the VAT Act do not confer countervailable benefits to companies subject to Section 21(4) of the VAT Act, we preliminarily determine that only the exemptions of import duties on fixed assets under Section 28 of IPA continue to provide countervailable benefits to the respondent companies.

Section 31: IPA Section 31 allows companies an exemption from payment of corporate income tax on profits derived from promoted exports. The corporate income tax rate in Thailand is 30 percent. NMB Thai and NMB Hi-Tech claimed an income tax exemption under Section 31 on the income tax returns filed during the review period. The income tax exemption continues to provide countervailable benefits to the respondent companies.

Section 36(1): IPA Section 36(1) allows companies to import raw and ''essential'' materials free of import duties. As Pelmec, NMB Thai, NMB Hi-Tech and Precision Ball Ltd. have bonded warehouses for the purchase of raw materials, they have only claimed Section 36(1) duty exemptions on their imports of essential materials. Respondents' questionnaire response included a range of items that were categorized by the BOI as essential materials (*e.g.*, grinding wheels, blades, lubricating cleaning solutions, gloves, and packing materials) for which they received duty exemptions. Energy and fuel were not included as they are not eligible for section 36(1) duty exemption.

Prior to the Uruguay Round Agreement, only duty exemptions on inputs that were physically incorporated into the product being exported (e.g., raw material inputs and packing materials) were considered non-countervailable. Under the Agreement on Subsidies and Countervailing Measures (the Agreement), this has been broadened to include duty exemptions on products that are ''consumed in production.'' Respondents claim that the essential materials for which BOI grants duty exemptions meet the ''consumed in production'' standard, and, therefore, any duty exemptions on these materials should be found not countervailable. However, Annex II of the Agreement contains a footnote (fn 61) which defines inputs consumed in the production process as: ''[i]nputs consumed in the production process are inputs physically incorporated, energy, fuels and oils used in the production process and catalysts which are consumed in the course of their use to obtain the exported product.''

At verification, we requested respondents to break out the ''essential materials'' according to the definition in the Annex II footnote, and provide that break-out in a supplemental response. Their break-out continued to include a number of BOI essential materials that fall outside the definition in footnote 61. Respondents argue that the term ''consumed in production'' should include all items that are worn out during the production process and that physically touch the product (*e.g.*, grinding wheels, drill bits, lubricating cleaning solutions) as well as items such as packing materials. However, it is the Department's position that the definition in Annex II is clear, and therefore, the only duty exemptions that we find not countervailable are those on oils, lubricating cleaning solutions, packing materials, and materials which are physically incorporated into the exported product. The remaining duty exemptions, received by the respondent companies, continue to be countervailable. Because energy and fuels were not eligible for Section 36(1) duty exemptions, we have not addressed whether duty exemptions on those products would be countervailable under the URAA.

Section 36(4): While the Minebea Group had not, prior to the period of review, claimed any benefits under Section 36(4) of the IPA, its BOI licenses, discussed in greater detail above, always included eligibility to claim them. Thus, the general discussion of the IPA above applies to Section 36(4) as well. In this review period, NMB Hi-Tech claimed benefits under Section 36(4) of the IPA for the first time. Under Section 36(4) of the IPA, promoted persons can deduct from their assessable income for payment of income tax an amount equal to five percent of the increased income over the previous year, derived from the export of products produced by the promoted persons. This benefit is calculated across the first ten years of a license, and it can be used as a loss carried forward in any year the promoted person wishes to use it, either during or after the promoted period. As Section 36(4) is conditioned upon exports, we preliminarily find this program to be countervailable.

Calculation of Benefit from IPA Sections 28, 31, 36(1) and 36(4)

To calculate the benefit from Sections 31, 28, and 36(1), of the IPA, we followed the same methodology that has been used in past administrative reviews (*see, e.g.,* 58 FR 16174, March 25, 1993; 57 FR 9413, March 18, 1992). For Section 31, we calculated the benefit by calculating the difference between what each company paid in corporate income tax during the review period and what it would have paid absent the exemption. We did this by multiplying the corporate income tax rate in effect during the review period by the amount of each company's income that was exempted from income tax. For Sections 28 and 36(1), we calculated the benefit by obtaining the amount of import duties that would have been paid on the imports absent the exemption.

Prior to this review, none of the Minebea group had ever claimed benefits under Section 36(4). During the period of review, NMB Hi-Tech claimed benefits under Section 36(4) for the first time. We calculated the Section 36(4) benefit by determining the amount of tax which would have been paid absent this deduction.

We then added all duty and tax savings under all the IPA programs and divided this aggregate benefit by the total export value of the subject merchandise. We then made the adjustment for the parent company mark-up discussed in the ''Calculation Methodology'' section above. On this basis, we preliminarily determine the countervailing duty rate from IPA Sections 31, 28, 36(1), and 36(4) to be 5.25 percent *ad valorem* during the review period.

II. Programs Preliminarily Determined to be Not Used

We examined the following programs and preliminarily determine that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under these programs during the period of review:

A. Tax Certificates for Exporters
B. Electricity Discounts for Exporters
C. Export Packing Credits
D. Rediscount of Industrial Bills
E. IPA Section 33
F. Export Processing Zones
G. Reduced Business Taxes for Producers of Intermediate Goods for Export Industries
H. International Trade Promotion Fund

Preliminary Results of Review

In accordance with section 355.22(c)(4)(ii) of the Department's *Interim Regulations*, we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. As stated in the *Calculation Methodology* section above, since the Minebea companies are affiliated, we are treating them as one company, and calculating one countervailing duty rate for the group. Thus, for the period January 1, 1994, through December 31, 1994, we preliminarily determine the net subsidy for NMB Thai, Pelmec, NMB Hi-Tech, and NMB Precision Ball, Ltd. to be 5.25 percent *ad valorem*.

If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to assess countervailing duties as indicated above.

As stated in the''Summary'' section above, the Department revoked this countervailing duty order, effective January 1, 1995, pursuant to section 782(h)(2) of the Act. Ball Bearings and Parts Thereof from Thailand; Final results of Changed Circumstances Countervailing Duty Review and Revocation of Countervailing Duty Order, 61 FR 20799 (May 8, 1996). Accordingly, suspension of liquidation was terminated effective January 1, 1995; thus, the Department will not issue further instructions with respect to cash deposits of estimated countervailing duties.

The URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies. The procedures for countervailing duty cases are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. Requests for administrative reviews must now specify the companies to be reviewed. See section 355.22(a) of the *Interim Regulations.* The requested review will normally cover only those companies specifically named. Pursuant to 19 C.F.R. § 355.22(g), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate previously ordered. Accordingly, for the period January 1 through December 31, 1994, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

Public Comment

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issue; and, (2) a brief summary of the argument. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 C.F.R. § 355.38.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 C.F.R. § 355.38, are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: June 27, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

Appendix

Scope of Review

Ball Bearings, Mounted or Unmounted, and Parts Thereof

The products covered by this review, ball bearings, mounted or unmounted, and parts thereof, include all antifriction bearings which employ balls as the rolling element. During the review period, imports of these products were classifiable under the following categories: antifriction balls; ball bearings with integral shafts; ball bearings (including radial ball bearings) and parts thereof; ball bearing type pillow blocks and parts thereof; ball bearing type flange, take-up, cartridge, and hanger units, and parts thereof; and other bearings (except tapered roller bearings) and parts thereof. Wheel hub units which employ balls as the rolling element are subject to the review. Finished but unground or semiground balls are not included in the scope of this review.

Imports of these products are currently classifiable under the

following HTS item numbers: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50. This review covers all of the subject bearings and parts thereof outlined above with certain limitations. With regard to finished parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts are included in the scope of this review. For unfinished parts (inner race, outer race, rollers, balls, etc.), such parts are included if (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by this review are those parts which will be subject to heat treatment after importation.

[FR Doc. 96–17015 Filed 7–2–96; 8:45 am]

BILLING CODE 3510–DS–P

National Institute of Standards and Technology

[Docket No. 960516133–6133–01]

RIN 0693–XX19

Announcement of Amendments to Voluntary Product Standard PS 20–94 American Softwood Lumber Standard

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice, announcement of amendments to Voluntary Product Standard PS 20–94.

SUMMARY: The American Lumber Standard Committee (ALSC), acting as the Standing Committee for Voluntary Product Standard PS 20–94 American Softwood Lumber Standard, approved two amendments to the standard on November 17, 1995 at its annual meeting in Corpus Christi, TX: Amendment 1 pertains to the certification functions of the Board of Review with regard to grading rules and revises § 10.2.3 as follows:

The originating agency shall make the rules fully and fairly available to all manufacturers, distributors, users, and consumers of lumber on equal terms and conditions and without discrimination.

Amendment 2 pertains to the membership of the American Lumber Standard Committee and revises § 9.3.7 as follows:

Balance of representation—Upon request, the Secretary of Commerce may consider making changes in the constitution of the Committee or making additional appointments to ensure that the Committee has a balance of interest and is not dominated by a single interest category. In such considerations, the Secretary of Commerce shall consult the Committee for advice regarding balance and the criteria by which it may be determined.

Until the standard is republished, the amendments shall be listed as an addendum to the standard.

ADDRESSES: Standards Management Program, Office of Standards Services, National Institute of Standards and Technology, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Barbara M. Meigs, Office of Standards Services, National Institute of Standards and Technology, telephone: (301) 975–4025, fax: (301) 926–1559.

SUPPLEMENTARY INFORMATION: NIST announced on October 23, 1995, at 60 FR 54338–54339, that the ALSC would consider three proposed amendments to Voluntary Product Standard PS 20–94 at its annual meeting on November 17, 1995. Proposed Amendments 1 and 2 were approved by the Committee; proposed Amendment 3 pertaining to Canadian representation was rejected.

Voluntary Product Standard PS 20–94 American Softwood Lumber Standard was developed under procedures published by the Department of Commerce in part 10, title 15, of the Code of Federal Regulations. In accord with the provisions of the procedures, this announcement is to provide public notice of these amendments to PS 20–94 and to indicate that the amendments shall be listed an addendum to the standard until the standard is republished.

Authority: 15 U.S.C. 272 and 15 CFR part 10.

Dated: June 27, 1996.

Samuel Kramer,

Associate Director.

[FR Doc. 96–17032 Filed 7–2–96; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 061196A]

RIN 0648–AC73

Fishing Vessel and Gear Damage Compensation Fund Program

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

ACTION: Notice.

SUMMARY: NMFS announces that the Fishing Vessel and Gear Damage Compensation Fund's (Fund) capital will be depleted before the end of this fiscal year. There are no alternative sources of capital, and the Fund will cease to do business.

EFFECTIVE DATE: July 3, 1996.

FOR FURTHER INFORMATION CONTACT: Michael L. Grable, Chief, Financial Services Division (301–713–2390).

SUPPLEMENTARY INFORMATION: Section 10 of the Fishermen's Protective Act established this fund. This fund has since 1979 paid fishermen's claims for damage to their vessels and gear caused by the actions of other vessels. Claims have typically involved the unobserved loss of fixed fishing gear presumptively caused by other vessels transiting through fixed-gear deployment areas.

The Fund's only significant source of capital has been the statutory ability to levy a surcharge of up to 20 percent on fees imposed on foreign fishing vessels formerly fishing in the U.S. exclusive economic zone (EEZ). The last levy occurred in 1984, and foreign fishing in the EEZ has since virtually ceased. The Fund has, since 1984, been husbanding capital reserved from earlier surcharges. There are now enough claims on hand to potentially deplete the Fund's remaining capital.

Although the Fund has statutory authority to borrow up to $5,000,000 from the U.S. Treasury with which to pay claims, it cannot do so, because it has no source of funds with which to repay the borrowing.

NMFS will, consequently:

1. Accept no further claim applications against the Fund (NMFS will return to claimants all claim applications submitted after the date of this notice).

2. Pay claims already submitted, provided sufficient Fund capital is available, in the chronological order in which claimants' applications are determined by NMFS to be complete for processing and are approved by NMFS (NMFS may return claim applications when NMFS determines there is insufficient Fund capital available).

3. Refund claim application fees to applicants whose claims NMFS cannot process due to insufficient Fund capital.

4. Maintain a list of returned claims, and advise claimants, in chronological order of claim submission, to resubmit them if unobligated Fund capital proves sufficient to pay additional claims.

Catalog of Federal Domestic Assistance

The Fishing Vessel and Gear Damage Compensation Fund Program is listed in the Catalog of Federal Domestic Assistance under number 11.409.

Classification

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

Authority: Public Law 95–396 and 95–561 (22 U.S.C. 1980 *et seq.*)

Dated: June 27, 1996.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 96–17052 Filed 7–2–96; 8:45 am]

BILLING CODE 3510–22–F

Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council; Meeting

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: Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council Open Meeting.

SUMMARY: NOAA will conduct a meeting of the Sanctuary Advisory Council (SAC) for the Hawaiian islands Humpback Whale National Marine Sanctuary on Friday, July 12, 1996, in Wailea, Maui, Hawaii. The SAC was established to advise NOAA's Sanctuaries and Reserves Division regarding the development and management of the Hawaii Islands Humpback Whale National Marine Sanctuary. The Advisory Council was established under the National Marine Sanctuaries Act.

TIME AND PLACE: The meeting will be held on Friday, July 12, 1996, from 9:30 AM until 3:00 PM, at the Kea Lani Hotel, Wailea Maui, Hawaii.

AGENDA: General issues related to the Hawaiian Islands Humpback Whale National Marine Sanctuary are expected to be discussed, including a discussion on communication protocols and strategies, community outreach, and reports from the SAC subcommittees (boundary, regulatory and management).

PUBLIC PARTICIPATION: The meeting will be open to the public, and interested persons will be permitted to present oral or written statements on agenda items. Seats will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Allen Tom (808) 879–2818 or Brady Phillips at (301) 713–3141, ext. 169.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary program

Dated: June 26, 1996.

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 96–16881 Filed 7–2–96; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 062696E]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will hold its 63rd meeting.

DATES: The meeting will be held August 5–6, 1996, from 8:30 a.m. to 5:00 p.m. each day.

ADDRESSES: The meeting will be held at the Kaluakoi Hotel, Hoaloha Room, Molokai, HI; telephone: (808) 552–2555.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI, 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The SSC will discuss and may make recommendations to the Council on the following agenda items:

1. Pelagic fishery issues, including:

(a) an update on the Pelagic Fisheries Research Program,

(b) Status of NMFS Pelagic Research,

(c) 1995 annual report,

(d) Longline bycatch issues,

(e) Status of Albatross Workshop, and

(f) Program planning;

2. Hawaii bottomfish issues, including:

(a) Status of Hawaii Department of Land and Natural Resources management plan for Main Hawaiian Islands onaga and ehu,

(b) Council preliminary (backup) management plan for Main Hawaiian Island onaga and ehu,

(c) Limited entry alternatives for the Mau Zone,

(d) Status of moratorium on new entry to the Mau Zone,

(e) 1995 annual report,

(f) Consideration of additional Hoomalu Zone participation, and

(g) Program planning;

3. Crustaceans Milestones 1997–1997; and

4. Other business as required.

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

Special Accommodations

Gary Matlock, Program Management Officer, National Marine Fisheries Service. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: June 27, 1996.

Richard W. Surdi,

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

[FR Doc. 96–17047 Filed 7–2–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 062696D]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council will hold a meeting of its Bottomfish Task Force.

DATES: The meeting will be held on July 23, 1996, from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Executive Center, 1088 Bishop St., Room 4003, Honolulu, HI; telephone: (808) 539–3000.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI, 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The task force will hold its second meeting to discuss and formulate limited entry alternatives for the Mau Zone bottomfish fishery in the Northwestern Hawaiian Islands and consider other business as required.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: June 27, 1996.

Richard W. Surdi,

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

[FR Doc. 96–17048 Filed 7–2–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 062696C]

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its 90th meeting.

DATES: The meeting will be held on August 7–9, 1996. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Kaluakoi Hotel, Hoaloha Room, Molokai, HI; telephone: (808) 552–2555.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI, 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone 808–522–8220.

SUPPLEMENTARY INFORMATION: The Council's Standing Committees will meet from 8:00 a.m. to 5:00 p.m. on August 7. The full Council will meet from 8:30 a.m. to 4:00 p.m. on August 8–9. There will be a Community Meeting at the Mitchell Pauole Center from 5:30 p.m. to 7:00 p.m. on August 8.

The Council will discuss and may take action on the following agenda items:

1. Reports from the islands;
2. Reports from fishery agencies and organizations;
3. Ecosystems and Habitat, including:
(a) Summary of recent issues and activities, and
(b) Project update on large scale transplant of live corals in Hawaii;
4. Pelagic fishery issues, including:
(a) 1995 annual report island-area summaries,
(b) Status of NMFS Pelagic Research,
(c) Bycatch issues,
(d) Status of request for single-Council designation for management of domestic pelagic fisheries in the Pacific,
(e) Status of Albatross Workshop,
(f) Pelagics data amendment, and
(g) Status of shark, turtle and albatross assessment;
5. Crustaceans Milestones 1997–1999;
6. Bottomfish issues, including:
(a) 1995 annual report island-area summaries,
(b) Status of Department of Land and Natural Resources management plan for Main Hawaiian Island onaga and ehu,
(c) Council's preliminary management plan for Main Hawaiian Island Onaga and Ehu stocks,
(d) Limited entry alternatives for the Mau Zone, and
(e) Milestones 1997–1999;
7. Enforcement issues, including:
(a) NMFS activities and Vessel Monitoring System (VMS) update,
(b) Status of violations, and
(c) Amendment to require VMS on all foreign vessels;
8. Native rights and indigenous fishing issues, including;
(a) Status of relevant Magnuson Fisheries Conservation and Management Act (Magnuson Act) amendments, and
(b) Molokai subsistence demonstration project;
9. Program planning, including;
(a) Status of Magnuson Act re-authorization,
(b) Status of Western Pacific Fisheries Information Network (WPacFIN), and
(c) Milestones;
10. Administrative matters; and
11. Other business as required.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: June 27, 1996.

Richard W. Surdi,

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

[FR Doc. 96–17049 Filed 7–2–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 062796A]

Endangered Species; Permits

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

ACTION: Receipt of an application for modification 7 to scientific research permit 825 (P513).

SUMMARY: Notice is hereby given that the Columbia River Inter-tribal Fish Commission at Portland, OR (CRITFC) has applied in due form for a modification to a permit to take endangered and threatened species for the purpose of scientific research.

DATES: Written comments or requests for a public hearing on this application must be received on or before August 2, 1996.

ADDRESSES: The application and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

Written comments or requests for a public hearing should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: CRITFC requests a modification to a permit under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217-227).

CRITFC (P513) requests modification 7 to permit 825 for authorization to take juvenile, threatened, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) annually associated with a study designed to monitor the extent of dissolved nitrogen gas supersaturation effects on outmigrating juvenile anadromous fish in the Snake and Columbia Rivers in the Pacific Northwest. Permit 825 authorizes an annual take of adult and juvenile, threatened, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) and juvenile, endangered, Snake River sockeye salmon (*Oncorhynchus nerka*) associated with several scientific research studies including the dissolved nitrogen gas supersaturation study. Juvenile fall chinook salmon are proposed to be captured, anesthetized, examined, allowed to recover from the anesthetic, and released. The probability of a juvenile, ESA-listed, Snake River fall chinook salmon indirect mortality associated with the study is negligible. Modification 7 is requested for the duration of the permit. Permit 825 expires on December 31, 1997.

Those individuals requesting a hearing (see **ADDRESSES**) should set out the specific reasons why a hearing on this application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of

the applicant and do not necessarily reflect the views of NMFS.

Dated: June 27, 1996.

Robert C. Ziobro,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–17051 Filed 7–2–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 062096A]

Marine Mammals; Permit No. 987 (P598)

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

ACTION: Scientific research permit amendment.

SUMMARY: Notice is hereby given that a request for amendment of scientific research permit no. 987 submitted by Dr. Jim Darling, P.O. Box 384, Tofino, British Columbia, Canada VOR 2Z0, has been granted.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Suite 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221);

Director, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310/980–4001); and

Coordinator, Pacific Area Office, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/973–2987).

SUPPLEMENTARY INFORMATION: On May 20, 1996, notice was published in the Federal Register (61 FR 25209) that an amendment of permit No. 987, issued March 1, 1996 (61 FR 9438), had been requested by the above-named individual. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of paragraphs (d) and (e) of § 216.33 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 222).

Permit No. 987 authorizes the taking (i.e., harassment) of up to 200 humpback whales (*Megaptera novaeangliae*) in the course of behavioral and photo-identification studies and biopsy sampling, in the waters around the main Hawaiian Islands, primarily off of Maui, Hawaii, over a period of 2 years. Amendment No. 1 to Permit No. 987, authorizes: 1) An increase in the total number of harassment takes authorized from 200 to up to 1000 animals annually, in Hawaii waters, up to 100 of which may be biopsy sampled annually; 2) an increase in the duration of the permit from two to three years; 3) the biopsy of 10 cows with calves or yearlings (biopsy of calves/yearlings is not requested); 4) the opportunistic collection of biopsy samples from dead stranded whales and retrieve humpback whale carcasses for necropsy; 5) the inclusion of Southeast Alaska, specifically Frederick Sound and Stephens Passage as research locations; and 6) in the requested Alaska locations, the take by harassment of up to 500 humpback whales annually, up to 100 of which may be biopsy sampled annually.

Issuance of this Permit as required by the ESA of 1973 was based on a finding that the permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in Section 2 of the ESA.

Dated: June 20, 1996.

William Windom,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–16945 Filed 7–2–96; 8:45 am]

BILLING CODE 3510–22–F

Patent and Trademark Office

Renewal and Amendment of the Charter of the Public Advisory Committee for Trademark Affairs

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), and after consultation with GSA, it has been determined that the renewal and amendment of the charter of the Public Advisory Committee for Trademark Affairs is in the public interest in connection with the performance of duties imposed on the Department by law. The charter was renewed on May 23, 1996. Charter amendments will allow the Assistant Secretary of Commerce and Commissioner of Patents and Trademarks (Assistant Secretary) to select organizations which are representative of the Intellectual Property community. Each selected organization will, in turn, be able to appoint a designated number of members to the Committee. Committee membership will be limited to no more than 15 members. These members will serve staggered 3-year terms.

SUPPLEMENTARY INFORMATION: The Committee was first chartered in January 1973 and is now being renewed and its charter amended. The Committee's purpose is to advise the Patent and Trademark Office (Office) on ways to increase the Office's efficiency and effectiveness and to provide a continuing flow of knowledge from the private sector or the Office in the area of international and domestic trademark law.

The Office is amending the charter of the Committee to make the Committee more diverse and more representative of trademark owners, trademark practitioners and the Intellectual Property community as a whole. The Assistant Secretary will select representative organizations from among intellectual property organizations, bar groups, business-related organizations and academia, and determine the number of Committee members each organization can choose.

Allowing each representative organization to select its own Committee member(s) will ensure that the Committee represents the concerns of each member organization. Members will serve staggered three-year terms. No member may serve more than two consecutive terms.

The size of the Committee is being reduced from its former level of 18 members to 15 members. After experience with both an 18-member and a 15-member Committee, the smaller number seems to work better.

The Committee Chair will be selected by the Assistant Secretary and will serve a one-year term. No individual may be the Chair for more than two consecutive terms.

FOR FURTHER INFORMATION CONTACT: Lynne G. Beresford at (703) 308–8900, by fax at (703) 308–7220, or by mail marked to her attention and addressed to:

Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202–3513. Any organization which has an interest in the Committee should contact Ms. Beresford. A list of interested

organizations will be maintained in the Office of the Assistant Commissioner for Trademarks.

Dated: June 26, 1996.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 96–16938 Filed 7–2–96; 8:45 am]

BILLING CODE 3510–16–M

COMMODITY FUTURES TRADING COMMISSION

Coffee, Sugar & Cocoa Exchange, Inc., Proposed Rule Amendments to Require that Membership Lessees Soliciting or Executing Customer Orders Affiliate with Member Firms

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rule amendments of the Coffee, Sugar & Cocoa Exchange, Inc., to require that membership lessees soliciting or executing customer orders affiliate with member firms.[1]

SUMMARY: The Coffee, Sugar & Cocoa Exchange, Inc., (''CSC'' or ''Exchange'') has submitted proposed rule amendments and other materials to require that lessees soliciting or executing customer orders affiliate with member firms.[2] Acting pursuant to the authority delegated by Commission Regulation 140.96, the Division of Trading and Markets has determined to publish the CSC proposal for public comment. The Division believes that publication of the CSC proposal is in the public interest and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before August 2, 1996.

FOR FURTHER INFORMATION CONTACT: Clarence Sanders, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Telephone: (202) 418–5484.

SUPPLEMENTARY INFORMATION:

I. Description of Proposed Rule Amendments

By a letter dated April 18, 1996, the CSC submitted proposed rule amendments pursuant to Section 5a(a)(12)(A) of the Commodity Exchange Act (''Act'') and Commission Regulation 1.41(b). The proposed amendments would require that lessees soliciting or executing customer orders affiliate as employees or principals of member firms.[3] Thus, the proposed affiliation requirement would prohibit a lessee from soliciting or executing customer orders unless the lessee serves as an employee or principal of a member firm.

The Exchange states that the purpose of the proposed affiliation requirement is ''to [establish] a regulatory structure in which a member firm is specifically responsible for the lessee's day to day activities on the Exchange.'' The Exchange asserts that, as mandated by the proposal, ''the [member] firm with which a lessee is affiliated is in the best position to effectively supervise [the lessee].''

In further support of the proposal, the Exchange states that a lessor typically does not employ or have any other relationship with the individual to whom a membership is leased and, for that reason, is not in a position to effectively oversee a lessee's trading activities or practices. The Exchange also notes that a clearing member guarantor of a lessee is not well situated to carry out supervisory responsibilities over lessees because the guarantor is functionally capable of monitoring a lessee's trading activity only after the fact.[4]

The Exchange states that it proposes to defer implementation of the proposal ''in order to give the affected lessees and floor brokerage firms sufficient time to make appropriate arrangements and to become member firms.'' Thus, the Exchange proposes to implement the proposal on September 20, 1996.

II. Request for Comments

The Commission requests comments on any aspect of the CSC's proposed rule amendments that members of the public believe may raise issues under the Act or Commission regulations. In particular, the Commission requests comments regarding the proposal's competitive effects, impact on supervisory oversight of lessees, and implementation schedule.

Copies of the proposed rule amendments and related materials are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 418–5100. Some materials may be subject to confidential treatment pursuant to 17 CFR 145.5 or 145.9.

Any person interested in submitting written data, views, or arguments on the proposed rule amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581, by the specified date.

Issued in Washington, DC, on June 27, 1996.

Alan L. Seifert,

Deputy Director.

[FR Doc. 96–16979 Filed 7–2–96; 8:45 am]

BILLING CODE 6351–01–P

[1] Rule 1.47 of the Coffee, Sugar & Cocoa Exchange, Inc., permits a full or associate member to lease his membership to another individual. Rule 1.47 states, among other things, that ''a Full Membership so leased shall be utilized for the limited purpose of trading in commodity contracts and an Associate Membership so leased shall be utilized for the limited purpose of trading in options on or subject to the Rules of the [Coffee, Sugar & Cocoa Exchange, Inc.,] and in such other contracts as may be specified by the Board from time to time.''

[2] The CSC proposal includes amended and newly proposed definitions and amendments to existing Rule 1.47.

[3] Under Exchange Rule 1.21, a partnership, corporation, limited liability company, or other entity is eligible to apply for member firm privileges. Applicants for member firm privileges must meet certain qualifying criteria and are subject to approval by the Board of the Exchange.

[4] Under CSC Rule 1.14, a clearing member guarantor is obligated to the Exchange and its members for the performance, payment, and discharge of all contracts, obligations, and liabilities of the guaranteed member.

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Control Number: Plebe-Parent Weekend Questionnaire.

Type of Request: New collection.

Number of Respondents: 1,203.

Responses Per Respondent: 1.

Annual Responses: 1,203.

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 301.

Needs and Uses: The information collected by this questionnaire is utilized by the U.S. Military Academy to improve the support provided parents of cadets who attend this weekend activity. Questions relate to parent experiences during the event and their insights into necessary improvements. The answers are used to evaluate

activities and services provided to parents and to make changes deemed advisable.

Affected Public: Individuals and households.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 28, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–16994 Filed 7–2–96; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Control Number: Reception Day Questionnaire.

Type of Request: New collection.

Number of Respondents: 1,343.

Responses per Respondent: 1.

Annual Responses: 1,343.

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 336.

Needs and Uses: The information collected by this questionnaire is utilized by the U.S. Military Academy to improve the support provided parents of cadets who attend this activity. Questions relate to parent experiences during the event and their insights into necessary improvements. The answers are used to evaluate activities and services provided to parents and to make changes deemed advisable.

Affected Public: Individuals and households.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 28, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–16995 Filed 7–2–96; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Control Number: Application for Uniformed Services Identification Card—DEERS Enrollment; DD Form 1172; OMB Number 0704–0020

Type of Request: Revision.

Number of Respondents: 2,459,785.

Responses Per Respondent: 1.

Annual Responses: 2,459,785.

Average Burden Per Response: 10 minutes.

Annual Burden Hours: 410,784.

Needs and Uses: The information collected hereby, is used to verify the entitlement of members of the Uniformed Services, their spouses and dependents, and other authorized individuals to certain benefits and privileges. These privileges include health care; use of commissary; base exchange; and morale, welfare and recreation facilities. The information provides the necessary data to determine eligibility to these benefits and privileges, and to provide eligible individuals with an authorization/identification card therefor. As well as to maintain a centralized database of eligible individuals. The information may also be used by the Uniformed Services, military departments, and Defense Agencies to issue their respective non-benefit identification cards.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 28, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–16996 Filed 7–2–96; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 3, 1996.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or

waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 27, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: Revision.
Title: Early Childhood Longitudinal Survey.
Frequency: One or two times.
Affected Public: Individuals or households; Not-for-profit institutions; State, local or Tribal Government, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 8,170
Burden Hours: 7,500.

Abstract: The National Center for Education Statistics requests a 3-year generic clearance from the Office of Management and Budget to conduct developmental and design activities (i.e., field test) that will culminate in instruments that measure cognitive outcomes as well as the factors that affect learning outcomes in young children and to conduct the base year survey and assessment activities. Kindergarten enrollee cohorts are involved.

Office of Postsecondary Education

Type of Review: Revision.
Title: Student Aid Report (SAR).
Frequency: Annually.
Affected Public: Individuals or households.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 9,506,891
Burden Hours: 4,663,316

Abstract: Used to notify applicants of their eligibility to receive Federal financial aid. The form is submitted by the applicant to the institution of their choice.

Office of Management

Type of Review: New.
Title: Education Department General Administrative Regulations for Grants, 34 CFR Parts 74, 75, 76 and 80.
Frequency: On Occasion.
Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, local or Tribal Government, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden
Responses: 30,000
Burden Hours: 690,000

Abstract: These collections are necessary for the award and administration of discretionary and formula grants. The collections specific to ED forms are part of the reinvented process ED uses for awarding multi-year discretionary grants. The new process substantially increases flexibility of the grant process by enabling all years of multi-year budgets to be negotiated on at the time of initial award, and to submit only a performance report instead of an entire noncompeting continuation (NCC) package to receive funding.

[FR Doc. 96–16939 Filed 7–2–96; 8:45 am]
BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–591–000]

Algonquin Gas Transmission; Notice of Request Under Blanket Authorization

June 27, 1996.

Take notice that on June 21, 1996, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP96–591–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the National Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a tap valve interconnecting its existing T-system in Milford, Massachusetts with facilities constructed by Ball-Foster Glass Container Co., L.L.C. (Ball-Foster), under the blanket certificate issued in Docket No. CP87–317–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Algonquin states that the proposed delivery facilities will consist of a tap, meter and related data acquisition system facilities which will be installed by Algonquin within the existing right-of-way. Algonquin notes that Ball-Foster will construct a regulator station and miscellaneous piping on land it owns in Milford, which is adjacent to Algonquin's right-of-way. Algonquin asserts that the proposed addition of the proposed facilities will have no impact on its system-wide peak day deliveries because the deliveries to Ball-Foster will be interruptible, pursuant to Algonquin's Rate Schedule AIT–1. Algonquin estimates the cost of facilities to be constructed by Algonquin will be $81.450. Ball-Foster has agreed to reimburse Algonquin for constructing these facilities. Algonquin notes that Ball-Foster will pay for facilities it will construct.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–16927 Filed 7–2–96; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. CP96–593–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

June 27, 1996.

Take notice that on June 24, 1996, Columbia Gas Transmission (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed a request with the Commission in Docket No. CP96–593–000, pursuant to Sections 157.205, and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to establish an additional point of delivery for transportation service to Pennzoil Products Company (Pennzoil) authorized in blanket certificate issued in Docket No. CP83–76–000), all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia proposes to construct and operate an addition point of delivery for interruptible transportation service to Pennzoil in Boone County, West Virginia. Columbia states that the additional point of delivery has been requested by Pennzoil for transportation service for residential service. The cost to establish the additional point of delivery is estimated at $11,452. Columbia reports that Pennzoil has agreed to reimburse Columbia for the total cost of the delivery point.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 96–16928 Filed 7–2–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–69–000]

KO Transmission Company; Notice of Compliance Filing

June 27, 1996.

Take notice that on June 21, 1996, KO Transmission Company (KO Transmission) filed its FERC Gas Tariff, Original Volume No. 1, on electronic media.

KO Transmission states that the purpose of the filing is to comply with the Letter Order issued by the Director of the Office of Pipeline Regulation on May 21, 1996, in the above-captioned docket.

Any person desiring to protest with said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211). All such protest must be filed as provided in Section 154.210 of the Commission's Regulations. All protests filed with Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–16929 Filed 7–2–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–590–000]

Northern Natural Gas Company; Notice of Application

June 27, 1996.

Take notice that on June 21, 1996, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP96–590–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain pipeline facilities to West Texas Gas, Inc. (WTG), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern proposes to abandon, by sale to WTG, approximately 14 miles of 6-inch pipeline and appurtenant facilities located in Hansford and Hutchinson Counties, Texas, to be used by WTG as non-jurisdictional gathering facilities.

Northern states that in instances where the primary term of any transportation service agreement using the subject facilities has not expired, to the extent necessary, WTG would perform a comparable, but non-jurisdictional, service on terms and conditions to be mutually agreed upon by WTG and the respective party for the remainder of the primary term.

Any person desiring to be heard or any person desiring to make any protest with reference to said application should on or before July 18, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–16930 Filed 7–2–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–577–000]

Plant Owners v. Continental Natural Gas, Inc.; Notice of Complaint and Motion for Show Cause Order

June 27, 1996.

Take notice that on June 17, 1996, Plant Owners, identified in the attached appendix, filed in Docket No. CP96–577–000, pursuant to Rules 206 and 212 of the Commission's Rules of Practice and Procedure (18 CFR 385.206, 385.212), a complaint and motion for an order to show cause against Continental Natural Gas, Inc. (CNG), alleging that CNG has constructed and is operating certain facilities that are subject to the

Natural Gas Act (NGA) without first obtaining authorization for these facilities pursuant to the certification procedures of NGA § 7(c). Plant owners own the Laverne processing plant that is operated by Conoco Inc. The attorney for Plant Owners is Bruce A. Connell, Esq., 600 N. Dairy Ashford, ML–1034, Houston, Texas 77079. Plant Owners' complaint is on file with the Commission and open for public inspection.

Plant Owners state that the facilities at issue consist of approximately ten miles of 8-inch pipeline through which high pressure natural gas flows between the tailgate of CNG's Beaver processing plant and the mainline transmission facilities of ANR Pipeline Company (ANR) in Beaver County, Oklahoma. Plant Owners assert that these facilities transport pipeline quality, processed, residue gas from the processing plant into interstate markets. The line is described as having no apparent well connects or gathering line interconnects.

It is stated that some Plant Owners produce natural gas behind CNG's Beaver Plant that is gathered by Colorado Interstate Gas Company, not ANR. Moreover, CNG has proposed to build connecting lines into the Laverne gathering area, where Plant Owners both produce and purchase natural gas. Plant Owners state that ANR has filed for authorization at Docket No. CP96–372–000 to construct and operate an interconnect between ANR's facilities appurtenant to Plant Owners' facilities and CNG's Beaver plant facilities. Plant Owners are concerned that the continuation of CNG's operation of jurisdictional facilities, without the protections provided by the NGA, will adversely affect their rights and opportunities to gain non-discriminatory, open access to interstate markets through the interstate pipeline grid. Plant Owners believe that, based on recent Commission precedent, the facilities at issue clearly perform a transmission function, as opposed to a gathering or production function.

Plant Owners allege that CNG's control of the line as an unregulated operator would be anti-competitive since Plant Owners compete with CNG for purchasing, processing and interstate marketing of natural gas. It is stated that denial of Plant Owners' request would place Plant Owners in an untenable competitive position because CNG would control Plant Owners' access to interstate gas markets and would be able to charge an unregulated rate for the same service currently provided, *i.e.*, access to ANR's mainline system.

Further, Plant Owners state that GPM Gas Corporation (GPM) filed a complaint against CNG at Docket No. CP96–495–000 on the basis that certain proposed pipeline facilities *upstream* of CNG's Beaver plant should be properly functionalized as transmission facilities subject to the NGA. Plant Owners have intervened and filed in support of GPM's complaint. Plant Owners assert that, should GPM's position be sustained by the Commission in that proceeding, Plant Owners' position in the instant filing should be affirmed *a fortiori*. Plant Owners believe it would be inconsistent with any previous application of the modified primary function test to have gathering facilities *downstream* of mainline transmission facilities.

Plant Owners ask that CNG be required to show cause as to why the subject line should not be considered to be performing a jurisdictional transmission activity for which a certificate under NGA § 7(c) should have been obtained, and pending satisfaction of the Show Cause order, CNG be precluded from connecting Plant Owners' gas from the Laverne gathering system to CNG's Beaver plant.

Any person desiring to be heard or to make any protest with reference to the complaint should file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions or protests, and a fully responsive answer of CNG to the complaint, should be filed on or before July 29, 1996. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

Plant owners

Robert W. Jones Jr., Resources Ventures '73, 3501 Barclay, Amarillo, TX 79109, (806) 352–4374.

Joanne H. Nor, 632¾ North Doheny Drive, Los Angeles, CA 90069, (310) 278–9025.

AnSon Company, P.O. 24060, Oklahoma City, OK 73124, (405) 528–0525, Contact: Daniel W. Fischer.

Guest Petroleum, Incorporated, P.O. Box 805, 1600 SE 19th, Suite #204, Edmond, OK 73083–0805, (405) 341–8698, Contact: David A. Guest.

Bond Operating Company, Agent, Bond Estate Properties, 325 North St. Paul, Suite 2810, Tower II, Dallas, TX 75201, 0 (214) 965–8766, Contact: James H. Bond.

Bond Operating Company, 325 North St. Paul, Suite 2810, Tower II, Dallas, TX 75201, (214) 965–8766, Contact: James H. Bond.

George M. Close, Trustee, Liberty Tower, 100 North Broadway, Suite 3113, Oklahoma City, OK 73102–8606, (405) 236–4388.

Van Oil Co. 1730 Commerce Building, Ft. Worth, TX 76102, (817) 332–3757, Contact: J.H. Van Zant.

Madelon L. Bradshaw, 2120 Ridgmar Boulevard, Suite 12, Fort Worth, TX 76116, (817) 732–4252, Contact: Larry O. Hulsey.

American Innovative Royalty Systems, P.O. Box 717, Pointblank, TX 77364, (409) 377–2833, Contact: Bennett Watts, Owner.

Thomas D. Cabot, Deceased, Thomas D. Cabot, Jr., Executor, Cabot Corporation, 75 State Street, Boston, MA 02109, (617) 342–6006, Contact: Joan Whelton.

Chevron U.S.A. Inc., (Warren Petroleum Company is a division of Chevron U.S.A. Inc.), Room 2260, 1301 McKinney Street, Houston, TX 77010, (713) 754–3415, Contact: Thomas D. Oliver, Senior Counsel.

Warren Petroleum Company, 1350 South Boulder, Tulsa, OK 74119, (918) 560–4405, Contact: G.M. Spies.

Lyons Petroleum Reserves, Incorporated, 14340 Torrey Chase Boulevard, Suite 270, Houston, TX 77014–1021, (713) 893–8540, Contact: Michael J. Nicol.

Eagle Ridge Oil & Gas, Incorporated, 8517 South 77th East Place, Tulsa, OK 74133–6622, (918) 494–8928, Contact: Mark P. Godsey, President.

Gallaspy Oil Properties, Ltd., P.O. Box 20472, Oklahoma City, OK 73156, (405) 842–5037, Contact: William C. Gallaspy.

Kennedy & Mitchell, Incorporated, P.O. Box 612007, Dallas, TX 75261–2007, (214) 753–6900, Contact: Michael R. Childers, Vice President.

Kenneth W. Cory, Ltd., 6565 West Loop South, Suite 780, Bellaire, TX 77401–3518, (713) 661–5911, Contact: Pat Chesnut.

*Locin Oil Corporation, 14340 Torrey Chase Boulevard, Suite 270, Houston, TX 77014–1021, (713) 893–8540, Contact: Michael J. Nicol.

Southwest Oil Industries, 7557 Rambler Road, Suite 1100, Dallas, TX 75231, (214) 696–7705, Contact: Bobby R. McAlpin.

Trident, NGL, 13430 Northwest Freeway, Suite 1200, Houston, TX 77040, Contact: Glenn Etienne, (713) 507–6830.

Pine Crest Preparatory School Incorporated, 1501 Northeast 62nd Street, Fort Lauderdale, FL 3334, (954) 492–4116, Contact: Kenneth Kone.

Statex Petroleum Incorporated, 1801 Royal Lane, Suite 110, Dallas, TX 75229, (214) 869–2800, Contact: Dhar Carman.

Bernadette G. Wolfswinkel, 5861 South Kyrene Road #1, Tempe, AZ 85283, (602) 831–2000, Contact: Jim Gillespie.

Earthtime, Incorporated, P.O. Box 164291, Austin, TX 78716–4291, (512) 306–9039, Contact: Steven R. Lockwood.

Alan L. Lamb, 11900 North Penn, Suite C–1, Oklahoma City, OK 73120, (405) 755–2233, Contact: Alan L. Lamb.

C&L Processors Partnership, c/o Conoco Inc., 600 North Dairy Ashford, Houston, TX 77079–2197, Contact: Patrick L. Meyer.

*Locin Oil Corporation is an affiliated company to Lyons Petroleum Reserves, Inc., but is not an owner in the Laverne Plant.

[FR Doc. 96–16931 Filed 7–2–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–218–002]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

June 27, 1996.

Take notice that on June 25, 1996, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following revised tariff sheet, to become effective July 26, 1996:

First Revised Sheet No. 741

Texas Eastern states that the purpose of this filing is to insert the words, ''Unless prohibited by law,'' at the beginning of the last sentence of the CRP election form for Rate Schedule SCT contained in Texas Eastern's FERC Gas Tariff. On June 13, 1996, Texas Eastern made a filing (June 13 Compliance Filing) in compliance with the Commission's Order issued May 29, 1996, in Docket No. RP96–218–000 (May 29 Order). Texas Eastern agreed in the June 13 Compliance Filing to make a revision to the CRP Election form, Exhibit D, to Rate Schedule SCT. The agreement was in response to Ordering Paragraph (E) of the May 29 Order.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions.

Any person desiring to protect this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–16932 Filed 7–2–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–284–000]

Viking Gas Transmission Company; Notice of Request for Waiver

June 27, 1996.

Take notice that on June 21, 1996, Viking Gas Transmission Company (Viking) tendered for filing a request for a waiver of the Commission's Order No. 563 requirement to provide electronic file downloading according to standards for Electronic Data Interchange.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be head or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 8, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–16933 Filed 7–2–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 10934–003; New Hampshire]

William B. Ruger, Jr.; Notice of Availability of Final Environmental Assessment

June 27, 1996.

A final environmental assessment (FEA) is available for public review. The FEA reviewed the application for amendment for the Sugar River II Project (FERC No. 10934). The application proposes to shorten the bypass reach of the Sugar River by 650 feet by relocating the proposed dam in a downstream direction and replacing an open canal with a seven-foot-diameter buried steel penstock. The FEA finds that approval of the amendment application would not constitute a major federal action significantly affecting the quality of the human environment. The Sugar River II Project is located on the Sugar River, in Sullivan County, in Newport, New Hampshire.

The FEA was prepared by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the FEA can be viewed at the Commission's Reference and Information Center, Room 2A, 888 First Street, N.E., Washington, D.C. 20426. Copies can also be obtained by calling the project manager, Mr. Joseph C. Adamson at (202) 219–1040.

Lois D. Cashell,

Secretary.

[FR Doc. 96–16926 Filed 7–2–96; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Notice of Cases Filed; Week of March 11 Through March 15, 1996

During the Week of March 11 through March 15, 1996, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: June 24, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS
[Week of March 11 through March 15, 1996]

Date	Name and location of applicant	Case No.	Type of submission
3/12/96	Lakes Gas Company, Forest Lake, Minnesota.	VEE–0018	Exception to the Reporting Requirements. If granted: Lakes Gas Company would not be required to file Form EIA–782B, Reseller's/Retailer's Monthly Petroleum Product Sales Report.
3/13/96	A. Victorian, Nottingham, England.	VFA–0142	Appeal of an Information Request Denial. If granted: The November 18, 1991, Freedom of Information Request Denial issued by the Office of Declassification would be rescinded, and A. Victorian would receive access to certain Department of Energy Information.
3/13/96	Yates Gulf #1 and #2, Alexandria, Virginia.	RR300–276	Request for Modification/Rescission in the Gulf Oil Refund Proceeding. If granted: The Dismissal of Case Nos. RF300-17883 and RF300-17884 issued to Yates Gulf #1 and #2 would be modified regarding the firm's application for refund submitted in the Gulf Oil Refund Proceeding.
3/14/96	Petrucelly & Nadler, P.C., Boston, Massachusetts.	VFA–0143	Appeal of an Information Request Denial. If granted: The February 8, 1996 Freedom of Information Request Denial issued by Oak Ridge Operations Office would be rescinded, and Petrucelly & Nadler, P.C. would receive access to certain DOE information.
3/15/96	Hiram Castilleja Service Station, San Diego, California.	RF300–278	Request for Modification/Rescission in the Gulf Oil Refund Proceeding. If granted: The March 7, 1996 Dismissal of Case No. RF300–15283 issued to Hiram Castilleja Service Station would be modified regarding the firm's application for refund submitted in the Gulf Oil Refund Proceeding.

[FR Doc. 96–16982 Filed 7–02–96; 8:45 am]
BILLING CODE 6450–01–P

Office of Hearings and Appeals

Notice of Cases Files; Week of March 18 through March 22, 1996

During the Week of March 18 through March 22, 1996, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: June 24, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE 0FFICE OF HEARINGS AND APPEALS
[Week of March 18 through March 22, 1996]

Date	Name and location of applicant	Case no.	Type of submission
Mar. 18, 1996	Ron's Gulf, New Carlisle, OH	RR300–280	Request for Modification/Rescission in the Gulf Oil Refund Proceeding. If granted: The July 30, 1991 Dismissal of Case No. RF300–16743 issued to Ron's Gulf would be modified regarding the firm's application for refund submitted in the Gulf Oil Refund Proceeding.
Mar. 19, 1996	Hill Service Station Savannah, GA	RR300–281	Request for Modification/Rescission in the Gulf Oil Refund Proceeding If granted: The June 9, 1992 Dismissal of Case No. RF300–16739 issued to Hill Service Station would be modified regarding the firm's application for refund submitted in the Gulf Oil Refund Proceeding.
Mar. 19, 1996	Radiant Oil Co., Miami, FL	RR300–279	Request for Modification/Rescission in the Gulf Oil Refund Proceeding. If granted: The February 5, 1996 Dismissal of Case No. RF300–19988 issued to Radiant Oil Company would be modified regarding the firm's application for refund submitted in the Gulf Oil Refund Proceeding.
Mar. 20, 1996	R&R Distributing Co., Inc. Columbia, TN	VEE–0019	Exception to the Reporting Requirements. If granted: R&R Distributing Co., Inc. would not be required to file Form EIA–782A, Refiner's/Gas Plant Operator's Monthly Petroleum Product Sales Report.
Mar. 21, 1996	Albuquerque Operations Office Albuquerque, NM.	VSA–0061	Request for Review of Opinion under 10 C.F.R. Part 710. If granted: The February 13, 1996 Opinion of the Office of Hearings and Appeals, Case No. VSO–0061, would be reviewed at the request of an individual employed at Albuquerque Operations Office.

[FR Doc. 96–16983 Filed 7–02–96; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5531–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Auto Refinishing Industry Solvent-Use Survey (ARSUS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Auto Refinishing Industry Solvent-Use Survey (ARSUS) EPA ICR No. 1786.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 2, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1786.01.

SUPPLEMENTARY INFORMATION:

Title: Auto Refinishing Industry Solvent-Use Survey EPA ICR No. 1786.01. This is a new collection.

Abstract: This information collection is a voluntary one-time survey of automobile refinishers requested by the Emissions Characterization and Prevention Branch (ECPB) of the Environmental Protection Agency's (EPA) Air Pollution and Prevention Control Division (APPCD) to support the overall EPA program to investigate the emissions of ozone precursors both nationally and at the metropolitan level. Data collected are used to validate existing and proposed model-based estimates of emissions, develop statistically valid estimates of precursors usage in the auto refinishing industry, and investigate functional relationships between emissions and factors that may be useful predictors of emissions.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 02/09/96 (61 FR 4992–4993); three (3) sets of comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 47 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are those which are the owners and operators of the facilities that are classified in the following standard industrial classification (SIC) code:

SIC 7532—Top, Body, and Upholstery Repair Shops and Paint Shops, as well as the owners and operators of the facilities that are classified with the SICs listed below, and that use SIC 7532 (Top, Body, and Upholstery Repair Shops and Paint Shops) as an auxiliary classifier:

5012—Wholesale: Automobiles and Other Motor Vehicles
5511—Motor Vehicle Dealers (New and Used)
5521—Motor Vehicle Dealers (Used Only)
7538—General Automotive Repair Shops
7539—Automotive Repair Shops, Not Elsewhere Classified

Estimated Number of Respondents: 6,000.

Frequency of Response: once.

Estimated Total Annual Hour Burden: 3,525 hours.

Estimated Total Annualized Cost Burden: 0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1786.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460.
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA 725 17th Street, NW, Washington, DC 20503.

Dated: June 27, 1996.

Richard Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 96–17025 Filed 7–2–96; 8:45 am]
BILLING CODE 6560–50–P

[FRL–5531–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; the 1997 Hazardous Waste Report (Biennial Report) Under the Resource Conservation and Recovery Act (RCRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: 1997 Hazardous Waste Report, OMB No. 2050–0024, expiring August 31, 1996. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 2, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 0976.08.

SUPPLEMENTARY INFORMATION:

Title: 1997 Hazardous Waste Report (Biennial Report) Under the Resource Conservation and Recovery Act, OMB Control No. 2050–0024; EPA ICR No. 0976.08. This is a request for extension of a currently approved collection.

Abstract: Generators and owners/operators of hazardous waste management facilities must compile, under RCRA sections 3002 and 3004, a biennial report of information on location, amount, and description of hazardous waste handled. EPA uses the information to define the population of

the regulated community and to expand its database of information for rulemaking and compliance with statutory requirements. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Ch. 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on March 15, 1996 (61 FR 1074); 32 comments were received.

Based on internal Agency analyses, comments received, and to progress towards the Agency's goal of achieving 25% burden reduction, the Agency is today suggesting the following changes to the 1997 Biennial Report:

(1) Generators and RCRA permitted Treatment, Storage and Disposal Facilities (TSDFs) will no longer be required to report any RCRA hazardous wastes managed in exempt units, defined as those units that are not under RCRA hazardous waste permitting requirements;

(2) The Waste Treatment, Disposal, or Recycling Process Systems (PS) form will be eliminated; and

(3)The Waste Minimization questions from the Identification and Certification (IC) and Waste Generation and Management (GM) forms will be eliminated.

Implementing these changes will result in a substantially streamlined 1997 Biennial Report without sacrificing the information needed to meet the Agency's statutory requirements or to conduct its analyses. The Agency recognizes that the information suggested today as being dropped from the 1997 Biennial Report is still important. The Agency may decide, after it conducts a comprehensive evaluation of the information needs for the RCRA community, that some or all of these types of information are in fact best collected through the Biennial Report, albeit in a different format. At the present time, however, the Agency will collect this information through mechanisms and sources other than the 1997 Biennial Report.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average of 18.7 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Generators and Handlers of Hazardous Waste.

Total estimated Number of Respondents: 24,530.

Frequency of Response: Biennial.

Estimated Total Annual Hour Burden: 229,049 hours.

Estimated Total Annualized Cost Burden: $9,456,804.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the following addresses. Please refer to EPA ICR No. 0976.08 and OMB Control No. 2050–0024 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA 725 17th Street, NW, Washington, DC 20503.

Dated: June 27, 1996.

Richard Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 96–17026 Filed 7–2–96; 8:45 am]

BILLING CODE 6560–50–P

[OMB#2060–0063, EPA# 1167.05]; [FRL–5531–9]

Agency Information Collection Activities Under OMB Review; Standards of Performance for New Stationary Sources Lime Manufacturing Plants (Subpart HH)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3507(a)(1)(D), this notice announces that the Information Collection Request (ICR) for Standards of Performance for New Stationary Sources—Lime Manufacturing Plants—NSPS Subpart HH) described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 2, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1167.05.

SUPPLEMENTARY INFORMATION:

Title: Standards of Performance for Lime Manufacturing Plants (OMB Control No. 2060–0063; EPA ICR No. 1167.05). This is a request for extension of a currently approved collection.

Abstract: The Administrator has judged that PM emissions from lime manufacturing plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners/operators of lime manufacturing plants must notify EPA of construction, modification, startups, shut downs, date and results of initial performance test and excess emissions. The only type of industry costs associated with the information collection activity in the standards are labor costs.

In order to ensure compliance with the standards promulgated to protect public health, adequate reporting and recordkeeping is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on March 26, 1996.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 44.2 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize

technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: owners or operators of lime manufacturing plants.

Estimated Number of Respondents: 38.

Frequency of Response. 2.

Estimated Number of Responses. 76.

Estimated Total Annual Hour Burden: 3,363.6 hours.

Estimated Total Annualized Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods of minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1167.05 and OMB Control No. 2060–0063 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: June 27, 1996.

Richard Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 96–17029 Filed 7–2–96; 8:45 am]

BILLING CODE 6560–50–M

[PF–658; FRL–5378–5]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

DATES: Comments, identified by the docket number PF–658, must be received on or before August 2, 1996.

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. Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (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(s) 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 to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

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 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–658]. No Confidential Business Information (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 below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Product Manager (PM) 21, Registration Division, (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 2801 Jefferson Davis Highway, Arlington, VA 22202, 703–305–6226; e-mail: welch.connie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received the following pesticide petitions from Rohm and Haas Company, AgroEvo USA Company and Griffin Corporation proposing the establishment of regulations for residues of certain pesticide chemicals in or on various raw agricultaral commodities.

PP 5F4582. Griffin Corporation, P.O. Box 1847, Rocky Ford Road, Valdosta, GA. 31603-1847 proposes to amend 40 CFR part 180 by establishing a tolerance for the residues of ethylene bisdithiocarbamate from the fungicides maneb and mancozeb calculated as zinc ethylene bisdithiocarbamate and their common metabolite ethylenethiourea in or on the raw agricultural commodity walnuts at 0.1 parts per million (ppm).

2. *PP 6F4693.* AgrEvo USA Company, Little Falls Center One, 2711 Centerville Road, Wilmington, DE 19808, proposes to amend 40 CFR part 180 by establishing a regulation to permit the combined residues of flutolanil (*N*-(3-(1-methylethoxy)phenyl)-2-(trifluoromethyl)benzamide)) and its metabolites converted to 2-trifluoromethyl benzoic acid and calculated as flutolanil, in or on the raw agricultural commodity potato tubers at 0.20 parts per million (ppm).

3. *PP 9F3812.* Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA 19105 proposes to amend 40 CFR 180.443 by establishing a tolerance for the combined residues of the fungicide myclobutanil [alpha-butyl-alpha-(4-chlorphenyl)-1*H*-1,2,4-triazole-1-propanenitrile] and its metabolite alpha-(3-hydroxbutyl)-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile (free and bound) in or on the raw agricultural commodity pome fruit at 0.5 ppm.

4. *FAP 6H5749.* AgrEvo USA Company, Little Falls Center One, 2711 Centerville Road, Wilmington, DE 19808, proposes to amend 40 CFR part 185 by establishing a food additive regulation to permit the combined residues of flutolanil (*N*-(3-(1-methylethoxy)phenyl)-2-(trifluoromethyl)benzamide)) and its metabolites converted to 2-trifluoromethyl benzoic acid and calculated as flutolanil, in or on the processed food commodity potato, dry peel at 3.0 ppm.

A record has been established for this document under docket number [PF–658] (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 document, 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, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 136a.

Dated: June 24, 1996.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–16858; Filed 7–02–96; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5532–1]

Agency Information Collection Activities Under OBM Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT:

Sandy Farmer (202) 260–2740, Please refer to the appropriate EPA ICR Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No. 0270.36; Proposed Modifications to the National Primary Drinking Water Regulations for Lead and Copper; was approved 06/03/96; OMB No. 2040–0090; expires 03/31/97.

EPA ICR No. 0664.05; NSPS Subpart XXX, Bulk Gasoline Terminals; was approved 06/07/96; OMB No. 2060–0006; expires 06/03/99.

EPA ICR No. 0222.04; Investigations into Possible Noncompliance of Motor Vehicles with Federal Emission Standards; was approved 05/09/96; OMB No. 2060–0086; expires 05/31/99.

EPA ICR No. 1057.07; Standards of Performance for New Stationary Sources; Sulfuric Acid Plants—NSPS Subpart H; was approved 06/09/96; OMB No. 2060–0041; expires 06/30/99.

EPA ICR No. 1712.02; National Emission Standard for Hazardous Air Pollutants for Shipbuilding and Ship Repair Facilities (Surface Coating); was approved 05/11/96; OMB No. 2060–0330; expires 05/31/99.

EPA ICR No. 0597.06; Maximum Residue Limit (MR) Petitions on Food/Feed Corps and New Inert Ingredients; was approved 06/10/96; OMB No. 2070–0024; expires 06/30/99.

EPA ICR No. 0601.05; FIFRA Section 29 Annual Reports on Conditional Registrations; was approved 06/14/96; OMB No. 2070–0026; expires 06/30/99.

EPA ICR No. 1506.07; NSPS for Muncipial Waste Combustors (MWC)—Subpart Ea; was approved 06.17/96; expires 01/31/99.

OMB Short Term Extensions

EPA ICR No. 0282.06; OMB No. 2060–0048; Motor Vehicle Emissions Defect Information Report and Records; expiration date was extended to 09/30/96.

EPA ICR No. 1626.04; OMB No. 2060–0256; National Emissions Reduction Program, Amendment; expiration date was extended to 08/31/96.

OMB Corrections

EPA ICR No. 0783.32; OMB No. 2060–0288; Refueling Emission Regulations for Light-Duty Vehicles and Light-Duty Trucks; expiration date has been changed from 07/31/97 to 06/30/96.

Dated: June 27, 1996.

Richard Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 96–17028 Filed 7–2–96; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00440; FRL–5378–6]

Conduct of Acute Toxicity Studies; Notice of Availability and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is soliciting comments on a draft guidance document entitled ''Conduct of Acute Toxicity Studies.'' Interested parties may request this document as described in the ADDRESSES unit of this notice.

DATES: Written comments, identified by the docket number ''OPP–00440'' must be received on or before September 3, 1996.

ADDRESSES: The guidance document is available from Tina Levine: By mail: Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 6th Floor, CS-1, 2800 Crystal Drive North, Arlington, VA, (703) 308–8393, e-mail: levine.tina@epamail.epa.gov.

Submit written comments to: 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, bring comments to: Rm. 1128, CM #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–00440.'' No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under the SUPPLEMENTARY INFORMATION unit 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 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 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 Virginia address given above from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Tina Levine at the telephone number, office location, or e-mail address listed under the ADDRESSES unit of this document.

SUPPLEMENTARY INFORMATION: EPA is soliciting comments on a proposed guidance document entitled ''Conduct of Acute Toxicity Studies.'' It is the goal of this document to compile additional guidance for the conduct of acute toxicity studies into a supplement to the Subdivision F Guidelines. It is expected that such guidance, which currently often must be pieced together from several different sources, will reduce the number of studies that are rejected or flawed due to incorrect procedures or insufficient reporting. While this should help all registrants, it is being finalized at this time because of the importance of clear guidance for the success of the self-certification program undergoing comment at this time. This Federal Register notice announces the availability of the draft document and solicits comment on it. In particular, EPA is interested in comments on those sections of the document where there has been some disagreement or uncertaintly between the various contributors to the document. These areas are highlighted in bold in the document. After reviewing the public comments received, EPA may make changes to the guidance document.

A record has been established for this action under docket number ''OPP–00440'' (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 action, 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, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: June 11, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–16590 Filed 7–2–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Safety Wireless Advisory Committee; Steering and Subcommittee Meetings

AGENCIES: The National Telecommunications and Information Administration (NTIA), Larry Irving, Assistant Secretary for Communications and Information, and the Federal Communications Commission (FCC), Reed E. Hundt, Chairman.

ACTION: Notice of the Next Meetings of the Spectrum Requirements and Interoperability Subcommittees.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the next meetings of two of the five Subcommittees of the Public Safety Wireless Advisory Committee. The NTIA and the FCC established a Public Safety Wireless Advisory Committee, Subcommittees, and Steering Committee to prepare a final report to advise the NTIA and the FCC on operational, technical and spectrum requirements of Federal, state and local Public Safety entities through the year 2010. All interested parties are invited to attend and to participate in the next round of meetings of the Subcommittees.

DATES: July 18, 19 1996 (Thursday, Friday).

ADDRESSES: Federal Communications Commission, 2000 M St., NW, Rooms 110 A,B, & C (Rooms subject to change), Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: For information regarding the Subcommittees, contact: Interoperability Subcommittee: James E. Downes at 202–622–1582; Spectrum Requirements Subcommittee: Richard N. Allen at 703–630–6617.

For information regarding accommodations and transportation, contact: Deborah Behlin at 202–418–0650 (phone), 202–418–2643 (fax), or dbehlin@fcc.gov (email). You may also contact Ms. Behlin for general information concerning the Public Safety Wireless Advisory Committee. Information is also available from the Internet at the Public Safety Wireless Advisory Committee homepage (http://pswac.ntia.doc.gov).

SUPPLEMENTARY INFORMATION: Two Subcommittees of the Public Safety Wireless Advisory Committee will hold consecutive meetings on Thursday, July 18, 1996 and Friday, July 19, 1996. The expected arrangement of the meetings, which is subject to change at the time of the meetings, is as follows:

July 18 & July 19: The Interoperability Subcommittee and then the Spectrum Requirements Subcommittee will meet consecutively starting at 8:00 a.m.

For further information contact Don Speights, NTIA, directly at 202–482–1652 or by email at wspeights@ntia.doc.gov.

The tentative agenda for each subcommittee meeting is as follows:

1. Welcoming Remarks.
2. Approval of Agenda.
3. Administrative Matters.
4. Work Program/Organization of Work.
5. Meeting Schedule.
6. Agenda for Next Meeting.
7. Other Business.
8. Closing Remarks.

The tentative schedule and general location of the next full meeting of the Public Safety Wireless Advisory Committee is: September 1996, in Washington, D.C.

The Co-Designated Federal Officials of the Public Safety Wireless Advisory Committee are William Donald Speights, NTIA, and John J. Borkowski, FCC. For public inspection, a file designated WTB–1 is maintained in the Private Wireless Division of the Wireless Telecommunications Bureau, Federal Communications Commission, Room 8010, 2025 M Street, N.W., Washington, D.C. 20554.

Federal Communications Commission

Robert H. McNamara.

Chief, Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 96–17096 Filed 7–2–96; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Statement of Policy on Assistance to Operating Insured Depository Institutions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Policy statement; Notice of opportunity for comment.

SUMMARY: The statement of policy would revise the FDIC's Statement of Policy on Assistance to Operating Insured Depository Institutions, which was published in the Federal Register on December 18, 1992 (the 1992 Policy Statement) (see, 57 FR 60203 (December 18, 1992)). As required by section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (the RCDRIA), the FDIC is conducting a systematic review of its regulations and statements of policy to identify and revise regulations and statements of policy that might be inefficient, cause unnecessary burden, or contain outmoded, duplicative, or inconsistent provisions (see, 60 FR 62345 (December 6, 1995)). The FDIC has reviewed the 1992 Policy Statement and has concluded that it should be revised. This revised statement of policy would replace the 1992 Policy Statement.

The statement of policy would (i) reflect the statutory ''sunset'' of the Resolution Trust Corporation on December 31, 1995, by deleting references to the Resolution Trust Corporation's statutory authority; (ii) incorporate the requirements of section 11 of the Resolution Trust Corporation Completion Act, P.L. 103–204, section 11 (1993), which revised section 11(a)(4) of the Federal Deposit Insurance Act, as amended (the FDI Act), 12 U.S.C. 1821(a)(4), to prohibit, with certain exceptions, the use of funds from the Bank Insurance Fund or the Savings Association Insurance Fund to benefit shareholders of a failed or failing insured depository institution; thus, the statement of policy would impact the treatment of shareholders with regard to FDIC assistance under section 13(c) of the FDI Act to an operating insured depository institution prior to the appointment of a conservator or receiver for that institution; (iii) provide that any depository institution subsidiary of a holding company may be included when considering what entities may contribute resources in connection with a proposal for FDIC assistance; and (iv) generally streamline the retained provisions of the 1992 Policy Statement, in pertinent part by removing certain detailed discussions of section 13(k)(5) of the FDI Act and various provisions added to the FDI Act by the Federal Deposit Insurance Corporation Improvement Act of 1991.

DATES: Written comments must be received on or before August 2, 1996.

ADDRESSES: Written comments should be addressed to the Office of the Executive Secretary, FDIC, 550 17th Street, N.W., Washington, D.C. 20429.

Comments may be hand delivered to Room F–402, 1776 F Street, N.W., Washington, D.C. 20439, on business days between 8:30 a.m. and 5:00 p.m. Comments may be sent through facsimile to: (202) 898–3838 or by the Internet to: comments@fdic.gov. Comments will be available for inspection at the FDIC Public Information Center, room 100, 801 17th Street, N.W., Washington, D.C. between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Gail L. Patelunas, Acting Director, Division of Resolutions, (202) 898–6779; Sean C. Forbush, Resolutions Specialist, Division of Resolutions, (202) 898–8506; Barbara I. Taft, Assistant General Counsel, Legal Division, (202) 736–0183; Michael B. Phillips, Counsel, Legal Division, (202) 736–0186, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The statement of policy does not require any collections of paperwork pursuant to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Accordingly, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that the statement of policy will not have a significant economic impact on a substantial number of small entities. In addition, the statement of policy will not impose regulatory compliance requirements on depository institutions of any size.

The text of the statement of policy follows:

FDIC Statement Of Policy on Assistance to Operating Insured Depository Institutions

I. Introduction

A. General Statutory Requirements

Section 13(c) of the Federal Deposit Insurance Act, as amended (the FDI Act), authorizes the Federal Deposit Insurance Corporation (the FDIC) to provide assistance to operating insured institutions (open assistance) (1) to prevent the ''default'' of insured institutions or to assist acquisitions of insured institutions that are ''in danger of default,'' [1] or (2) if severe financial conditions exist that threaten the stability of a significant number of insured institutions or of insured institutions possessing significant financial resources, to lessen the risk to the FDIC posed by such insured institutions under such threat of instability.

In order for the FDIC to provide assistance to an operating insured institution, the FDIC must determine that the assistance meets the least-cost test set forth in section 13(c) of the FDI Act. That section provides that the assistance (1) must be necessary to meet the obligation of the FDIC to provide insurance coverage for the insured deposits in such institution, and (2) must be the least costly to the deposit insurance fund of all possible methods for meeting that obligation.[2]

The FDIC has the authority to provide to an operating insured institution assistance that does not meet the least-cost test only if the Secretary of the Treasury (in consultation with the President and upon the written recommendations of two-thirds of the Board of Directors of the FDIC and two-thirds of the Board of Governors of the Federal Reserve System) determines that the FDIC's compliance with the least-cost test would have adverse effects on economic conditions or financial stability and the assistance to the operating insured institution would avoid or mitigate such adverse effects (the ''Systemic Risk Exception'').[3]

The FDIC may consider providing financial assistance under section 13(c) to an operating insured institution before the appointment of a conservator or receiver only if the FDIC determines that (1) grounds for the appointment of a conservator or receiver exist or likely will exist in the future unless the institution's capital levels are increased,[4] and (2) it is unlikely that the institution can meet all currently applicable capital standards without assistance.[5] In addition, before the FDIC may provide assistance to an operating insured institution, (1) the appropriate Federal banking agency [6] and the FDIC must determine that, for such period of time as the agency or the FDIC considers to be relevant, the institution's management has been competent and has complied with applicable laws, rules, and supervisory directives and orders,[7] and (2) the FDIC must determine that the institution's management did not engage in any insider dealing, speculative practice, or other abusive activity.[8] Any determination made by the FDIC to provide assistance to an operating insured institution under section 13(c) must be made in writing and published in the Federal Register.[9]

SAIF-insured institutions submitting proposals for assistance under section 13(k)(5) of the FDI Act also must meet the criteria contained in that statutory provision.[10]

B. Timing Considerations

As section 13(c)(4) of the FDI Act requires the FDIC to select the resolution alternative that involves the least cost to the relevant deposit insurance fund, any open assistance proposal must be evaluated on a competitive basis with other available resolution alternatives. Because of the cost savings inherent in FDIC-assisted transactions involving the appointment of a receiver for an institution, it may be difficult for an open assistance proposal to be more cost effective than an available closed institution resolution.[11] Therefore, an open assistance proposal, to be acceptable, generally must be submitted substantially before grounds exist for the appointment of a receiver for the institution. Moreover, because of the complexity of many transactional

[1] The terms ''default'' and ''in danger of default'' are defined in section 3(x) of the FDI Act, 12 U.S.C. 1813(x).

[2] *See* section 13(c)(4)(A)(ii) of the FDI Act, 12 U.S.C. 1823(c)(4)(A)(ii).

[3] *See* section 13(c)(4)(G) of the FDI Act, 12 U.S.C. 1823(c)(4)(G).

[4] *See* section 13(c)(8)(A)(i)(I) of the FDI Act, 12 U.S.C. 1823(c)(8)(A)(i)(I).

[5] *See* section 13(c)(8)(A)(i)(II) of the FDI Act, 12 U.S.C. 1823(c)(8)(A)(i)(II).

[6] ''Appropriate Federal banking agency'' is defined at 12 U.S.C. 1813(q), in part, to mean: (1) the Comptroller of the Currency, in the case of a national bank; (2) the Board of Governors of the Federal Reserve System, in the case of a state member insured bank; (3) the FDIC, in the case of a state nonmember insured bank; and (4) the Director of the Office of Thrift Supervision, in the case of any savings association.

[7] *See* section 13(c)(8)(A)(ii)(I) of the FDI Act, 12 U.S.C. 1823(c)(8)(A)(ii)(I).

[8] *See* section 13(c)(8)(A)(ii)(II) of the FDI Act, 12 U.S.C. 1823(c)(8)(A)(ii)(II).

[9] *See* section 13(c)(8)(B) of the FDI Act, 12 U.S.C. 1823(c)(8)(B).

[10] Assistance proposals with respect to SAIF-insured institutions under section 13(k)(5) that do not meet all nine of the criteria in that statutory provision may be submitted to the FDIC for consideration under section 13(c) of the FDI Act. Section 13(k)(5) applies only to SAIF-insured institutions located in ''economically depressed regions,'' and only if those institutions have certain types of problems pre-dating the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. The nine criteria for proposals submitted under section 13(k)(5) of the FDI Act are listed in subsections (k)(5)(A)(i) (I)–(III) and (A)(ii) (I)–(VI) of section 13 of the FDI Act, 12 U.S.C. 1823(k)(5)(A)(i) (I)–(III) and (A)(ii) (I)–(VI).

[11] Among the cost advantages favoring a resolution transaction following the appointment of a receiver for an institution are the effect of the receivership on the contingent liabilities of the failed institution, the potential for uninsured depositors and other unsecured creditors to share in the loss incurred on the institution and the ability of the FDIC as receiver to repudiate burdensome contracts.

structures involving open assistance, the time required to negotiate terms acceptable to all parties and to obtain necessary regulatory and shareholder approvals, and the ''prompt corrective action'' mandates of Section 38 of the FDI Act,[12] the FDIC encourages submission of proposals for open assistance well before grounds exist for the institution's closure. In general, this timing consideration will require the board of directors of the insured institution to make the difficult business judgment that the institution is likely to fail and that the balance of their responsibilities, including those to depositors as well as shareholders, compels the board to seek FDIC assistance, and to make that judgment before it is certain that the institution will fail.

II. Treatment of Shareholders Under Section 11(a)(4) of the FDI Act

Section 11(a)(4) of the FDI Act states, in pertinent part:

Notwithstanding any provision of law other than section 13(c)(4)(G) [of the FDI Act], the Bank Insurance Fund and the Savings Association Insurance Fund shall not be used in any manner to benefit any shareholder of—

(i) Any insured depository institution for which the [FDIC] or the [RTC] has been appointed conservator or receiver, in connection with any type of resolution by the [FDIC] or the [RTC];

(ii) Any other insured depository institution in default or in danger of default, in connection with any type of resolution by the [FDIC] or the [RTC]; or

(iii) Any insured depository institution, in connection with the provision of assistance under this section or section 13 with respect to such institution, except that this clause shall not prohibit any assistance to any insured depository institution that is not in default, or that is not in danger of default, that is acquiring (as defined in section 13(f)(8)(B) [of the FDI Act]) another insured depository institution.[13]

As the scope of the language of section 11(a)(4) and related legislative history with respect to the limitation on the use of the relevant deposit insurance fund for assistance under section 13(c) of the FDI Act is not clearly delineated,[14] the FDIC will determine, on a case-by-case basis, the application of section 11(a)(4) to any proposal for assistance.

III. Criteria for the FDIC's Consideration of Proposals for Assistance to an Operating Insured Institution

A proposal for assistance to an operating insured institution will be evaluated pursuant to the following criteria:

A. Prerequisites for Open Assistance

Criterion 1. The FDIC must determine that grounds for the appointment of a conservator or receiver exist or likely will exist in the future unless the insured institution's capital levels are increased.[15]

Criterion 2. The FDIC must determine that it is unlikely that the insured institution can meet all currently applicable capital standards without assistance.[16]

B. Financial Criteria for Open Assistance

Criterion 3. The cost of the proposal for open assistance to the FDIC must be determined to be the least-costly alternative available.[17] In order to ensure that the proposal is the least costly alternative, the FDIC will, in many cases, also seek proposals for resolving the insured institution on a closed basis.

Criterion 4. The proposal must provide for sufficient tangible capitalization, including capital infusions from outside private investment sources, to meet the regulatory capital standards of the appropriate Federal banking agency.[18]

Criterion 5. The amount of the assistance and the new capital injected from outside sources must provide for a reasonable assurance of the future viability of the insured institution.[19]

Criterion 6. Applicants must establish quantitative limits on all financial items in the proposal. For example, if applicants request indemnification from the FDIC for certain contingent liabilities, the proposal must include ceilings on the FDIC's financial exposure.

C. Competition

Criterion 7. The FDIC will consider the proposal within a competitive context which provides for the solicitation by the FDIC of interest from qualified entities.[20]

D. FDIC Financial Contribution and Repayment and Repayment

Criterion 8. The FDIC will consider, on a case-by-case basis, whether the proposal shall provide the FDIC with an equity or other financial interest in the resulting institution.[21]

Criterion 9. It is preferable that the proposal for FDIC assistance provide for repayment of such assistance in whole or in part.

E. Impact on Shareholders and Creditors

Criterion 10. Unless the Systemic Risk Exception in section 13(c)(4)(G) of the FDI Act is applicable, FDIC assistance may not be used in any manner to benefit any preexisting shareholder of the insured institution, as determined by the FDIC on a case-by-case basis. In any event, any remaining ownership interest of such shareholders shall be subordinate to the FDIC's right to receive reimbursement for any

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[12] *See* section 38(h)(3) of the FDI Act, 12 U.S.C. 1831o(h)(3).

[13] *See* 12 U.S.C. 1821(a)(4).

[14] *See* the Report of the House Committee on Banking, Finance and Urban Affairs, H.R. Rep. No. 103, 103d Cong., 1st Sess., Part 1, at 32 (1993) and the Conference Report accompanying the RTC Completion Act, H.R. Rep. No. 380, 103d Cong., 1st Sess. at 55 (1993).

[15] This criterion is mandatory. *See* section 13(c)(8)(A) of the FDI Act, 12 U.S.C. 1823(c)(8)(A).

[16] This criterion is mandatory. *See* section 13(c)(8)(A) of the FDI Act, 12 U.S.C. 1823(c)(8)(A).

[17] This criterion is mandatory unless the Secretary of the Treasury makes a systemic risk determination. *See* section 13(c)(4) (A) and (G) of the FDI Act, 12 U.S.C. 1823(c)(4) (A) and (G). Resolution alternatives must be evaluated on a present-value basis, using a realistic discount rate. *See* section 13(c)(4)(B) of the FDI Act, 12 U.S.C. 1823(c)(4)(B). This cost determination is premised on evaluating all possible resolution alternatives and must be made as of the date the FDIC determines to provide section 13(c) assistance. *See* section 13(c)(4)(C) of the FDI Act, 12 U.S.C. 1823(c)(4)(C). In calculating the cost of such assistance, the FDIC must treat any tax revenues that the U.S. Treasury would forego as a result of an assistance transaction, to the extent they are reasonably determinable, as revenues foregone by the applicable deposit insurance fund.

[18] The regulatory capital requirements of the respective Federal banking agencies are stated in: (1) For the Office of the Comptroller of the Currency, 12 CFR Part 3; (2) for the Board of Governors of the Federal Reserve System, 12 CFR Part 225; (3) for the FDIC, 12 CFR Part 325; and (4) for the Office of Thrift Supervision, 12 CFR Part 567.

[19] Viability may be demonstrated by pro forma projections based on reasonable assumptions regarding the use of the assistance, earnings, reserve levels, asset quality trends, anticipated dividends, and capital levels and needs. The viability projections will be reviewed closely by the FDIC for the reasonableness of assumptions. In addition, under normal circumstances, enough new capital should come from outside private sources to represent a vote of confidence in the viability of the assisted institution. By contrast, as an example, a *de minimus* investment which gave the investor an option on the whole institution would not represent a market validation of the assurance of viability.

[20] The FDIC has determined that under 12 U.S.C. 1823(c)(4), in order to demonstrate that the least costly resolution was selected, an assistance transaction generally cannot be the result of a single party negotiation, but rather must be the result of a competitive process.

[21] Under 12 U.S.C. 1823(c)(5), the FDIC is prohibited from purchasing the voting or common stock of an insured institution. However, this restriction does not preclude the acceptance by the FDIC of non-voting preferred stock, warrants, or other forms of equity or equity-equivalent arrangements.

assistance provided. Preexisting debtholders of the insured institution shall make substantial concessions.

F. Due Diligence

Criterion 11. Applicants must consent to unrestricted on-site due diligence reviews by the FDIC (or its agents) and FDIC-monitored, on-site due diligence reviews by all potential qualified acquirers as determined by the FDIC (after consultation with the appropriate Federal banking agency).

G. Acquisition Within a Holding Company Structure

Criterion 12. The proposal must ensure that the assistance will benefit the insured institution and the FDIC and not be diverted to other purposes. If the insured institution is a subsidiary of a holding company, the proposal should be structured so that FDIC assistance is not provided to the holding company, except where compelling reasons require it, and then only when the holding company acts as a conduit to immediately provide the entire amount of assistance to the insured institution.[22]

Criterion 13. If the insured institution is a subsidiary of a holding company, the proposal should be structured so that available resources from the holding company and its other depository institution subsidiaries and/or nondepository subsidiaries are used to make a significant contribution toward minimizing the financial exposure of the FDIC.

H. Assets

Criterion 14. The FDIC may consider, in appropriate circumstances, the acquisition of, or loss-sharing, gain-sharing and other incentive arrangements with respect to, distressed assets.

I. Supervisory Concerns With Respect to Management

Criterion 15. The appropriate Federal banking agency and the FDIC must determine that, during such period of time preceding the date of such determination as the agency or the FDIC considers to be relevant, management of the insured institution was competent and complied with applicable laws, rules, and supervisory directives and orders. In no event will such determination, for assistance transaction purposes, estop or impair the FDIC or the appropriate Federal banking agency from pursuing any enforcement, civil or criminal remedies or redress against any person.[23]

Criterion 16. The FDIC must determine that the management of the resulting institution did not engage in any insider dealing, speculative practice, or other abusive activity.[24]

Criterion 17. The proposal must provide for adequate managerial resources. Continued service of any directors or senior ranking officers who served in a policy-making role at the insured institution, as may be determined by the FDIC, will be subject to approval by the FDIC.

Criterion 18. Any renegotiation or termination of management contracts is to be completed prior to the granting of assistance. Further, the FDIC may review and object to any or all parts of any compensation arrangements (including termination clauses) covering these individuals during the period assistance is outstanding.[25] In general, the failure to terminate a particular management contract prior to the granting of assistance will not stop the FDIC or the appropriate Federal banking agency from subsequently pursuing any enforcement, civil, or criminal remedies or redress against any person by reason of such contract, unless there is a written statement explicitly waiving such rights that is signed by an authorized official of the FDIC and the appropriate Federal banking agency. Notwithstanding the foregoing, any such waiver must take into consideration the requirements of 12 CFR part 359.

J. Fee Arrangements

Criterion 19. All fee arrangements with attorneys, investment bankers, accountants, consultants, and other advisors and agents incident to an open assistance proposal must be disclosed to the FDIC and will be evaluated in determining the cost of the assistance. Excessive fees must be avoided.

IV. Other Information

Any proposal requesting assistance to prevent the closing of an insured institution should be addressed to the appropriate FDIC regional offices of the Division of Supervision and the Division of Resolutions and should provide the amount, terms, and conditions of the assistance requested, as well as the details of the financial support to be provided. This information must be presented in sufficient detail to permit the FDIC to estimate the maximum cost that will be incurred as a result of the proposal and to determine the extent to which the proposal satisfies the criteria of this policy statement.

The proposal must include, with respect to the management determinations set forth in Criteria 15, 16, 17 and 18 in Part III, information about proposed management of the insured institution or the resulting institution, as applicable. Specifically, the proposal must identify all individuals who would exercise significant influence over, or participate in, major policy-making decisions of the insured institution or the resulting institution, without regard to title, salary or compensation. This list would include, without limitation, all directors, the chief executive officer, chief managing official (in an insured state branch of a foreign bank), chief operating officer, chief financial officer, chief lending officer and chief investment officer.

Copies of the proposal also should be provided to (1) the Director of the Division of Supervision, FDIC, 550 17th Street, N.W., Washington, D.C. 20429, (2) the Director of the Division of Resolutions, FDIC, 550 17th Street, N.W., Washington, D.C. 20429, (3) the insured institution's chartering authority, and, (4) if approvals under the Bank Holding Company Act are required, the appropriate Federal Reserve Bank.

By Order of the Board of Directors. Dated at Washington, D.C., this 17th day of June, 1996.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 96–16904 Filed 7–2–96; 8:45 am]

BILLING CODE 6714–01–P

[22] *See* section 13(c)(3) of the FDI Act, 12 U.S.C. 1823(c)(3).

[23] This criterion is mandatory. *See* section 13(c)(8)(A) of the FDI Act, 12 U.S.C. 1823(c)(8)(A). The FDIC interprets section 13(c)(8)(A)(ii) of the FDI Act that the management critrion applies to the management of the resulting institution, including any management retained from the predecessor institution, but *not* including predecessor management that is not retained. This interpretation is based on the relevant statutory provisions and their legislative history and reconciles the management criteria of section 13(c)(8)(A)(ii) with the statutory mandate of minimizing the cost of resolutions and with Congress' desire to encourage early resolutions.

[24] This criterion is mandatory. *See* section 13(c)(8)(A) of the FDI Act, 12 U.S.C. 1823(c)(8)(A).

[25] In addition, under section 18(k)(1) of the FDI Act, the FDIC may ''prohibit or limit, by regulation or order, any golden parachute payment or indemnification payment.'' *See* 12 U.S.C. 1828(k)(1). The terms ''golden parachute payment'' and ''indemnification payment'' are defined in 12 U.S.C. 1828(k)(4) and (5)(A), respectively. *See also* the FDIC's regulations at 12 CFR part 359, which implement section 18(k)(1).

FEDERAL HOUSING FINANCE BOARD

[No. 96–N–4]

Prices for Federal Home Loan Bank Services

AGENCY: Federal Housing Finance Board.

ACTION: Notice of prices for Federal Home Loan Bank services.

SUMMARY: The Federal Housing Finance Board (Board) is publishing the prices charged by the Federal Home Loan Banks (Banks) for processing and settlement of items (negotiable order of withdrawal or NOW), and demand deposit accounting (DDA) and other services offered to members and other eligible institutions.

EFFECTIVE DATE: July 3, 1996.

FOR FURTHER INFORMATION CONTACT: Edward J. Reedy, Associate Director, Regulatory Oversight Division, (202) 408–2959; or Edwin J. Avila, Financial Analyst, (202) 408–2871; Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION: Section 11(e) of the Federal Home Loan Bank Act (Bank Act) (12 U.S.C. 1431(e)) authorizes the Banks (1) to accept demand deposits from member institutions, (2) to be drawees of payment instruments, (3) to engage in collection and settlement of payment instruments drawn on or issued by members and other eligible institutions, and (4) to engage in such incidental activities as are necessary to the exercise of such authority. Section 11(e)(2)(B) of the Bank Act (12 U.S.C. 1431(e)(2)(B)) requires the Banks to make charges for services authorized in that section, which charges are to be determined and regulated by the Board.

Section 943.6(c) of the Board's regulations provides for the annual publication in the Federal Register of all prices for Bank services. The following fee schedules are for the four Banks which offer item processing services to their members and other qualified financial institutions. Most of the remaining Banks provide other Correspondent Services which may include securities safekeeping, disbursements, coin and currency, settlement, electronic funds transfer, etc. However, these Banks do not provide services related to processing of items drawn against or deposited into third party accounts held by their members or other qualified financial institutions.

District 1.—Federal Home Loan Bank of Boston (1996 NOW/DDA Services)

(Services not provided)

District 2.—Federal Home Loan Bank of New York (1996 NOW/DDA Services)

(Does not provide item processing services for third party accounts)

District 3.—Federal Home Loan Bank of Pittsburgh (1996 NOW/DDA Services) Deposit Processing Service (DPS)

DPS Deposit Tickets—$0.5700 Per Deposit, Printing of Deposit Tickets

Deposit items processed for volumes of:	Pass-through pricing varies—tiered by monthly volume:
1–25,000	0.0365 per item (transit)
25,001–58,500	0.0359 per item.
58,501–91,500	0.0354 per item.
91,501–125,000	0.0348 per item.
125,001–158,500	0.0343 per item.
158,501–191,500	0.0337 per item.
191,501–over	0.0332 per item.
Deposit items encoded (west) for volumes of:	Pricing varies—tiered by monthly volume:
1–25,000	$0.0302 per item.
25,001–58,500	0.0297 per item.
58,501–91,500	0.0292 per item.
91,501–125,000	0.0287 per item.
125,001–158,500	0.0282 per item.
158,501–191,500	0.0277 per item.
191,501–over	0.0272 per item.
Deposit items encoded (east) for volumes of:	Pricing varies—tiered by monthly volume:
1–25,000	$0.0323 per item.
25,001–58,500	0.0318 per item.
58,501–91,500	0.0313 per item.
91,501–125,000	0.0308 per item.
125,001–158,500	0.0303 per item.
158,501–191,500	0.0298 per item.
191,501–over	0.0293 per item.
Deposit Items Returned	1.8500 per item.
Deposit Items Photocopied	3.6500 per photocopy.
DPS Photocopies—Subpoena	18.0000 per hour of processing time.
plus	0.2500 per photocopy.
Deposit Items Rejected	0.2300 per rejected item.

(applicable to pre-encoded deposits only)

DPS Transportation (West)	8.5000 per pickup.
DPS Transportation (East)	8.5000 per pickup.
Return Check Courier Service	125.0000 per month.

DEPOSITORY ACCOUNT SERVICES

Mail Deposits	$5.4000 per deposit.
''On-Us'' Returns Deposited:	
Qualified Returns	0.5000 per item.
Raw Returns	2.0000 per item.

Bond Coupon Collection	6.0000 per envelope.
Bond Coupon Returns	15.0000 per coupon.
Bond Collection:	
Bearer	23.0000 per bond.
Registered	31.0000 per bond.
Deposit Transfer Vouchers	5.4000 per item.
Foreign Item Collection	Pass-through.

Electronic Funds Transfer

Incoming Wire Transfers	$6.0000 per transfer.
Outgoing Wire Transfers (Automated/Link)	7.0000 per transfer.
Outgoing Wire Transfers (Manual)	10.0000 per transfer.
Fax of Wire Transfer Advice	To be Announced.
Internal Book Transfer Advice (Automated/Link)	No Charge.
Internal Book Transfers (Manual)	1.0000 No Charge.
Foreign Wire Surcharge	30.0000 No charge.*
Expected Wires Not Received	Penalty Assessed.**
Automated Clearing House (ACH)	
ACH Transaction Settlement (CR)	0.2550 per transaction.
ACH Transaction Settlement (DR)	0.2550 per transaction.
ACH Origination Items (CR)	0.2000 per item.
ACH Origination Items (DR)	0.2000 per item.
ACH Origination Record Set-Up	1.5500 per record.
ACH Origination Items Returned	5.0000 per returned item.
ACH Returns/Notification of Change (NOCs)—Facsimile	2.0600 per transaction.
ACH Returns/NOC's—Telephone	3.3500 per transaction.
ACH/Federal Reserve Board (FRB) Priced Service Charges	0.2700 per transaction.

* Note: This surcharge will be added to the amount of the outgoing funds transfer to produce a single total debit to be charged to the customer's account on the date of transfer.

** Note: Standard penalty is equivalent to the amount of the wire(s) times the daily Interest on Demand (IOD) rate, divided by 360. If the wire not received causes the Bank to suffer any penalty, deficiency, or monetary loss, any and all related costs will also be assessed.

FEDERAL RESERVE SETTLEMENT

FRB Statement Transaction (CR)	$0.5500 per transaction.
FRB Statement Transaction (DR)	0.5500 per transaction.
Reserve Requirement Pass-Thru	25.0000 per month (active).
Correspondent Transaction (DR)	0.5500 per transaction.
Direct Send Settlement	140.0000 per month.
FRB Inclearing Settlement	140.0000 per month.

DEMAND DEPOSIT SERVICES

Clearing Items Processed	$0.1450 per item.
Clearing Items Fine Sorted (for return with Bank statements)	0.0730 per item.
Reconcilement Copies—Manual	0.0870 per copy.
Reconcilement Copies—MagTape	0.0490 per copy.
Reconcilement MagTape Processing	Pass-through.
Reconcilement Copies—Voided	0.0400 per copy.
Check Photocopies—Mail	3.7500 per photocopy.
Check Photocopies—Telephone/Fax	4.5000 per photocopy.
Check Photocopies—Subpoena	0.6520 per photocopy.
Stop Payment Orders	16.2500 per item.
FRB Return Items	0.5000 per item.
FRB Return Items Over $2,500	6.0000 per item.
Collections & Forgeries	15.0000 per item.
Imprinting of Standard Checks	0.1100 per item.
Non-Standard Imprinting	Pass-through.
Microfiche Copies	5.0000 per copy.
Request for Fax/Photocopy	3.0000 per document.

IMAGE STATEMENT SERVICE PROOF OF DEPOSIT (POD) SERVICE

Pricing for each of these premium services is customer-specific, based upon individual service requirements; please call your Marketing representative at (800) 288–3400 for further information.

COIN & CURRENCY SERVICE: WESTERN SERVICE AREA

Currency Orders	$0.3550 per $1,000.*
Coin Orders	2.3500 per box.
Currency Deposits	1.2400 per $1,000.*
Coin Deposits	1.8000 per standard bag.
Coin Deposits (Non-Standard)	2.7500 per non-standard bag.
Coin Deposits (Unsorted)	8.5000 per mixed bag.
Food Stamp Deposits	1.8000 per $1,000.*
Coin Shipment Surcharge	0.2500 per excess bag.**
C&C Transportation (Zone W1)	16.1000 per stop.
C&C Transportation (Zone W2)	27.6000 per stop.
C&C Transportation (Zone W3)	36.8500 per stop.
C&C Transportation (Zone W4)	Negotiable.***

COIN & CURRENCY SERVICE: EASTERN SERVICE AREA

Currency Orders	$0.3100 per $1,000.*

Coin Orders	2.7500 per box.
Currency Deposits	1.2400 per $1,000.*
Coin Deposits	1.8000 per standard bag.
Coin Deposits (Non-Standard)	2.7500 per non-standard bag.
Coin Deposits (Unsorted)	8.5000 per mixed bag.
Food Stamp Deposits	1.8000 per $1,000.*
Coin Shipment Surcharge	0.2500 per excess bag.**
C&C Transportation (Zone E1)	24.6000 per stop.
C&C Transportation (Zone E2)	34.3500 per stop.
C&C Transportation (Zone E3)	52.8500 per stop.
C&C Transportation (Zone E4)	Negotiable.***

* Note: Charges will be applied to each $1,000 ordered or deposited, and to any portion of a shipment not divisible by that standard unit.

** Note: A surcharge will apply to each container (box/bag) of coin in an order/delivery after the first 20 containers.

*** Note: Reserved for remote locations: delivery charges will be negotiated with the courier service on an individual basis.

CHECK PROCESSING (INCLEARING)

Checks Processed for volumes of:	Pricing varies—tiered by monthly volume:
1–25,000	$0.0435 per item.
25,001–58,500	0.0409 per item.
58,501–91,500	0.0383 per item.
91,501–125,000	0.0357 per item.
125,001–158,500	0.0332 per item.
158,501–191,500	0.0306 per item.
191,501–350,000	0.0280 per item.
350,001–500,000	0.0254 per item.
500,001–over	0.0229 per item.

FULL BACKROOM SERVICE (ITEM PROCESSING CHARGES)

Non-Truncated Checks for volumes of:	Pricing varies—tiered by monthly volume:
1–25,000	$0.0570 per item.
25,001–58,500	0.0555 per item.
58,501–91,500	0.0540 per item.
91,501–125,000	0.0525 per item.
125,001–158,500	0.0510 per item.
158,501–191,500	0.0495 per item.
191,501–350,000	0.0480 per item.
350,001–500,000	0.0450 per item.
500,001–over	0.0420 per item.
Truncated Checks for volumes of:	Pricing varies—tiered by monthly volume:
1–25,000	$0.0470 per item
25,001–58,500	0.0455 per item.
58,501–91,500	0.0440 per item.
91,501–125,000	0.0425 per item.
125,001–158,500	0.0410 per item.
158,501–191,500	0.0395 per item.
191,501–350,000	0.0380 per item.
350,001–500,000	0.0350 per item.
500,001–over	0.0320 per item.

MODIFIED BACKROOM SERVICE (ITEM PROCESSING CHARGES)

Non-Truncated Checks for volumes of:	Pricing varies—tiered by monthly volume:
1–25,000	$0.0470 per item.
25,001–58,500	0.0455 per item.
58,501–91,500	0.0440 per item.
91,501–125,000	0.0425 per item.
125,001–158,500	0.0410 per item.
158,501–191,500	0.0395 per item.
191,501–350,000	0.0380 per item.
350,001–500,000	0.0350 per item.
500,001–over	0.0320 per item.
Truncated Checks for volumes of:	Pricing varies—tiered by monthly volume:
1–25,000	$0.0370 per item.
25,001–58,500	0.0355 per item.
58,501–91,500	0.0340 per item.
91,501–125,000	0.0325 per item.
125,001–158,500	0.0310 per item.
158,501–191,500	0.0295 per item.
191,501–350,000	0.0280 per item.
350,001–500,000	0.0250 per item.
500,001–over	0.0220 per item.

CHECK PROCESSING (ASSOCIATED SERVICES)

Over-The-Counter Items	$0.1800 per item.
OTC Item Transportation	10.0000 per month.
Special Cycle Sorting	0.0210 per item.
Mid-Cycle Statement (Purged)	0.5200 per item (Min $2.60).
Mid-Cycle Statement (Non-Purged)	2.6000 per statement.
Check (NOW) Statement Processing:	
Statements using Generic Envelopes	0.0591 per envelope.

Statements using Custom Envelopes	0.0965 per envelope.
Statements using Large Envelopes	0.5582 per envelope.
Additional Stuffer Processing	0.0250 per stuffer.
(One stuffer per statement free—applicable to all additional stuffers	
Selective Stuffer Processing	0.0680 per statement.
Daily Report Postage	Pass-through.
Statement Postage	Pass-through.
Standard Return Calls	1.1300 per item.
Automated Return Calls	0.2626 per item.
Return Calls via Link	0.8000 per item.
Late Return Calls	2.2500 per item.
FRB Return Items	0.5000 per item.
FRB Return Items Over $2,500	6.0000 per item.
Check Photocopies—Mail	3.7500 per photocopy.
Check Photocopies—Telephone/Fax	4.5000 per photocopy.
Check Photocopies—Subpoena	0.6500 per photocopy.
Signature Verification Copies	0.7500 per copy.
Check Retrieval	1.5000 per item.
Magnetic Ink Character Recognition (MICR) Sort Option (Fixed Fee)	26.0000 per month.
MICRSort Option (per item)	0.0300 per item.
Check Reconcilement Service	(See Separate Section).
Collections & Forgeries	15.0000 per item.
Monthly Checks Processed Journal (MCPJ) Microfiche Service	0.0020 per item. (Min. $15.00, Max. $75.00).
Microfiche Copies	5.0000 per copy.
Microfilm Processing	5.2500 per roll.
Microfilm Duplication	10.7500 per roll.
Transportation	Pass-through.
STATEMENT SAVINGS PROCESSING	
Statements using Small Envelopes	$0.0991 per envelope.
Statements using Custom Envelopes	0.1265 per envelope.
Statements using Large Envelopes	0.5682 per envelope.
CHECK RECONCILEMENT SERVICE	
Reconcilement Items Processed	$0.2250 per item.
Stop Payment Orders	10.0000 per item.
Microfiche Copies	3.0000 per copy.
Account Reconcilement	15.0000 per account.

* Note: Individual service charges are detailed in a monthly statement provided specifically for this service. The net of these charges is posted to Check Processing and appears as a single line item on the monthly billing statement.

ACCOUNT MAINTENANCE	
Demand Deposit Accounts	$21.5000 per month, per account.
Telephone Balance Inquiry	2.0000 per telephone call.
Cut-Off Statements	10.0000 per statement.
Paper Advice of Transactions (Daily Transaction Statement)	1.0000 per statement.
Daily Transaction Data via Link	No Charge.

ACCOUNT OVERDRAFT PENALTY

Greater of $75.00 and interest on the amount of the overdraft
(Rate used for calculation equal to the highest posted advance rate plus 3.0%)

ATTENTION: CUSTOMERS RECEIVING TRANSPORTATION CHARGES UNDER ANY SERVICE

Rates and charges relative to transportation vary depending on the location of the office(s) serviced. Details regarding the pricing for the transportation to/from specific institutions or individual locations will be provided upon their subscription to that service. Surcharges may be applicable and will be applied to the customer as effective and without prior notice.

District 4.—Federal Home Loan Bank of Atlanta (1996 NOW/DDA Services)

(Does not provide item processing services for third party accounts.)

District 5.—Federal Home Loan Bank of Cincinnati (1996 NOW/DDA Services)

(Does not provide item processing services for third party accounts.)

District 6.—Federal Home Loan Bank of Indianapolis (1996 NOW/DDA Services)

Cash Management Services (CMS)

Transaction Charges

Paid Check charge	$0.16 per item.
Paper Advice	.065 per item.
Tape Advice	.040 per item.
Stop Payments	6.00 per stop.
Photo copies	2.50 per copy.
Fine Sort Numeric Sequence	.025 per item.
Collection/Return/Exception	5.00.
Daily Statement	2.00.

Transaction Charges

Maintenance	30.00 per month.
Debit Entries	no charge.
Credit Entries	no charge.
Checks (Administration Fee)	.02 per item.
Special Cutoff	no charge.
Infoline	50.00 per month.
VRU (Voice Response Unit)	1.00 per inquiry.

Collected Balances Will Earn Interest at the CMS daily posted rate.

Now Account Services

Transaction Charges

Monthly volume	Safekeeping		Turnaround (daily or cycled)		Complete		Image*	
	Per item	Cost	Per item	Cost	Per item	Cost	Per item	Per stmt
0–5,000	$.048	$240.	$.056	$280.	$.080	$400.	$.06	$.40
5–10,000	$.040	$200.	$.051	$255.	$.078	$390.	$.06	$.40
10–15,000	$.039	$195.	$.047	$235.	$.076	$380.	$.06	$.40
15–25,000	$.034	$340.	$.040	$400.	$.075	$750.	$.06	$.40
25–50,000	$.033	$825.	$.036	$900.	$.073	$1,825.	$.06	$.40
50–75,000	$.029	$725.	$.033	$825.	$.069	$1,725.	$.06	$.40
75–100,000	$.026	$650.	$.030	$750.	$.068	$1,700.	$.06	$.40
100–and up	$.024		$.027		$.067		$.06	$.40

Ancillary Service Fees:

Large Dollar Signature Verification	$0.50.
Over-the-Counters and Microfilm	0.035.
Return Items	2.15.
Photocopies ** and Facsimiles	2.50.
Certified Checks	1.00.
Invalid Accounts	0.50.
Invalid Returns	0.50.
Late Returns	0.50.
No Magnetic Ink Character Recognition/ Over the Counter (MICR/OTC)	0.50.
Settlement Only	100.00 per month.
+ Journal Entries	3.00 each.
Encoding Errors	2.75.
Fine Sort Numeric Sequence	0.02.
Access to Infoline	50.00 per month.
High Dollar Return Notification	no charge.
Debit Entries	no charge.
Credit Entries	no charge.
Standard Stmt. Stuffers (up to 2)***	no charge.

Minimum processing fee of $40.00 per month will apply for total NOW services.

Also included in the above fees—at *no* additional cost are Federal Reserve fees, incoming courier fees, software changes, disaster recovery, envelope discount and inventory.

* Image Monthly Maintenance Fee of $500.00 for 0–32% of accounts; $300.00 for 33–49% of accounts; and $200.00 for 50%+ will be assessed for Image Statements.

** Photocopy request of 50 or more are charged at an hourly rate of $15.00.

*** Each additional (over 2) will be charged at $.02 per statement.

	Fee
Wire Transfer Services:	
In (Per transfer) Domestic	$4.00.
Out (Per transfer) Domestic	7.50.
International Wires	25.00.
Depository Transfer Checks: Per Check	$2.00.
Treasury Tax and Loan Settlement Service: Per Transaction	$2.00.
Charge Card Transaction: Per Transaction	$1.50.
Automated Clearing House (ACH) Service:	
Tape Transmission	$8.50.
or Origination	.045 per item.
Michigan Clearing House, Indiana Clearing House (MACHA, INDEX)	Actual Federal Reserve Charges.
ACH Entries Clearing through our R&T Number	$.25 per item.
Settlement Only	$65.00 per month.
ACH Returns/NOC	$2.50 per item.

	Fee
Coin and Currency:	
Deliveries—Indiana and Michigan:	
Prices based on delivery location, excess bag fee (courier) and order preparation. Cost will vary per institution.	
Returns	$12.50.
Non-Transit Customer	$10.00.
Orders (Member uses own courier)	$15.00.
Special Order*	$15.00.
*Any order placed after normal order has been received and processed by Federal Home Loan Bank.	
Proof and Transit Processing:	
Pre-encoded Items:	
City	$0.04 per item.
Remote Check Processing Center (RCPC)	$0.05 per item.
Other Districts	$0.085 per item.
Unencoded	$0.165 per item.
Food Stamp	$0.14 per item.
Photocopies*	$2.50 per copy.
Adjustments on pre-encoded work	$2.75 per error.
E Z Clear	$0.14 per item.
Coupons	$8.25 per envelope.
Collections	$6.00 per item.
Cash Letter	$2.00 per cash letter.
Deposit Adjustments	$0.30 per adjustment.
Debit Entries	no charge.
Credit Entries	no charge.
Microfilming	no charge.
Mortgage Remittance (Basic Service)	$0.35.
Settlement Only	$100.00 per month.
+ Journal Entries	$3.00 each.
Third Party Fedline	$.50 each.
Courier**	
Marion County	$8.25 per location, per day, per pick-up.
Other	Prices vary per location.
*Multiple Photocopies (more than 50 per request) $15.00 per hour.	
**Includes branch work transfer and correspondence to and from Federal Home Loan Bank.	
All Fees Subject to Change.	

District 7.—Federal Home Loan Bank of Chicago (1996 NOW/DDA Services)

(Does not provide item processing services for third party accounts)

District 8.—Federal Home Loan Bank of Des Moines (1996 NOW/DDA Services)

Demand Account Analysis Fee Schedule:	
Account Maintenance	$12.00.
Account Reconciliation	35.00.
Electronic Cash Manager	25.00 (plus connect charge).
Non-ECM Distribution of Reports	75.00.
Drafts Paid:.	
Truncated	0.045.
Non-Truncated	0.055.
Stop Payments	7.00.
Ledger Entries—Credits	0.35.
Ledger Entries—Debits	0.15.
Bank Wires In	3.00.
Bank Wires Out	4.00.
ACH Settlement Charges	1.00.
Special Cut-Off Statements	10.00.
Account Reconciliation Tape Issues	0.015.
Issue Encoding	0.0225.
Pre-Encoded Issues	0.015.
Collections:	
Bonds/Coupons Per Envelope Local/Government	5.00.
Out-of-Town	7.00.
Domestic/Checks	15.00 (Plus Actual).
Foreign	25.00 (Plus Actual).
Miscellaneous	Actual.
ACH Fee Schedule:	
FRB/ACH Pass Thru	Actual.
FRB/ACH Settlement	$1.00.
Origination Service:	
Set Up New Account (One Time Charge)	50.00.
Formatted Tape	10.00.
Reformat Tape	10.00.
Per Item On Tape*	.05.

Paper Input: Monthly Maintenance	20.00.
Data Entry Per Item*	.25.
Day Cycle Deposit Charge:	
Local DB/CR	.0550.
Out-of-State DB/CR	.0550.
Prenotes	.0550.
Addendas	.0550.
Night Cycle Deposit Charge Premium:	
Local DB/CR	.07.
Out-of-State DB/CR	.07.
Prenotes	.07.
Addendas	.07.
Warehousing Per Item	.0050.
Originator Volume Discount—Monthly:	
5,000 to 20,000	−.005.
Over 20,000	−.01.
Return Items	1.50.
Transportation Charges	Negotiable.
Special Service/Handling	Negotiable.
Telephone Advice:	
Per Call	2.00.
Miscellaneous	Actual.
Minimum Monthly Billing	50.00.

*Plus ACH Origination Fee.

Des Moines Regional Center—Deposit Processing Fee Schedule

Description	Below 50,000	50,000–100,000	100,000–300,000	Over 300,000
Deposited Item Charges:				
Local	.02	.015	.014	.011
RCPC	.030	.025	.022	.020
RCPC-Premium	.045	.045	.045	.045
Transit	.0525	.051	.05	.049

Other Fees

Encoding	$.0225.
Return Items: Return Items	.75/item.
Special Handling:	
Subtotal by Office	1.50/office total.
Individual Entries	.50/entry.
Telephone Notification less than $2,500	.60/item.
Large Dollar Notification (Reg. J.)	3.00/item.
Collection/Settlement Services:	
Bonds/Coupons Per Envelope:	
Local/Government	5.00.
Out-of-Town	7.00.
Domestic/Checks	15.00 (Plus Actual).
Canadian Items	.25/item.
Foreign	25.00 (Plus Actual).
Miscellaneous	Actual.
Federal Reserve Settlement Entries	1.00/entry.
Food Coupons	.02.
Non-Processable Items	15/item.
Cash Services:	
Currency/Coin Orders	2.00/order.
Special Orders	Standard order fee plus actual charges.
Foreign Currency Orders	2.50/order.
Coin—per roll	.0385/roll.
Currency/Coin Deposits:	
Standard Packaging	.50.
Non-Standard Packaging	10.00.
Foreign Currency Deposits	5.00/deposit.
Currency Per Strap	.25.
Delivery Charge (includes return delivery to FRB Chicago)	53.00/stop.
Balance/Availability Reporting	30.00/month.
Endpoint Analysis	20.00/day.
Photocopies	2.75/copy.
Research	20.00/hour.

Kansas City Regional Center—Deposit Processing Fee Schedule

Description	Below 25,000	25,000–50,000	50,000–250,000	Over 250,000
Deposited Item Charges:				
Local	0.0170	0.0160	0.0150	0.0075–0.0140
Regional	0.0280	0.0250	0.0220	0.0150–0.021
Country	0.0280	0.0250	0.0220	0.0150–0.021
Transit	0.0540	0.0530	0.0510	0.0435–0.050

Other Services

Encoding:	
Below 25,000	$0.0300.
25,000–50,000	0.0250.
50,000–250,000	0.0225.
Over 250,000	0.0200.
Return Items:	
0–999	0.75.
1,000 & Over	0.65.
Special Handling:	
Subtotal by Office	1.50/office total.
Selected Account Chargeback	.025/item.
Individual Entries.	50/entry.
Telephone Notification less than $2,500	.60/item.
Large Dollar Notification (Reg. J.)	3.00/item.
Collection/Settlement Services:	
Bonds/Coupons Per Envelope:	
Local/Government	5.00.
Out-of-Town	7.00.
Domestic/Checks	15.00 (Plus Actual).
Canadian Items	.25/item.
Foreign	25.00 (Plus Actual).
Miscellaneous	Actual.
Federal Reserve Settlement Entries	1.00/entry.
Food Coupons	.02.
Non-Processable Items	0.15.
Cash Services:	
Currency/Coin Orders	3.00/order.
Special Orders	3.00/order, plus actual charges.
Foreign Currency Orders	5.50/order.
Currency/Coin Deposits:	
Standard Packaging	.50/deposit.
Non-Standard Packaging	10.00/deposit.
Foreign Currency Deposits	5.00/deposit.
Balance/Availability Reporting	30.00/month.
Endpoint Analysis	30.00/each, over two per year.
Photocopies/Microfilm Copies	2.75/copy.
Audit	2.75/copy or 20.00/hour + .50 copy, whichever is less.
Research	20.00/hour.

Minneapolis Regional Center

Deposit Processing Fee Schedule

Description	Below 25,000	25,000–150,000	Over 150,000
Deposited Item Charges:			
Local	.02	.016	.014
RCPC	.032	.025	.020
RCPC-Premium	.045	.04	.032
Country	.04	.038	.036
Transit	.063	.058	.052

Other Services

Encoding	.0225.
Return Items	.75/item.
Special Handling:	
Subtotal by Office	1.50/office total.
Individual Entries	.50/entry.

Telephone Notification less than $2,500	.60/item.
Large Dollar Notification (Reg. J.)	3.00/item.
Collection/Settlement Services:	
Bonds/Coupons Per Envelope:	
Local/Government	5.00.
Out-of-Town	7.00.
Domestic/Checks	15.00 (Plus Actual).
Canadian Items	.25/item.
Foreign	25.00 (Plus Actual).
Miscellaneous	Actual.
Federal Reserve Settlement Entries	1.00/entry.
Food Coupons	.04.
Non-Processable Items	.15/item.
Cash Services:	
Currency/Coin Orders	2.00/order.
Special Orders	Standard order fee plus actual charges.
Foreign Currency Orders	2.50/order.
Currency/Coin Deposits	2.00/order.
Standard Packaging	.50.
Non-Standard Packaging	10.00.
Foreign Currency Deposits	5.00/deposit.
Balance/Availability Reporting	30.00/month.
Endpoint Analysis	20.00/day.
Photocopies	2.75/copy.
Research	20.00/hour.

Minneapolis—Out-of-District Customers

Description	Below 25,000	25,000–100,000	Over 100,000
Deposited Item Charges:			
Local	.0250	.0210	.0160
RCPC	.0370	.0300	.0200
RCPC-Premium	.0500	.0450	.0400
Country	.0450	.0430	.0380
Transit	.0730	.0680	.0580

Other Services

Encoding	.0250.
Return Items	.75/item.
Special Handling:	
Subtotal by Office	1.50/office total.
Individual Entries	.50/entry.
Telephone Notification less than $2,500	.60/item.
Large Dollar Notification (Reg. J.)	3.00/item.
Collection/Settlement Services:	
Bonds/Coupons Per Envelope:	
Local/Government	5.00
Out-of-Town	7.00
Domestic/Checks	15.00 (Plus Actual).
Canadian Items	.25/item.
Foreign	25.00 (Plus Actual).
Miscellaneous	Actual.
Federal Reserve Settlement Entries	1.00/entry.
Food Coupons	.04.
Non-Processable Items	.15/item.
Cash Services:	
Currency/Coin Orders	2.00/order.
Special Orders	Standard order fee plus actual charges.
Currency/Coin Deposits:	
Standard Packaging	.50.
Non-Standard Packaging	2.00.
Foreign Currency Deposit	5.00/month.
Endpoint Analysis	20.00/day.
Photocopies	2.75/copy.
Research	20.00/hour.

St. Louis Regional Center—Deposit Processing Fee Schedule

Deposit Item Charges:	
Local	.013.

RCPC	.017.
Country	.017.
Transit	.052.
Package Sort:	
Local	.009.
RCPC	.009.
Country	.016.
Transit	.048.

Note: Package Sort prices are available to customers who present deposits separated by item type.

Out-of-District Customers

Deposit Item Charges:	
Local	.017.
RCPC	.020.
Country	.020.
Transit	.055.
Package Sort:	
Local	.013.
RCPC	.019.
Country	.019.
Transit	.053.

Note: Package Sort prices are available to customers who present deposit separated by item type.

In and Out-of-District Customers
Other Services

Encoding	.0225.
Return Items:	
Return Items	.75/item.
Special Handling:	
Subtotal by Office	1.50/office total.
Individual Entries	.50/entry.
Telephone Notification less than $2,500	.60/item.
Large Dollar Notification (Reg. J.)	3.00/item.
Collection/Settlement Services:	
Bonds/Coupons Per Envelope:	
Local/Government	5.00.
Out-of-Town	7.00.
Domestic/Checks	15.00 (Plus Actual).
Canadian Items	.25/item.
Foreign	25.00 (Plus Actual).
Miscellaneous	Actual.
Federal Reserve Settlement Entries	1.00/entry.
Food Coupons	.02.
Non-Processable Items	.15/item.
Cash Services:	
Currency/Coin Orders	4.00/order.
Special Orders	Standard order fee plus actual charges.
Currency/Coin Deposits:	
Standard Packaging	.50.
Non-Standard Packaging	20.00.
Balance/Availability Reporting	30.00/month.
Endpoint Analysis	20.00/day.
Photocopies	2.75/copy.
Research	20.00/hour.

Des Moines Regional Center—Inclearing Processing Fee Schedule

Monthly capture volume	Basic Fee (Capture)	Daily sort [1] [2]	Cycle/Monthly Sort [2]
1–25,000	.020	.017	.020
25,001–50,000	.016	.013	.016
50,001–75,000	.014	.011	.014
75,001–175,000	.012	.009	.012
175,001–400,000	.010	.007	.010
400,001–750,000	.009	.006	.009
750,001–Over	.007	.004	.007
Reject Reentry	.04/item		
Posting File	.0005/item		

[1] Surcharge for same-day return: 15%.
[2] Fees for daily and cycle/monthly return are in addition to the basic fee.

Return Items

Basic Service	.75–2.65

Telephone Request	3.50
Forward Collection Only:	
Local	.20
RCPC	.20
Transit	.50
Regulation J Notification	3.00/item.

Other Services

Support Services:	
Facsimile Transmission	1.50/transmission.
Microfiche Monthly Reports	25.00/month.
Microfilm of Checks Captured	.01/item.
Original Item Return2	2.75/item.
Research	20.00/hour.
Telephone Check Inquiry	1.00/inquiry.
Signature Verification	.35/item.
Counter Items: With MICR Encoding	.04/item.
Photocopies/Microfilm Copies	2.75/item.
Audit	2.75/item or 20.00/hour + .50/copy, whichever is less.
Settlement:	
Daily Reporting	25.00/month.
Settlement Only (Inclearings or returns)	100.00/month.
Third Party Settlement	350.00/month.
Special Sorting Options:	
Account Separators	.003/item ($175.00 minimum).
Truncated Items Returned Unsorted	.002/item.
Truncated Items Returned Sorted	.012/item ($250.00 minimum).
Sequence Number Order	.005/item.
Other Miscellaneous Fine Sorting	.005/item.

Special Services

Backup Service:	
Set-Up Charge	500.00–1,500.00 one time.
Monthly Maintenance	Negotiable plus actual monthly usage.
File Maintenance:	
Mergers/Acquisitions	500.00/each.
Multiple R/T Numbers	50.00/number/month.
Parameter File Maintenance	25.00/change.
Multiple Sorter Pockets	300.00/pocket/month.
Data Servicer Conversion	500.00/conversion.
Minimum Monthly Charge (Excluding Actual Charges)	250.00

Kansas City Regional Center

Inclearing Processing Fee Schedule

Monthly capture volume	Basic fee (capture)	Daily sort [1 2]	Cycle/monthly sort [2]
1–50,000	0.16	.013	.016
50,001–100,000	.014	.011	.014
100,001–175,000	.012	.009	.012
175,001–400,000	.010	.007	.010
400,001–750,000.	009	.006	.009
750,001–Over	.007	.004	.007
Reject Reentry	.04/item	.....	.....
Posting File	.0005/item	.....	.....

Outgoing Return Items

Volume levels	Basic service [3]	Telephone request [3]	Forward Collection Only [4]	
			Unqualified	Qualified [5]
1–750	$1.60–2.75	$3.50	$.80	$.40
751–2,5000	.95–1.95	NA	.73	.33
2,501–Over	0.65–1.65	NA	.65	.26
Regulation J Notification	3.00/item			

[1] Surcharge for same-day daily return: 15%
[2] Fees for daily and cycle/monthly return are in addition to the basic fee.

Other Services

Support Services:	
Facsimile Transmission	1.50/transmission.
Microfiche Monthly Reports	25.00/month.
Microfilm of Checks Captured	Negotiated.
Original Item Return	2.75/item.
Research	20.00/hour.
Telephone Check Inquiry	1.00/inquiry.
Signature Verification	.35/item.
Counter Items: With MICR Encoding	.04/item.
Photocopies/Microfilm Copies:	
Mail or Courier	2.75/item.
Fax	3.25/item.
Audit	2.75/item or 20.00/hour + .50/copy, whichever is less.
Settlement:	
Daily Reporting	25.00/month.
Settlement Only (Inclearings or Returns)	100.00/month.
Third Party Settlement	350.00/month.
Special Sorting Options:	
Account Separators	.003/item ($175.00 minimum).
Truncated Items Returned Unsorted	.002/item.
Truncated Items Returned Sorted	.012/item ($250.00 minimum).
Sequence Number Order	.005/item.
Other Miscellaneous Fine Sorting	.005/item.

Special Services

Backup Service:	
Set-Up Charge	500.00–1,500.00 one time.
Monthly Maintenance	Negotiable plus actual monthly usage.
File Maintenance:	
Mergers/Acquisitions	500.00/each.
Multiple R/T Numbers	50.00/number/month.
Parameter File Maintenance	25.00/change.
Multiple Sorter Pockets	300.00/pocket/month.
Data Servicer Conversion	500.00/conversion.
Minimum Monthly Charge (Excluding Actual Charges)	250.00.

Minneapolis Regional Center—Inclearing Processing Fee Schedule

Monthly capture volume	Basic fee (capture)	Daily sort [1] [2]	Cycle/monthly sort [2]
1–25,000	.020	.017	.020
25,001–50,000	.016	.013	.016
50,001–75,000	.014	.011	.014
75,001–175,000	.012	.009	.012
175,001–400,000	.010	.007	.010
400,001–750,000	.009	.006	.009
750,001–Over	.007	.004	.007
Reject Reentry	.04/item	.....	.....
Posting File	.0005/item	.....	.....

[1] Surcharge for same-day return: 15%.
[2] Fees for daily and cycle/monthly return are in addition to the basic fee.

Return Items:	
Basic Service	1.30–2.75
Telephone Request	3.50
Forward Collection Only:	
Qualified	.50
Raw	1.40
Regulation J Notification	3.00/item.

Other Services

Support Services:	
Facsimile Transmission	1.50/transmission.
Microfiche Monthly Reports	25.00/month.
Microfilm of Checks Captured	Negotiated.
Original Item Return	2.75/item.
Research	20.00/hour.
Telephone Check Inquiry	1.00/inquiry.
Signature Verification	.35/item.

Counter Items: With MICR Encoding	.04/item.
Photocopies/Microfilm Copies	2.75/item.
Audit	2.75/item or 20.00/hour + .50/copy, whichever is less.
Settlement:	
Daily Reporting	25.00/month.
Settlement Only (Inclearings or Returns)	100.00/month.
Third Party Settlement	350.00/month.
Special Sorting Options:	
Account Separators	.003/item ($175.00 minimum).
Truncated Items Returned Unsorted	.002/item.
Truncated Items Returned Sorted	.012/item ($250.00 minimum).
Sequence Number Order	.005/item.
Other Miscellaneous Fine Sorting	.005/item.

Special Services

Backup Service:	
Set-Up Charge	500.00–1,500.00 one time.
Monthly Maintenance	Negotiable plus actual monthly usage.
File Maintenance	
Mergers/Acquisitions	500.00/each.
Multiple R/T Numbers	50.00/number/month.
Parameter File Maintenance	25.00/change.
Multiple Sorter Pockets	300.00/pocket/month.
Data Servicer Conversion	500.00/conversion.
Minimum Monthly Charge (Excluding Actual Charges)	250.00.

St. Louis Regional Center—Inclearing Processing Fee Schedule

Monthly capture volume	Basic fee (capture)	Daily sort [1] [2]	Cycle/month sort [2]
1–25,000	.020	.017	.020
25,001–50,000	.016	.013	.016
50,001–75,000	.014	.011	.014
75,001–175,000	.012	.009	.012
175,001–400,000	.010	.007	.010
400,001–750,000	.009	.006	.009
750,001–Over	.007	.004	.007

[1] Surcharge for same-day daily return: 15%.
[2] Fees for daily and cycle/monthly return are in addition to the basic fee.

Reject Reentry	.04/item.	
Posting File	.0005/item.	
Return Items:		
Basic Service	1.25–2.25	1.25–2.25
Forward Collection Only	Qualified	Non-Qualified
Local (8th District)	.35	.60
Transit	.60	.85
Regulation J Notification	3.00/item.	

Other Services

Support Services:	
Facsimile Transmission	1.50/transmission.
Microfiche Monthly Reports	25.00/month.
Microfilm of Checks Captured	Negotiated.
Original Item Return	2.75/item.
Research	20.00/hour.
Telephone Check Inquiry	1.00/inquiry.
Signature Verification	.35/item.
Counter Items: With MICR Encoding	.04/item.
Photocopies/Microfilm Copies	2.75/item.
Audit	2.75/item or 20.00/hour + .50/copy, whichever is less.
Settlement:	
Daily Reporting	25.00/month.
Settlement Only (Inclearings or Returns)	100.00/month.
Third Party Settlement	350.00/month.
Special Sorting Options:	
Account Separators	.003/item ($175.00 minimum).
Truncated Items Returned Unsorted	.002/item.
Truncated Items Returned Sorted	.012/item ($250.00 minimum).
Sequence Number Order	.005/item.

Other Miscellaneous Fine Sorting	.005/item.

Special Services

Backup Service:	
Set-Up Charge	500.00–1,500.00 one time
Monthly Maintenance	Negotiable plus actual monthly usage.
File Maintenance:	
Mergers/Acquisitions	500.00/each.
Multiple R/T Numbers	50.00/number/month.
Parameter File Maintenance	25.00/change.
Multiple Sorter Pockets	300.00/pocket/month.
Data Servicer Conversion	500.00/conversion.
Minimum Monthly Charge (Excluding Actual Charges)	250.00.

Minneapolis Regional Center Out-of-District Customers—Inclearing Processing Fee Schedule

Monthly capture volume	Basic fee (capture)	Daily sort [1,2]	Cycle/ monthly sort [2]
1–25,000	.021	.018	.021
25,001–50,000	.017	.014	.017
50,001–75,000	.015	.012	.015
75,001–175,000	.013	.010	.013
175,001–400,000	.011	.008	.011
400,001–750,000	.010	.007	.010
750,001–Over	.008	.005	.008

[1] Surcharge for same day daily return: 15%.
[2] Fees for daily and cycle/monthly return are in addition to the basic fee.

Reject Reentry	.04/item.
Posting	.0005/item.
Return Items:	
Basic Service	1.30–2.75.
Telephone Request	3.50.
Forward Collection Only:	
Qualified	0.50.
Raw	1.40.
Regulation J Notification	3.00/item.
Other Services:	
Support Services:	
Facsimile Transmission	1.50/transmission.
Microfiche Monthly Reports	25.00/month.
Microfilm of Checks Captured	Negotiated.
Original Item Return	2.75/item.
Research	20.00/hour.
Telephone Check Inquiry	1.00/inquiry.
Signature Verification	.35/item.
Counter Items:	
With MICR Encoding	.04/item.
Photocopies/Microfilm Copies	2.75/item.
Audit	2.75/item or 20.00/hour + .50/copy whichever is less.
Settlement:	
Daily Reporting	25.00/month.
Settlement Only (Inclearings or Returns)	100.00/month.
Third Party Settlement	350.00/month.
Special Sorting Options:	
Account Separators	.003/item ($175.00 minimum).
Truncated Items Returned Unsorted	.002/item.
Truncated Items Returned Sorted	.012/item ($250.00 minimum).
Sequence Number Order	.005/item.
Other Miscellaneous Fine Sorting	.005/item.
Special Services:	
Backup Services:	
Set-Up Charge	500.00–1,500 one time.
Monthly Maintenance	Negiotiable plus actual monthly usage.
File Maintenance:	
Mergers/Acquisitions	500.00/each.
Multiple R/T Numbers	50.00/number/month.
Parameter File Maintenance	25.00/change.
Multiple Sorter Pockets	300.00/pocket/month.
Data Servicer Conversion	500.00/conversion.
Minimum Monthly Charge (Excluding Actual Charges)	250.00.

St. Louis Regional Center, Out-of-District Customers—Inclearing Processing Fee Schedule

Monthly capture volume	Basic fee (capture)	Daily sort [1 2]	Cycle/ monthly sort [2]
1–25,000	.021	.018	.021
25,001–50,000	.017	.014	.017
50,001–75,000	.015	.012	.015
75,001–175,000	.013	.010	.013
175,001–400,000	.011	.008	.011
400,001–750,000	.010	.007	.010
750,001–Over	.008	.005	.008

[1] Surcharge for same day daily return: 15 percent.
[2] Fees for daily and cycle/monthly return are in addition to the basic fee.

Reject Reentry		.04/item.
Posting		.0005/item.
Basic Service [1]	1.25–225	1.25–2.25
Forward Collection Only	Qualified	Non-Qualified
Local (8th District)	.35	.60
Transit	.60	.85

Regulation J Notification: 3.00/item.

[1] Full service processing. Excludes Large Dollar notification required under Regulations CC and J.

Other Services

Support Services:	
Facsimile Transmission	1.50/transmission.
Microfiche Monthly Reports	25.00/month.
Microfilm of Checks Captured	Negotiated.
Original Item Return	2.75/item.
Research	20.00/hour.
Telephone Check Inquiry	1.00/inquiry.
Signature Verification	.35/item.
Counter Items:	
With MICR Encoding	.04/item.
Photocopies/Microfilm Copies	2.75/item.
Audit	2.75/item or 20.00/hour+.50/copy whichever is less.
Settlement:	
Daily Reporting	25.00/month.
Settlement Only (Inclearings or Returns)	100.00/month.
Third Party Settlement	350.00/month.
Special Sorting Options:	
Account Separators	.003/item ($175.00 minimum).
Truncated Items Returned Unsorted	.002/item.
Truncated Items Returned Sorted	.012/item ($250.00 minimum).
Sequence Number Order	.005/item.
Other Miscellaneous Fine Sorting	.005/item.

Special Services

Backup Services:	
Set-Up Charge	500.00–1,500 one time.
Monthly Maintenance	Negiotiable plus actual monthly usage.
File Maintenance:	
Mergers/Acquisitions	500.00/each.
Multiple R/T Numbers	50.00/number/month.
Parameter File Maintenance	25.00/change.
Multiple Sorter Pockets	300.00/pocket/month.
Data Servicer Conversion	500.00/conversion.
Minimum Monthly Charge (Excluding Actual Charges)	250.00.

Des Moines Regional Center—Proof-of-Deposit (POD) Fee Schedule

Processing Fees

Encoding	.0225.
Capture	.009.
Fine Sorting:	
Exception Cycle Sort	.003.
Account Sequence Sort	.003.
Serial Sort	.005.

Reject	.04.

Ancillary Services

Return Items:	
Basic Service	.75–2.65.
Telephone Request	3.50.
Large Item Notification	3.00.
Signature Verification/Review	.35.
Deposit/Customer Corrections	.25.
Fax Transmissions	1.50.
Microfiche Monthly Reports	25.00.
Research	20.00/hour.
Telephone Check Inquiry	1.00/inquiry .
Microfilm	Negotiated.
Deposit Returns (incoming)	.75.

Clearing Fees

Deposit Items:	
Local	.01.
RCPC	.018.
RCPC Premium	.043.
Transit	.049.
Forward Collection Returns:	
Local	.20.
RCPC	.20.
Transit	.50.

Terms of Account

Payment of Processing Fees and Clearing Fees are made by a direct charge to the account or by payment of our invoice or by balance compensation. Payment of Relationship Fees are made only by balance compensation. The earnings credit rate is indexed to the Bank's yield on overnight Fed Funds for the current month. Interest that approximates the Fed Funds rate will be paid to the account for excess balances, and deficient balances will be charged at the average Fed Funds rate of the current month.

Kansas City Regional Center—Proof-of-Deposit (POD) Fee Schedule

Processing Fees

Encoding	.0225.
Capture	.009.
Fine Sorting:	
Exception Cycle Sort	.003.
Account Sequence Sort	.003.
Serial Sort	.005.
Rejects	.04.

Ancillary Services

Return Items:	
Basic Service :	
1–750	1.60–2.75.
751–2,500	.95–1.95.
2,501–Over	.65–1.65.
Telephone Request	3.50.
Large Item Notification	3.00.
Signature Verification/Review	.35.
Deposit/Customer Corrections	.25.
Fax Transmissions	1.50.
Microfiche Monthly Reports	25.00.
Research	20.00/hour.
Telephone Check Inquiry	1.00/inquiry.
Microfilm	Negotiated.
Deposit Returns (incoming):	
0–999	.75.
1,000–Over	.65.

Clearing Fees

Deposit Items:	
Local	.01.
Country	.021.
Transit	.045.

Forward collection returns (Outgoing)	Qualified	Nonqualified
1–750	0.40	0.80

Forward collection returns (Outgoing)	Qualified	Nonqualified
751–2,500	0.33	0.73
2,501–Over	0.26	0.65

Terms of Account

Payment of Processing Fees and Clearing Fees are made by a direct charge to the account or by payment of our invoice or by balance compensation. Payment of Relationship Fees are made only by balance compensation. The earnings credit rate is indexed to the Bank's yield on overnight Fed Funds for the current month. Interest that approximates the Fed Funds rate will be paid to the account for excess balances, and deficient balances will be charged at the average Fed Funds rate of the current month.

Minneapolis Regional Center—Proof-of-Deposit (POD) Fee Schedule Processing Fees

Encoding	.0225.
Capture	.009.
Fine Sorting:	
Exception Cycle Sort	.003.
Account Sequence Sort	.003.
Serial Sort	.005.
Rejects	.04.

Ancillary Services

Return Items:	
Basic Service	1.30–2.75.
Telephone Request	3.50.
Large Item Notification	3.00.
Signature Verification/Review	.35.
Deposit/Customer Corrections	.25.
Fax Transmissions	1.50.
Microfiche Monthly Reports	25.00.
Research	20.00/hour.
Telephone Check Inquiry	1.00/inquiry.
Microfilm	Negotiated.
Deposit Returns (incoming)	.75.

Clearing Fees

Deposit Items:	
Local	.014.
RCPC	.020.
RCPC Premium	.032.
Transit	.036.
Forward Collection Returns:	
Qualified	.50.
Non-Qualified (Raw)	1.40.

Terms of Account

Payment of Processing Fees and Clearing Fees are made by a direct charge to the account or by payment of our invoice or by balance compensation. Payment of Relationship Fees are made only by balance compensation. The earnings credit rate is indexed to the Bank's yield on overnight Fed Funds for the current month. Interest that approximates the Fed Funds rate will be paid to the account for excess balances, and deficient balances will be charged at the average Fed Funds rate of the current month.

St. Louis Regional Center—Proof-of-Deposit (POD) Fee Schedule

Processing Fees

Encoding	.0225.
Capture	.009.
Fine Sorting:	
Exception Cycle Sort	.003.
Account Sequence Sort	.003.
Serial Sort	.005.
Rejects	.04.

Ancillary Services

Return Items:	
Basic Service	1.25–2.25.
Large Item Notification	3.00.
Signature Verification/Review	.35.
Deposit/Customer Corrections	.25.
Fax Transmissions	1.50.
Microfiche Monthly Reports	25.00.

Research	20.00/hour.
Telephone Check Inquiry	1.00/inquiry.
Microfilm	Negotiated.
Deposit Returns (incoming)	.75.

Clearing Fees

Deposit Items:	
Local	.009.
RCPC	.016.
RCPC Premium	.016.
Transit	.048.
Forward Collection Returns:	
Local (8th District)	.35–.60.
Transit	.60–.85

Terms of Account

Payment of Processing Fees and Clearing Fees are made by a direct charge to the account or by payment of our invoice or by balance compensation. Payment of Relationship Fees are made only by balance compensation. The earnings credit rate is indexed to the Bank's yield on overnight Fed Funds for the current month. Interest that approximates the Fed Funds rate will be paid to the account for excess balances, and deficient balances will be charged at the average Fed Funds rate of the current month.

Des Moines, Minneapolis, Kansas City and St. Louis Regional Centers

Lockbox Fee Schedule

Basic Service

Open envelope; screen per instructions; verify payee, signature and amount. Record data on check, remittance, envelope, or correspondence as requested. Balance checks to remittances and post credits to account specified.

Mortgage	$.12–.25.
Consumer	.09–.15.
Retail-Commercial	.07–.15.
Wholesale-Commercial	.15–.55.
Credit Card	.07–.15.
Data Capture and Transmit: Includes use of derogatory file as required. Rejects pulled, balanced and returned per instructions.	.015–.030.
Item Preparation Charge; Data Entry as required. Includes preparation of new or substitute machine-readable documents.	.05/item.
Microfilm Remittances or Checks	.01/item.
Credit/Posting Advice	.25/advice.
Photocopies:	
Recurring	.05/copy.
On Request	.25/copy.
Facsimile Transmissions:	
Recurring	.85/page.
On Request	1.50/page.
Microfilm Copies	2.75/copy.
Payment Discounts Calculated	.25/discount.
Telephone Inquiry or Notification	1.00/call.
Foreign Item Processing:	
U.S. Dollars	.75/check.
Foreign Currency	3.50/check.
Process Cash Payment	5.00/each.
Daily Reporting	50.00/month.
Courier/Postage	Actual.
Storage: Envelopes and remittance material retained unsorted for 14 days and destroyed Safekeeping beyond 14 days	Negotiated.
Minimum Monthly Billing (Excludes Actual Charges)	175.00.
New Account Set-Up	50.00–500.00.
Special Services	Negotiated.

Des Moines, Minneapolis, Kansas City and St. Louis Regional Centers—Statement Rendering Fee Schedule

Statements Per Month, Non-Truncated:	
First 5,000	$.18.
Next 5,000	.165.
Over 10,000	.15.
Statements Per Month, Truncated	.05.
Statement Inserts	.0.
Other Mailings	.05.
Surcharge for One Cycle Per Month	10%.
Fine Sort Counter Items for Statement Insertion	005.
Sort Counter Items Without MICR	.02.
Courier, Postage and Envelopes	Actual.
Pre-Sort Only	.02/item.
Statement Printing (Laser Printer) Customer Provided Paper	.03/page.

FHLB Provided Paper	.04/page.
Custom Forms/Logos	Actual cost.

Note: Members that have changed Data Processors or have more than one MICR account number corresponding to one statement account number are subject to additional fees.

Pricing to Forward Cycle Items to Data Processor for Statement Handling

Insertion of Trigger/Separator Tickets:	
Sorting	$.003/item.
Trigger Ticket Expense	.012/account.
Insertion of Rejects	.040/reject.
Photocopies of Missing Items	2.75/copy.
Courier, Postage and Boxes	Actual.
Monthly Fee for Special Handling	25.00/cycle ($75.00 minimum).

District. 9.—Federal Home Loan Bank of Dallas (1996 NOW/DDA Services)

(Does not provide item processing services for third party accounts)

District. 10.—Federal Home Loan Bank of Topeka (1996 NOW/DDA Services)

Deposit Processing Fees: (all fees per item unless other indicated)

Processing Center	Local item	Other local	Transit	Other transit
Colorado	$0.015	$0.029	$0.040	$.067
Kansas	0.015	0.039	0.040	.067
Nebraska	0.015	0.038	0.040	.067
Oklahoma	0.015	0.038	0.040	.067

Encoding Fee	0.023 per item.
Rejects on Encoded Items	0.15 per item.
Returns/Redeposits	0.80 per item.
Collections	6.50 per item.
Coin and Currency	2.50 per phone call.
Courier/Armored Car Cost	At Cost.
Research	0.15 per item plus $12/hour.
ACH Settlement	.50 per trans.
Photocopy	2.25 per item.
Facsimile	1.75 per page.
Postage	At Cost.

Proof of Deposit Processing Fees: (all fees per item unless otherwise indicated).

Items Per Month	Data Capture	Archival	Cycle	Account Sort
1–50,000	$0.011	$0.012	$0.009	$0.008.
50,001–100,000	0.008	0.012	0.006	0.008.
100,001–150,000	0.006	0.010	0.004	0.006.
150,001–250,000	0.005	0.010	0.003	0.006.
250,001–500,000	0.004	0.010	0.002	0.006.
500,001–Above	0.004	0.009	0.002	0.006.

Inclearing Processing Fees: (all fees per item unless otherwise indicated).

Items Per Month	Data Capture	Archival	Cycle	Account Sort
1–50,000	$0.009	$0.012	$0.009	$0.008.
50,001–100,000	0.006	0.012	0.006	0.008.
100,001–150,000	0.004	0.010	0.004	0.006.
150,001–250,000	0.003	0.010	0.003	0.006.
250,001–500,000	0.002	0.010	0.002	0.006.
500,001–Above	0.002	0.009	0.002	0.006.

Inclearing Return Items	City	RCPC	Country	Transit
Colorado	$0.19	$0.29	$0.35	$0.73.
Kansas	0.15	0.15	0.30	0.73.
Nebraska	0.25	0.31	0.37	0.73.
Oklahoma	0.16	0.20	0.22	0.73.

Return Item Pull	$0.86.
Return Item Qualification	0.25.
Large Item Return Notification	3.00.

Settlement Only	100.00 per month.
Facsimile	1.75.
Postage	At cost.
Photocopy	2.25.
Research	0.15 plus $12 per hour.
Over the Counter Items	0.03.

Statement Processing Fees: (all fees per item unless otherwise indicated)

Truncated Statement	$0.08 per statement.
Imaged Statement	0.12 per statement.
Cycled Statement	0.20 per statement.
Per Insert	0.01 per insert.
Postage	At Cost.
Imaged Check Printing	0.07 per page.
Statement Data Printing	0.07 per page.
Maintenance Fee	250.0 per month.

DDA Processing Fees: (all fees per item unless otherwise indicated)

Full Cycled	$0.15.
Full Truncated	0.12.
Basic Cycled	0.11.
Basic Truncated	0.08.
Maintenance Fee	25.00 per month.
Debit	0.15.
Credit	0.15.
Large Item Return Notification	3.00.
Research	0.15 plus $12 per hour.
Additional Statements	2.00.
Photocopy	2.25.
Facsimile	1.75.
Postage	At Cost.

Lockbox Processing Fees: (all fees per item unless otherwise indicated)

1–50,000 items per month	$0.110.
50,001–80,000 items per month	0.105.
80,001–120,000 items per month	0.100.
120,001–160,000 items per month	0.095.
160,001–above items per month	0.090.
Processing Fee	100.00 per month.
Exception Items	0.07.
Photocopy	2.25.
Facsimile	1.75.
Postage	At Cost.

District 11.—Federal Home Loan Bank of San Francisco (1996 NOW/DDA Services)

(Does not provide item processing services for third party accounts)

District 12.—Federal Home Loan Bank of Seattle (1996 NOW/DDA Services)

(Does not provide item processing services for third party accounts)

By the Federal Housing Finance Board.

Rita I. Fair,

Managing Director.

[FR Doc. 96–16965 Filed 7–2–96; 8:45 am]

BILLING CODE 6720–01–P

FEDERAL MEDICATION AND CONCILIATION SERVICE (FMCS)

Office of the Deputy Director; Submission for OMB Review; Comment Request

June 27, 1996.

The Federal Mediation and Conciliation Service (FMCS) has submitted four information collection requests to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). These forms are: FMCS' Arbitrator's Personal Data Questionnaire (FMCS For R–22), FMCS' Request for Arbitration Panel (FMCS Form R–43), FMCS' Arbitrator's Report and Fee Statement (FMCS Form R–19), and FMCS' Notice to Mediation Agencies (FMCS Form F–7). Copies of these individual collection requests, with the appropriate agency form number, may be obtained by calling Tammi E. Strozier, Office Manager, Office of the General Counsel at (202) 606–5442, between 8:30 a.m. and 4:30 p.m., Monday through Friday.

Comments Received

In response to the 60-day notice, no comments were received for FMCS Forms R–22, R–43, and R–19. For the FMCS Form F–7, there were nine non-opposing comments received basically dealing with the agency's suggested change from a quadruplicate form to a single copy which would require the filing party to provide photocopies to the appropriate state agencies and other parties. Donald G. Russell, Director of Conciliation of the Indian Education Employment Relations Board, wrote that the form looks fine; Melissa McIntosh, Director, Wage and Hour Division of the

Department of Labor of the State of Indiana, commented that the cost-cutting change seems to be a reasonable and efficient idea; Jan Hart DeYoung, Hearing Examiner of the Alaska Labor Relations Agency, Supported FMCS's efforts at cost-cutting and said her agency would not be affected by a change from a quadruplicate form to a single form; Patrick A. Fridell, Assistant Chief UI Legal Section of the Georgia Department of Labor, stated that a photocopy is usually what the agency receives and is adequate; the New Jersey State Board of Mediation has no comments; and Catherine J. Serino, Director of the Connecticut Department of Labor, had no objections to the proposed change but note that, ''only experience will tell if parties notice the proper agencies, like our Board, without the multiple copies.''

Mark A. Lamont, Director of the Pennsylvania Bureau of Mediation, Department of Labor and Industry, suggested the insertion of ''Copies to: Appropriate State or Territorial Agency, Opposite Party, and copy to be Retained by Party Filing Notice should be in BOLD print as found in the current format.'' He also noted that in Pennsylvania, at least, 85 percent of the notices were from the quadruplicate form. Bethanie Jensen, Administrative Assistant, North Dakota Department of Labor, suggested that the form contain more information, e.g. ''actual active union members covered by the contract, percent of union members at a site location, and actual total active union members at the location affected.'' FMCS believes that since the Taft-Hartley Act only requires notification of contract expiration or modification by the filing party, this additional information collection request may prove too burdensome for the filer, whether it be the union or employer, to complete in a timely fashion.

Parker Denaco of the New Hampshire Public Employee Relations Board, saw no problems with his agency receiving photocopies that though that, ''from a recipient agency standpoint,'' the receipt of photocopies instead of pressure-sensitive copies would assure clearer copies'' and ''that it might cause users to give more consideration as to when it is actually necessary to send the state a copy in the first place.'' Also, he suggested, ''from an efficiency standpoint, could you offer an even more technologically advanced solution, namely to scan the new and improved Form 7 into your computer and offer any entity using the form to send a blank disc on which you would transfer the form in one of the common formats.'' This ''would allow users/filers to upload the form into their computer, fill in the blanks on the screen and then print the completed form.'' The user could have the ''opportunity to fill out, proof, and print a form all in one process.'' FMCS will look into the feasibility and cost of that approach.

Submission of Comments

Comments about this request should be submitted to the Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for (FMCS), Office of Management and Budget, Room 10235, Washington, DC 20503. For more information call (202) 395–7316, within 30 days from the date of this publication in the Federal Register.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Federal Mediation and Conciliation Service.

Title: Arbitrator's Personal Data Questionnaire.

OMB Number: 3076–0001.

Agency Number: Form R–22.

Frequency: Once per application and once per year for updating the biographical sketch.

Affected Entities: The individuals who apply for admission to the FMCS Roster of Arbitrators.

Number of Respondents: 250.

Estimated Time Per Respondent: 1½ hour.

Total Burden Hours: 375.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The Form R–22 is used to select highly qualified candidates for the arbitrator roster. The respondents are private citizens who make application for appointment to the FMCS roster.

Agency: Federal Mediation and Conciliation Service.

Title: Request for Arbitration Panel.

OMB Number: 3076–0002.

Agency Number: Form R–43.

Frequency: On occasion.

Affected Entities: Employers and their representatives, employees, labor unions and their representatives who request arbitration services.

Number of Respondents: 27,000.

Estimated Time Per Respondent: 10 minutes.

Total Burden Hours: 4,500.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The Form R–43 is used for FMCS to offer panels of arbitrators for selection by labor and management to resolve grievances and disagreements arising under their collective bargaining agreements (CBAs) and to deal with fact-finding and interest arbitration issues as well. The need for this form is to obtain information, such as name, address, type of assistance desired, so that FMCS can provide various arbitration services effectively and efficiently (e.g., furnishing a standard list of seven arbitrators to both labor and management). This information collection facilitates the processing of the parties request for arbitration assistance.

Agency: Federal Mediation and Conciliation Service.

Title: Arbitrator's Report and Fee Statement.

OMB Number: 3076–0003.

Agency Number: Form R–19.

Frequency: On occasion.

Affected Entities: Individual arbitrators who render awards under appointment by the FMCS procedures.

Number of Respondents: 5,000.

Estimated Time Per Respondent: 10 minutes.

Total Burden Hours: 417 hours.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The Form R–19 is used by FMCS to monitor the work of the arbitrators who serve on its roster. This is satisfied through the required completion of a report and fee statement which indicates when the arbitration award was rendered, the file number, the company and union, the issues, whether briefs were filed and transcripts taken, and fees charged to the parties for days the arbitrators' services were utilized. This information is then

contained in the agency's annual report to indicate the types of arbitration issues, the average or median arbitration fees and days spent on cases, and the timeliness of the awards rendered.

Agency: Federal Mediation and Conciliation Service.

Title: Notice to Mediation Agencies.

OMB Number: 3076–0004.

Agency Number: Form F–7.

Frequency: Once per collective bargaining contract.

Affected Entities: Private sector employers and labor unions involved in interstate commerce who file notices for mediation services to the FMCS and state, local, and territorial agencies, who receive copies of these notices filed.

Number of Respondents: 70,000.

Estimated Time Per Respondent: 10 minutes.

Total Burden Hours: 4,167

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The F–7 form was created to establish conformity throughout interstate commerce and to allow FMCS to gather desired information in a uniform manner. The collection of such information, including the name of employer or employer association, address and phone number, official contact, bargaining unit and establishment size, location of affected establishment and negotiations, industry or type of business, principal product or service, union address, phone number, and official contact, contract expiration date or renewal date, whether the notice is filed on behalf of the union or employer, and whether this is health car industry notice for initial contracts or existing contracts, is critical for reporting and mediation purposes.

Dated: June 27, 1996.

Wilma B. Liebman,

Deputy Director.

[FR Doc. 96–16984 Filed 7–2–96; 8:45 am]

BILLING CODE 6372–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Science Foundation

Frequently Asked Questions Concerning the Department of Health and Human Services Objectivity in Research Regulations and the National Science Foundation Investigator Financial Disclosure Policy

AGENCIES: Public Health Service, and Office of the Secretary, HHS; National Science Foundation.

ACTION: Responses to questions.

SUMMARY: This document responds to frequently asked questions regarding PHS' and NSF's recently-issued rules on investigator conflicts of interest. This guidance document is intended to help institutions implement conflict of interest policies that comply with both PHS and NSF requirements.

FOR FURTHER INFORMATION CONTACT: *For PHS:* Geoffrey Grant, Acting Director, Office of Policy for Extramural Research Administration, National Institutes of Health, Room 2192, 6701 Rockledge Drive, MSC 7730, Bethesda MD 20817, (301) 435–0949. *For NSF:* Christopher L. Ashley, Assistant General Counsel, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, VA 22230, (703) 306–1060.

SUPPLEMENTARY INFORMATION: On July 11, 1995, the Public Health Service (PHS) and the Office of the Secretary of the Department of Health and Human Services (HHS) and the National Science Foundation (NSF) issued rules regarding investigator conflict of interest. As explained in the preambles to those rules, PHS and NSF have been working together to ensure that the rules impose consistent obligations on institutions receiving PHS and NSF funding. To that end, PHS and NSF announced that the agencies would be developing a set of questions and answers (Q&As) to help institutions implement conflict of interest policies that comply with both PHS and NSF requirements. This set of Q&As provides answers to frequently asked questions received by both agencies. Where there are minor differences between the PHS and NSF rules, they are clearly noted.

Q1: Does NSF or PHS have a suggested format for investigator disclosures?

A1: No. The rules are designed to defer to the expertise of grantee institutions in developing policies and supporting documentation.

Q2: May an institution have different conflict of interest policies that vary among departments or professional schools?

A2: Yes, as long as all policies meet the minimum requirements of the NSF and PHS rules.

Q3: Which offices within an institution should be involved in administering the conflict of interest rules?

A3: An institution is free to administer its policy through whatever office or structure it wishes, as long as the policy reaches all investigators on NSF- and PHS-funded projects and the requirements of the PHS and NSF rules are met.

Q4: Must institutions routinely require financial disclosures from graduate students working on NSF- or PHS-sponsored research?

A4: The term ''investigator'' is defined to encompass individuals ''responsible for the design, conduct or reporting'' of NSF- or PHS-funded research. It is up to the institution to decide whether graduate student co-authors are ''responsible for reporting'' the research.

Q5: Will a proposal be processed if it does not contain the new certification required by the NSF and PHS rules?

A5: NSF will not process a proposal in the absence of the new certification, but in most cases the institution will not be required to re-submit the entire proposal. An addendum page to the *Cover Sheet to the National Science Foundation* (NSF Form 1207) has been developed that contains the required certification. The NSF administrative officer typically will forward a new certification page to the institution, and will process the proposal upon receipt of a completed and executed new page. The PHS would process the application without the proper certification but no award would be made until the awarding component received the certification in the form of a signed, revised application face page.

Q6: Do the PHS and NSF conflict of interest rules apply to all researchers and faculty members at institutions that receive NSF or PHS support?

A6. No. The NSF policy applies only to grantee institutions that employ more than fifty persons and the PHS rule exempts Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Phase I applications. In those institutions subject to the NSF policy and/or the PHS rule, only persons involved in PHS- or NSF-funded research are subject to the rules. However, institutions may choose to cover other researchers or faculty members under their policies for institution-specific reasons.

Q7: Do the PHS or NSF rules apply to subgrantees of PHS or NSF grantees?

A7: Consistent with current regulations and policies, the PHS rule applies to subgrants; the NSF Policy does not. Accordingly, institutions conducting PHS-funded research through subgrantees, contractors, or collaborators must take reasonable steps to ensure that investigators working for such entities comply with the regulations (42 C.F.R. § 50.604(a)) either by requiring the investigators to comply with the grantee institution's policy or by requiring the entities to provide appropriate assurances to the grantee institution. An institution conducting NSF-funded research through subgrantees must certify that the institution itself has in place a written, enforced policy on investigator conflicts of interest, but is not required to ensure that subgrantees comply with the NSF Policy. However, the Policy may apply to a subgrantee employing investigators who collaborate on NSF-sponsored research (see Q&A 14).

Q8: Do the NSF or PHS rules apply to post-doctoral fellowships?

A8: Not in most cases. The NSF policy applies only to grantee institutions that employ more than 50 persons and therefore would not apply to post-doctoral fellowships awarded to individuals. The PHS rule applies to PHS-funded research and to any person who is responsible for the design, conduct or reporting of research funded by the PHS. Thus, if a post-doctoral fellow served in such a capacity in PHS-funded research he or she would be subject to the rule. The PHS rule would apply to a postdoctoral fellowship application to the PHS only if the funding would be used for research and the fellow served in one of the research capacities described above.

Q9: Are investigators required to disclose interests in mutual funds?

A9: An interest in a pooled fund such as a diversified mutual fund may be sufficiently remote that it would not reasonably be expected to create a conflict of interest for a NSF- or PHS-funded investigator. For example, an investigator may own an interest in a diversified mutual fund which has assets placed in many securities. It is possible that certain of the securities held by the mutual fund were issued by an entity whose interests would reasonably appear to be affected by activities proposed for funding by NSF or PHS. However, because it is likely that an investigator's interest in a mutual fund is only a small portion of the fund's total assets and because only a limited portion of the fund's assets are placed in the securities of a single issuer, it is unlikely that an investigator's activities on an NSF or PHS award would affect his or her interest in the mutual fund. Institutions therefore may determine that certain interests in a diversified mutual fund could never directly and significantly affect the design, conduct or reporting of PHS- or NSF-funded research and exempt such interests from disclosure by the investigator on that basis.

The federal government's Office of Government Ethics has detailed regulations regarding the treatment of diversified mutual funds under the government's conflict of interest rules. 5 C.F.R. § 2634.310(c); *see also* 60 Fed. Reg. 47,208 (Sept. 11, 1995) (proposed rule). Institutions may consult these regulations for guidance on how they might wish to treat interests in mutual funds under their policies.

Q10: Are investigators required to disclose interests in ''blind trusts''?

A10: Institutions may determine that the research will not be affected by qualified blind trust assets not known to the investigator that are managed by an independent fiduciary. Because such assets would not be known to an investigator, they could not directly and significantly affect the design, conduct or reporting of the research. Of course, an investigator is aware of the assets originally placed in the trust at the time of its formation and would be required to disclose any such assets that would reasonably appear to be affected by NSF- or PHS-funded research. Only new assets purchased with the proceeds from the original assets would be unknown to the investigator.

As with diversified mutual funds, the Office of Government Ethics has detailed regulations describing the type of trusts that qualify for the ''blind trust'' exception to the government's conflict of interest rules. 5 C.F.R. Part 2634 Subpart D. Institutions may consult these guidelines in determining how they wish to treat certain trusts under their policies.

Q11: Are foreign investments (e.g., shares in a foreign corporation) covered by the financial disclosure requirement.

A11: Yes, if they would reasonably appear to be affected by NSF- or PHS-funded research and do not fall within one of the exceptions to the definition of ''significant financial interest.''

Q12: Which conflicts of interest must be reported to the federal government?

A12: Neither the PHS nor NSF rules require any institution to report to the federal government the details of any conflict of interest that has been resolved pursuant to the institution's Policy. Consistent with the statute authorizing its conflict of interest rule, the PHS requires institutions, prior to the institution's expenditure of any funds under an award, to report to the PHS Awarding Component the existence of any conflicting interests and assure that the interest has been managed, reduced or eliminated in accordance with PHS regulations. NSF requires that only conflicts that have not been managed, reduced or eliminated prior to the expenditure of funds under an award be reported to NSF.

Q13: Will investigator financial records be subject to public disclosure?

A13: No. Normally, neither PHS nor NSF would possess records of the financial interests of investigators, because institutions are not required to submit those records. However, in the event NSF or PHS had such information either as a result of an audit or compliance review or in connection with a conflict of interest that cannot be managed satisfactorily under the institution's policy, it would not be disclosed to the public. Where a member of the public submits a request under the federal Freedom of Information Act (FOIA) for financial information in the possession of NSF or PHS, the agencies would assert all applicable FOIA exemptions in response to such a request.

Q14: Is the applicant institution required to obtain financial disclosures from investigators who are not employed by the applicant institution?

A14: The PHS rule provides that if the institution carries out the PHS-funded research through a collaborator, the institution must take reasonable steps to ensure that investigators working for the collaborator comply with the rule, either by requiring those investigators to comply with the applicant institution's policy or by requiring an assurance from the collaborating institution which will enable the applicant institution to comply with the rule. NSF would expect that where an investigator does not work for the applicant institution, the applicant institution would obtain an assurance from the institution employing the investigator indicating that the investigator has complied with the requirements of the policy at that institution.

Q15: Are all ''senior personnel'' listed in NSF proposals and ''key personnel'' listed in PHS proposals subject to the financial disclosure requirements of the conflict of interest rules?

A15: As explained in Q&A 4, the term ''investigator'' is defined functionally rather than categorically. Although the agencies believe that senior and key personnel will be ''responsible for the design, conduct or reporting of research'' under the rules in almost all

cases, it is possible to conceive situations in which senior or key personnel might not meet the definition of ''investigator.'' Institutions are also responsible for obtaining financial disclosures from persons other than senior or key personnel who meet the definition of ''investigator.''

Q16: How should institutions with fewer than 50 employees complete the certification page for NSF proposals?

A16: Such institutions should annotate NSF Form 1207 or the addendum page (See Q&A1 above) to indicate that they have fewer than 50 employees and are therefore exempt from the Investigator Financial Disclosure Policy. These institutions are not exempt from the PHS regulations.

Q17: Salary, royalties and other payments that ''are not expected to exceed $10,000 over the next twelve month period'' are excluded from the definition of ''significant financial interest.'' How should an investigator estimate expected income over the next twelve months?

A17: The agencies have no preferred estimation method. Investigators must make their best reasonable estimates of expected income in determining whether salary, royalties or other payments constitute ''significant financial interests.'' This issue is separate from an investigator's ongoing duty to update financial disclosures either annually or as new significant financial interests are obtained throughout the period of the award.

Q18: How can an institution determine that all required disclosures have been made before submitting a proposal to NSF or PHS?

A18: As part of the institution's routine proposal preparation procedures institutions should require investigators to ensure that they have made all required financial disclosures in accord with the regulations prior to the time the organizational representative makes the certification in an NSF or PHS proposal. NSF and PHS staff, auditors and others concerned with the proper implementation of these regulations would expect such an arrangement at any institution that certifies to the maintenance of an appropriate written, enforced policy on conflict of interest.

Q19: Must an investigator report to the institution a single share of stock?

A19: A single share of stock would have to be reported only if (i) it is valued at more than $10,000 *or* represents more than a five percent ownership interest in the corporation; *and* (ii) it would reasonably appear that the value of the stock could be affected by the research for which funding is sought or that the financial interest of the corporation would be so affected.

The rules define a significant financial interest as anything of monetary value including equity interests (*e.g.*, stocks, stock options, or other ownership interests) but the definition excludes an equity interest that does not exceed $10,000 in value *and* represents no more than a 5% ownership interest in any single entity. This means that, under the rules, an investigator would never have to report an equity interest of $10,000 or less which represents 5% or less ownership interest in any single entity because that combination of value and ownership is excluded by definition from the term ''significant financial interest.'' On the other hand, under the rules, an investigator would always have to report an equity interest exceeding $10,000 or an ownership interest exceeding 5% in any single entity, regardless of value, if that equity interest or ownership interest was held in an entity whose financial interests would reasonably appear to be affected by the specified activities for which funding is sought.

Q20: When and how will the NSF and PHS rules be reviewed and revised?

A20: The agencies anticipate that after two or three years of experience with the rules, they will solicit public comments regarding whether changes are necessary or appropriate.

Dated: June 13, 1996.

Dr. Harold Varmus, M.D.,

Director, National Institutes of Health.

Lawrence Rudolph,

General Counsel, National Science Foundation.

[FR Doc. 96–16974 Filed 7–2–96; 8:45 am]

BILLING CODE 7555–01–P, 4140–01–P

Centers for Disease Control and Prevention

[INFO–96–18]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer at (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. Survey of State-Based Diabetes Control Cooperative Agreement Programs—New—Diabetes mellitus and related complications are the seventh leading cause of death in the United States, and accounts for $105 billion in direct medical costs and lost productivity each year. Approximately 14 million Americans have been diagnosed with diabetes, a leading cause of new blindness and end-stage renal failure in the United States and a major co-morbid factor in lower extremity amputation, cardiovascular disease and related death, and neonatal morbidity and mortality.

Through the support of the Centers for Disease Control and Prevention's (CDC) ''State-Based Program to Reduce the Burden of Diabetes: A Health Systems Approach,'' public health departments in 42 states and four U.S. territorial affiliated jurisdictions have been charged with providing leadership in reducing the gap between what should be and what is the current standard of diabetes care.

CDC will collect information from diabetes State Program Coordinators regarding the four key areas of program implementation. They are (1) capacity building and infrastructure development, (2) surveillance and data collection, (3) health systems change, and (4) working with local programs.

The survey has three main objectives:

1. Document the progress made by Diabetes Control Programs in the four main areas of program implementation.

2. Assess the relationship between the level of infrastructure development, and a program's efforts to carry out surveillance activities, health systems change activities, and work with local programs. Information will help improve technical assistance (TA) and guidance offered to states by CDC.

3. Lay the groundwork for an evaluation instrument that can be used to collect data from Diabetes Control Programs at the end of the funding cycle in order to assess whether progress in program implementation and development is linked to reduced diabetes morbidity and mortality.

The data will result from self-administered mailed surveys sent to the Program Coordinator in each state. Most questions will be in the form of checklists although each of the four sections contain a number of open-ended questions for explanation of unique features of programs. It is expected that the burden in time to each respondent will be about two (2) hours per Program Coordinator or Designee, resulting in a total burden of 92 hours. Results will also be made available to participants upon request. The total cost to respondents is estimated at $1,840.

Respondents	No. of Respondents	No. of responses/respondent	Avg. burden response (in hrs.)	Total burden (in hrs.)
Diabetes program coordinators	46	1	2	92
Total				92

2. List of Ingredients Added to Tobacco in the Manufacture of Cigarette Products—(0920–0210)—Extension without change - Cigarette smoking is the leading preventable cause of premature death and disability in our nation. Each year more than 400,000 premature deaths occur as the result of cigarette smoking related diseases. The Centers for Disease Control and Prevention (CDC), Office on Smoking and Health has primary responsibility for the Department of Health and Human Services' (HHS) smoking and health program. HHS's overall goal is to reduce death and disability resulting from cigarette smoking and other forms of tobacco use through programs of information, education and research.

The Comprehensive Smoking Education Act of 1984 (15 USC 1336 Pub.L. 98–474) requires each person who manufactures, packages, or imports cigarettes to provide the Secretary of HHS with a list of ingredients added to tobacco in the manufacture of cigarettes. This legislation also authorizes HHS to undertake research, and to report to the Congress (as deemed appropriate), on the health effects of the ingredients.

In 1993, OMB reinstated approval for collection of ingredients information (0920–0210) after the expiration of the previous approval; this current approval expires on December 31, 1996. The total cost to the respondent is estimated at $189,000.

Respondents	No. of respondents	No. of responses/respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
Tobacco manufacturers	14	1	190	2,660

3. The Fourth National Health and Nutrition Examination Survey (NHANES IV) Pretests—New—The National Health and Nutrition Examination Survey (NHANES) has been conducted periodically since 1970 by the National Center for Health Statistics, CDC. NHANES IV is planned for 1998–2004 and two pretests are proposed to include 400 sample persons in each. They will receive an interview and a physical examination. The first pretest is needed to test the sampling process, data collection procedures, computer-assisted personal interviews (including translations into Spanish), examination protocols, and automated computer systems. The second pretest will test the revised survey questionnaires and examination procedures, quality control procedures and response rates. Participation in the pretests and the full survey will be completely voluntary and confidential.

NHANES programs produce descriptive statistics which measure the health and nutrition status of the general population. Through the use of questionnaires, physical examinations, and laboratory tests, NHANES studies the relationship between diet, nutrition and health in a representative sample of the United States. NHANES monitors the prevalence of chronic conditions and risk factors related to health such as coronary heart disease, arthritis, osteoporosis, pulmonary and infectious diseases, diabetes, high blood pressure, high cholesterol, obesity, smoking, drug and alcohol use, environmental exposures, and diet. NHANES data are used to establish the norms for the general population against which health care providers can compare such patient characteristics as height, weight, and nutrient levels in the blood. Data from future NHANES can be compared to those from previous NHANES to monitor changes in the health of the U.S. population. NHANES IV will also establish a national probability sample of genetic material for future genetic testing for susceptibility to disease.

Users of NHANES data include Congress; the World Health Organization; Federal agencies such as NIH, EPA, and USDA; private groups such as the American Heart Association; schools of public health; private businesses; individual practitioners; and administrators. NHANES data are used to establish, monitor, and evaluate recommended dietary allowances, food fortification policies, programs to limit environmental exposures, immunization guidelines and health education and disease prevention programs. The total cost to respondents for the two pretests is estimated at $54,600.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Children	80	1	2.75	220

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Adolescents and Adults	720	1	4.75	3420
Total				3640

4. The Second Longitudinal Study of Aging (LSOA II)—(0920–0219)—Revision—The Second Longitudinal Study of Aging is a second generation, longitudinal survey of a nationally representative sample of civilian, non-institutionalized persons 70 years of age and older. Participation is voluntary, and individually identified data are confidential. It will replicate portions of the first Longitudinal Study of Aging (LSOA), particularly the causes and consequences of changes in functional status. LSOA II is also designed to monitor the impact of changes in Medicare, Medicaid, and managed care on the health status of the elderly and their patterns of health care utilization. Both LSOAs are joint projects of the National Center for Health Statistics (NCHS) and the National Institute on Aging (NIA).

The Supplement on Aging (SOA), part of the 1984 National Health Interview Survey (NHIS), established a baseline on 7,527 persons who were then aged 70 and older. The first LSOA reinterviewed them in 1986, 1988 and 1990. Data from the SOA and LSOA have been widely used for research and policy analysis relevant to the older population.

Approximately 10,000 persons aged 70 and over were interviewed for the 1994 National Health Interview Survey's second Supplement on Aging (SOA II) between October of 1994 and March of 1996. LSOA II will reinterview the SOA II sample three times: in 1997, 1999, and 2001. As in the first LSOA, these reinterviews will be conducted using computer assisted telephone interviewing (CATI). Beyond that, LSOA II will use methodological and conceptual developments of the past decade.

LSOA II will contain modules on scientifically important and policy-relevant domains, including: (1) assistance with activities of daily living, (2) chronic conditions and impairments, (3) family structure, relationships, and living arrangements, (4) health opinions and behaviors, (5) use of health, personal care and social services, (6) use of assistive devices and technologies, (7) health insurance, (8) housing and long-term care, (9) social activity, (10) employment history, (11) transportation, and (12) cognition. This new data will result in publication of new national health statistics on the elderly and the release of public use micro data files. The total cost to the respondents is estimated at $112,500.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Sample adult	10,000	1	.75	7,500
Total				7,500

Dated: June 27, 1996.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–16947 Filed 7–2–96; 8:45 am]

BILLING CODE 4163–18–P

[Announcement 658]

State Grants to Support the Evaluation of 5 A Day Nutrition Programs and Physical Activity Programs

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1996 funds for grants to support the evaluation of State and community nutrition and physical activity intervention programs.

This announcement addresses one required component and one optional component:

I. ''5 A Day Evaluation'' for supporting the evaluation of 5 A Day for Better Health nutrition intervention programs. Applicants must apply for the 5 A Day Evaluation component.

II. ''Physical Activity Evaluation'' for supporting the evaluation of a physical activity intervention. Application for the Physical Activity Evaluation component is optional.

The CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000'' a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related specifically to the priority area of Nutrition with a secondary emphasis on Physical Activity and Fitness. (For ordering a copy of ''Healthy People 2000'' see the Section, ''Where to Obtain Additional Information.'')

Authority

This program is authorized under section 317(k)(2) [42 U.S.C. 247b(k)(2)] of the Public Health Service Act, as amended.

Smoke-Free Workplace

CDC encourages all grant recipients to provide a smoke-free workplace and promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants are the official public health agencies of States or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments, that have established,

clearly defined, evaluable, long-range 5 A Day for Better Health projects in a specific community channel.

Availability of Funds

Approximately $600,000 is available in FY 1996 to fund approximately 9 awards.

A. 5 A Day Evaluation:

Approximately $450,000 is available to fund approximately 6 awards. It is expected that the average award will be $75,000 ranging from $60,000 to $90,000 for a 5 A Day for Better Health project in a specific community channel (e.g., youth and civic clubs, after school care programs, schools or preschools, churches, service groups, food assistance programs, worksites, supermarkets, health clinics, media, etc.).

B. Physical Activity Evaluation:

Approximately $150,000 is available to fund approximately 3 awards to evaluate physical activity interventions. It is expected that the average award will be $50,000 ranging from $35,000 to $60,000. In order to be eligible for Part B, applicants must apply for Part A.

It is expected that the awards will begin on or about September 30, 1996, and will be made for a 12-month budget period within a project period of one year. Funding estimates may vary and are subject to change.

Awards under this announcement will not be sufficient to fully support an applicant's proposed activities, but are meant to be used in conjunction with other resources—whether direct funding or in-kind contributions—that the applicant may have available.

Purpose

These awards will support State efforts to evaluate nutrition and physical activity intervention programs. Emphasis will be placed on evaluations of community interventions, preferably through environmental approaches, such as policy or administrative changes, or testing the effects of multiple strategies designed to increase the consumption of fruits and vegetables and to increase moderate-intensity (i.e., the equivalent of a brisk walk at 3 to 4 mph) physical activity.

Program Requirements

Program areas that will be supported under this grant are:

A. 5 A Day Evaluation (required):

Evaluation of a 5 A Day intervention in one or more specific community channels.

B. Physical Activity Evaluation (optional):

Evaluation of a physical activity intervention in one or more specific community channels.

Note: Use of the same or complementary targeted populations for both the 5 A Day and the Physical Activity evaluations is encouraged.

Applicants should propose an evaluation plan for a clearly defined, established, long-range effort in a specific community channel in accordance with the following definitions:

A. Clearly Defined:

Intervention objectives are clearly stated; activities necessary to accomplish objectives are described, to include who is responsible for each activity and when they will be accomplished; and work is done within a specific channel with a defined targeted audience.

B. Established:

For the 5 A Day evaluation component, the applicant is licensed with the National Cancer Institute (NCI) and has developed an ongoing 5 A Day Program. For both evaluation components, evaluating pretested or piloted interventions is desirable.

C. Evaluation Plan:

Clear, measurable evaluation objectives and expected outcomes are defined with appropriate statistical power. Use of current theoretical frameworks to guide the evaluation study is desirable. A combination of process and impact objectives are also desirable, with outcome objectives where feasible. In designing the study, consideration should be given to the number of individuals or groups needed to detect realistic changes in post intervention outcome measures when compared with pre-intervention measures. Sample sizes should give adequate power (80%) to detect these changes. If the appropriate design expertise does not exist within the State health department, inclusion of a university affiliate on the project team is desirable.

D. Long Range:

The program is not just a single activity at one point in time, but a sustained effort involving appropriate behavior change strategies. Programs including environmental approaches, such as administrative or policy changes, are encouraged.

Evaluation Criteria

5 A Day Evaluation and Physical Activity applications will be allocated 100 points each. Applications will be reviewed and evaluated according to the following criteria:

A. Background: (25 Points)

The degree to which the applicant clearly describes a long range, clearly defined, evaluable project, including a description of the intervention targeted population, method, and community channel(s).

B. Program Plan: (45 Points)

The adequacy of the applicant's plan to carry out the evaluation within the 12-month time period, including the specific objectives, methods, and measures to be used in the evaluation.

C. Capacity: (30 Points)

The capabilities of the personnel (including consultants where appropriate) to carry out the evaluation.

D. Budget: (Not Weighted)

The extent to which the applicant provides a detailed budget and line-item justification that is consistent with the evaluation plan.

E. Human Subjects: (Not Scored)

Whether or not exempt from the Department of Health and Human Services (HHS) regulations, are procedures adequate for the protection of human subjects? Recommendations on the adequacy of protections include: (1) Protections appear adequate and there are no comments to make or concerns to raise, (2) protections appear adequate, but there are comments regarding the protocol, (3) protections appear inadequate and the ORG has concerns related to human subjects; or (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal Governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should send them to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305, no later than 30 days after the application deadline. The appropriation for this

financial assistance program was received late in the fiscal year and would not allow for an application date which would accommodate the 60-day State recommendation process period. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to ''accommodate or explain'' State process recommendations it receives after that date.

Indian tribes are strongly encouraged to request tribal government review of the proposed application. If tribal governments have any tribal process recommendations on applications submitted to CDC, they should forward them to Sharron P. Orum, Grants Management Office, Grants Management Branch, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305. This should be done no later than 30 days after the application deadline. The granting agency does not guarantee to ''accommodate or explain'' for tribal process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit. Should human subjects review be required, the proposed workplan should incorporate timelines for such development and review activities.

Women, Racial and Ethnic Minorities

It is the policy of the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC/ATSDR- supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaskan Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the Federal Register, Vol. 60, No. 179, pages 47947–47951, Friday, September 15, 1995.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Number 0937–0189) must be submitted to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers For Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305, on or before August 2, 1996.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.)

2. Late Applications: Applications that do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description and information on application procedures are contained in the application package. Business management technical assistance may be obtained from Albertha Carey, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers For Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305, telephone (404) 842–6508, fax (404) 842–6513, or Internet or CDC WONDER electronic mail at <ayc1@opspgo1.em.cdc.gov>.

Programmatic technical assistance may be obtained from Sarah Kuester, MS, RD, Division of Nutrition and Physical Activity, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–26, Atlanta, GA 30341–3724, telephone (770) 488–4281, fax (770) 488–4479, or Internet or CDC WONDER electronic mail at <sak2@ccddn1.em.cdc.gov>.

Please refer to Announcement Number 658 when requesting information and submitting an application. Potential applicants may obtain a copy of ''Healthy People 2000'' (Full Report; Stock No. 017–001–00474–0) or ''Healthy People 2000'' (Summary Report; Stock No. 017–001–00473–1) referenced in the ''Introduction'' through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

There may be delays in mail delivery and difficulty in reaching the CDC Atlanta offices during the 1996 Summer Olympics. Therefore, CDC suggests applicants use Internet, follow all instructions in this announcement, and leave messages on the contact person's voice mail for more timely responses to any questions.

Dated: June 27, 1996.

Joseph R. Carter

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–16946 Filed 7–02–96; 8:45 am]

BILLING CODE 4163–18–P

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Annual Survey of Refugees (ORR–9).

OMB No.: 0970–0033.

Description: The Annual Survey of Refugees collects information on the economic circumstances of a random sample of refugees, Amerasians, and entrants who arrived in the U.S. during the previous five years. The survey focuses on their training, labor force participation, and welfare utilization rates. Data are segmented by region of origin, State of resettlement, and number of months since arrival. From their responses, ORR reports on the economic adjustment of refugees annual deliberations of refugee admissions and funding and by program managers in formulating policies for the direction of the Refugee Resettlement Program.

Respondents: State governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per respondent	Total burden hours
ORR–9	1,800	1	.75	1,350

Estimated Total Annual Burden Hours: 1,350.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: June 26, 1996.

Larry Guerrero,

Director, Office of Information Management Services.

[FR Doc. 96–16969 Filed 7–2–96; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 96N–0158]

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish a notice in the Federal Register concerning each collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on a survey of hormone replacement therapy (HRT) among women with a previous diagnosis of endometrial cancer.

DATES: Submit written comments on the collection of information by September 3, 1996.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Charity B. Smith, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1686.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the Federal Register concerning each proposed collection of information. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c). To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Survey of HRT Among Women With A Previous Diagnosis of Endometrial Cancer

Under FDA's statutory authority to conduct and sponsor research (21 U.S.C.

393(b)(2)(C) and 42 U.S.C. 300u–1), FDA and the Fred Hutchinson Cancer Research Center in Seattle, WA, have jointly designed a study involving a written survey to be completed by women with a previous diagnosis of endometrial cancer. The study will evaluate the occurrence of menopausal vasomotor symptoms (''hot flashes'') among these women, and the extent to which they have used HRT, either as therapy for menopausal symptoms or for other reasons. (''Hormone replacement therapy'' means treatment with estrogen alone or with a combination of estrogen and progestogen.)

FDA estimates the burden of this survey as follows:

ESTIMATED ANNUAL REPORTING BURDEN

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
575	1	575	.5	288

There are no capital costs or operating and maintenance costs associated with this collection.

Dated: June 26, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–16884 Filed 7–2–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96N–0186]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on a proposed survey of mammography facilities to assess the impact of proposed regulations required by the Mammography Quality Standards Act of 1992 (the MQSA).

DATES: Submit written comments on the collection of information by September 3, 1996.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Charity B. Smith, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1686.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the Federal Register concerning each proposed collection of information. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c). To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

FDA Survey of Mammography Facilities

The MQSA of 1992 (Pub. L. 102–539) has resulted in regulatory efforts by FDA to ensure high quality standards for mammography in the United States. In the Federal Register of April 3, 1996 (61 FR 14856), FDA proposed final regulations to implement these standards. Interim regulations are codified at 21 CFR 900. In connection with this rulemaking, FDA proposes to conduct a survey of facilities to determine current operating costs and procedures. The information to be collected from the proposed survey includes general provider characteristics, equipment characteristics, facility operating procedures, personnel qualifications, and costs of compliance with current quality standards. This information is necessary in order to ensure that costs to affected facilities are minimized to the extent consistent with maintenance of high quality mammography services, and that patient access to mammography services is not diminished as a result of agency action.

The proposed survey will be a one-time data collection effort. Surveys will be mailed to 1,000 randomly selected facilities. Facilities will be contacted by telephone in order to respond to any specific issues, or questions that may arise. Responses will not be mandatory, and no facility will be required to respond. All responses will be kept confidential, although a compilation of data that does not reveal facility-specific information will be made available upon request to participants and to the public. A toll-free telephone number will be installed to allow respondents the opportunity to call if specific issues arise.

FDA estimates the burden of this one-time survey as follows:

ESTIMATED ANNUAL REPORTING BURDEN

Burden Element	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Costs
Initial Contact by Telephone	1,000	1	1,000	0.083	83	$1,385
Compile Requested Information	702	1	702	1.0	702	$11,716

ESTIMATED ANNUAL REPORTING BURDEN—Continued

Burden Element	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Costs
Mail-in Response	200	1	200	0	N/A	N/A
Telephone Followup	800	1	800	0.083	67	$1,118
Responses by Telephone Interview	480	1	480	0.5	240	$4,006
Mail-In Response After Receiving Followup	22	1	22	0	N/A	N/A
Total Burden					1,092	$18,225

There are no capital costs or continuing operating and maintenance costs associated with this survey. These burden estimates include the time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information. The hour and cost burden estimates were derived from a pretest of nine randomly selected facilities.

Dated: June 26, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–16970 Filed 7–2–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96N–0121]

Bayer Corp., et al.; Withdrawal of Approval of 29 NADA's

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 29 new animal drug applications (NADA's). Twenty-four NADA's are held by Bayer Corp., Agriculture Division, Animal Health (formerly Miles, Inc., Agriculture Division, Animal Health Products), three are held by Hubbard Milling Co., and one each is held by Hoffmann-LaRoche, Inc., and Ohmeda, Inc. The firms notified the agency in writing that the animal drug products are not being manufactured or marketed and requested that approval of the applications be withdrawn. In a final rule published elsewhere in this issue of the Federal Register, FDA is amending the animal drug regulations by removing the entries which reflect approval of the NADA's.

EFFECTIVE DATE: July 15, 1996.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0159.

SUPPLEMENTARY INFORMATION: The sponsors of the applications listed in the table in this document have informed FDA that these animal drug products are not being manufactured or marketed and have requested that FDA withdraw approval of the applications.

NADA no.	Drug name	Sponsor name and address
6–462	Diethylcarbamazine tablets	Bayer Corp., Agriculture Division, Animal Health, P.O. Box 390, Shawnee Mission, KS 66201.
10–540	Calcium disodium edetate injection	Do.
11–380	Diethylcarbamazine powder	Do.
12–054	Protokylol hydrochloride tablets and injection	Do.
12–103	Triamcinolone tablets	Do.
12–392	Triamcinolone injection	Do.
12–598	Disophenol sodium injection	Do.
15–161	Trichlorfon powder	Do.
15–965	Coumaphos Type A medicated article	Do.
30–045	Triamcinolone/neomycin sulfate ointment	Do.
34–394	Niclosamide tablets	Do.
35–263	Styrylpyridinium chloride/diethylcarbamazine (as base) oral liquid.	Do.
45–287	Coumaphos crumbles	Do.
48–645	Tylosin Type A medicated articles (5, 10, 20, and 40 grams per pound).	Hubbard Milling Co., 424 North Riverfront Dr., P.O. Box 8500, Mankato, MN 56002–8500.
49–555	Styrylpyridinium chloride/diethylcarbamazine control diet HRH/MSD.	Bayer Corp.
91–628	Diethylcarbamazine citrate syrup	Do.
93–372	Chlortetracycline calcium complex Type A medicated articles.	Hoffmann-LaRoche, Inc., Nutley, NJ 07110.
94–402	Tylosin and sulfamethazine Type A medicated articles	Hubbard Milling Co.
95–078	Trichlorfon oral liquid	Bayer Corp.
96–031	Styrylpyridinium chloride/diethylcarbamazine citrate tablets.	Do.
100–201	Trichlorfon paste	Do.
100–356	Styrylpyridinium chloride/diethylcarbamazine control diet HRH.	Do.
100–670	Niclosamide Type A medicated article	Do.
101–078	Dichlorophene and toluene capsules	Do.
120–327	Diethylcarbamazine chewable tablets	Do.
120–670	Styrylpyridinium, diethylcarbamazine edible tablets	Do.

NADA no.	Drug name	Sponsor name and address
121–291	Enflurane liquid (anesthetic)	Ohmeda, Inc., Pharmaceutical Products Division, P.O. Box 804, Liberty Corner, NJ 07938–0804.
121–813	Styrylpyridinium, diethylcarbamazine film-coated tablets	Bayer Corp.
133–509	Pyrantel tartrate Type A medicated articles	Hubbard Milling Co.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA's 6–462, 10–540, 11–380, 12–054, 12–103, 12–392, 12–598, 15–161, 15–965, 30–045, 34–394, 35–263, 45–287, 48–645, 49–555, 91–628, 93–372, 94–402, 95–078, 96–031, 100–201, 100–356, 100–670, 101–078, 120–327, 120–670, 121–291, 121–813, and 133–509, and all supplements and amendments thereto is hereby withdrawn, effective July 15, 1996.

In a final rule published elsewhere in this issue of the Federal Register, FDA is removing 21 CFR 520.500, 520.620a, 520.620b, 520.1520, 520.2022, 520.2160a, 520.2160b, 520.2160c, 520.2160d, 520.2480, 520.2520c, 520.2520d, 522.281, 522.740, 522.2022, 522.2480, 529.810, 558.367, and 558.565, and amending 21 CFR 520.580, 520.622a, 520.622b, 520.2520a, 558.185, 558.485, 558.625, and 558.630 to reflect the withdrawal of approval of the above mentioned NADA's.

Dated: June 3,1996.

Michael J. Blackwell,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 96–16887 Filed 7–2–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96D–0159]

Compounding of Drugs for Use in Animals; Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a Compliance Policy Guide (CPG) section 608.400 entitled ''Compounding of Drugs for Use in Animals.'' The purpose of this CPG is to provide guidance to FDA's field and headquarters staff with regard to the compounding of animal drugs by veterinarians and pharmacists for use in animals. The CPG contains information that may be useful to industry and the public. The text of the CPG is included in this notice. This CPG does not bind FDA, nor does it create or confer any rights, privileges, benefits, or immunities on or for any person.

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies of CPG section 608.400 entitled ''Compounding of Drugs for Use in Animals'' to the Industry Information Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on CPG section 608.400 entitled ''Compounding of Drugs for Use in Animals'' to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one copy. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of CPG section 608.400 and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Richard E. Geyer, Center for Veterinary Medicine (HFV–200), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1764.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of CPG section 608.400 entitled ''Compounding of Drugs for Use in Animals.'' The purpose of this CPG is to provide clear policy and regulatory guidelines to FDA's field and headquarters staff with regard to the compounding of animal drugs by veterinarians and pharmacists for use in animals. It also contains information that may be useful to industry and to the public.

The Federal Food, Drug, and Cosmetic Act (the act) does not distinguish compounding from manufacturing or other processing of drugs for use in animals. However, veterinarians and pharmacists do manipulate drugs (e.g., combine or dilute finished dosage forms, prepare finished dosage forms from bulk drug substances, or prepare injectables from powdered oral dosage forms) to obtain products that differ from the starting materials.

FDA acknowledges the use of compounding within certain areas of veterinary practice. The current state of veterinary medicine requires products to treat many conditions in a number of different species, some of which are known to have unique physiological characteristics. While the agency acknowledges the need for compounding under certain circumstances, it is also aware of recent adverse reactions and animal deaths caused by compounded drug products and is concerned about the risks associated with compounding practices in veterinary medicine. In addition, the agency is greatly concerned about pharmacies that produce large quantities of unapproved new animal drugs that are essentially copies of FDA-approved products. These pharmacy products are actively advertised and promoted, and sometimes are priced lower than the approved product. The firms claim that they are practicing within the scope of their State licenses. However, it is apparent that some of these firms use their pharmacy licenses to circumvent the entire drug approval process, and are mass marketing products that have been produced under little or no quality control, manufacturing standards to ensure purity, potency, and stability.

When the Animal Medicinal Drug Use Clarification Act of 1994 (AMDUCA) is implemented and becomes effective, it will allow compounding from approved drugs because it will permit the extralabel use of approved animal and human drugs. Extralabel use, including compounding, under AMDUCA will be subject to conditions specified by the implementing regulations. The scope of compounding made legal upon the effective date of AMDUCA will be addressed by those regulations.

CPG section 608.400 represents FDA's current position and interpretation of the act. The CPG is intended to provide clear guidance to FDA field and headquarters staff and also could

provide information to the animal health industry. However, this document, which is intended merely for internal FDA guidance, does not bind FDA, nor does it create or confer any rights, privileges, benefits, or immunities on or for any persons. FDA may reconsider its position at a later date in light of comments received or other data or information which comes to the attention of the agency.

COMPLIANCE POLICY GUIDE [1]

CHAPTER - 6

SUB CHAPTER - 600

Sec. 608.400 Compounding of Drugs for Use in Animals

Background:

The Federal Food, Drug, and Cosmetic Act (the Act) does not distinguish compounding from manufacturing or other processing of drugs for use in animals. However, veterinarians and pharmacists do manipulate drugs (e.g., combine or dilute finished dosage forms, prepare finished dosage forms from bulk drug substances, or prepare injectables from powdered oral dosage forms) to obtain products that differ from the starting materials.

There is a potential for causing harm to public health and to animals when drug products are compounded, distributed, and used in the absence of adequate and well-controlled safety and efficacy data, adherence to the principles of contemporary pharmaceutical chemistry and current good manufacturing practices.

The Agency acknowledges the use of compounding within certain areas of veterinary practice. The practice of veterinary medicine requires products to treat many conditions in a number of different species, some of which have unique physiological characteristics. FDA, other federal, state agencies, and producer groups encourage drug sponsors to obtain approvals for all new animal drugs.

While the Agency acknowledges the use of compounding under certain circumstances, it is also aware of adverse reactions and animal deaths caused by compounded drug products and is concerned about the risks associated with compounding practices in veterinary medicine. An example is the recent death of cattle due to the presence of endotoxin in a parenteral product prepared from spectinomycin approved for oral use. In addition, the Agency is greatly concerned about pharmacies that produce large quantities of unapproved new animal drugs that are essentially copies of FDA-approved products. These pharmacy products are actively advertised and promoted, and sometimes are priced lower than the approved product. The firms claim that they are practicing within the scope of their state licenses. However, it is apparent that some of these firms use their pharmacy licenses to circumvent the entire drug approval process, and are mass marketing products which have been produced with little or no quality control, manufacturing standards to ensure purity, potency and stability.

The pharmacokinetics and depletion times for residues from compounded products are not known and the assigning of extemporaneous withdrawal times may result in potentially harmful residues in food. Excipients and vehicles from unapproved or unknown origins may pose additional risks.

Section 510(g)(1) of the Act exempts from the registration requirements licensed pharmacies which do not compound drugs except exclusively within the regular course of their business of dispensing or selling drugs at retail. Section 510(g)(2) exempts from the registration requirements licensed practitioners who manufacture, prepare, propagate, compound, or process drugs during the regular course of business of dispensing drugs at retail. The Act and regulations do not, however, exempt such practitioners or pharmacists from the approval requirements in the new animal drug provisions of Sections 501(a)(5) and 512. Therefore, compounding allowed under the Act is limited to the preparation of drug products which do not meet the definition of new animal drugs. In the absence of an approved new animal drug application (NADA), the compounding of a new animal drug from any article, including an approved or unapproved finished human or animal drug, or a bulk drug, results in an adulterated new animal drug in violation of section 501(a)(5).

Compounding from Approved Dosage Form Drugs: When the Animal Medicinal Drug Use Clarification Act of 1994 (AMDUCA) goes into effect, it will allow the ''extra-label'' use of approved animal and human drugs. It will also allow compounding from those approved drugs. Under AMDUCA ''extra-label'' use, including compounding, will be subject to conditions specified by regulation. AMDUCA will become effective upon promulgation of the regulations. The scope of compounding made legal upon the effective date of AMDUCA will also be addressed by the regulations. The proposed regulations were published in the Federal Register on May 17, 1996. They have no effect until finalized.

Compounding from Bulk Drugs: Two Federal Appeals Court decisions, *United States v. Algon Chemical Inc.*, 879 F.2d 1154 (3d Cir. 1989), *United States v. 9/1 Kg. Containers*, 854 F.2d 173 (7th Cir. 1988), affirmed the FDA position that the Act does not permit veterinarians to compound unapproved finished drug products from bulk drugs, *unless the finished drug is not a new animal drug.* The principle established by the court applies equally to compounding by pharmacists. However, one of the courts acknowledged the Agency's policy that, *if the need is great and the risk small*, the Agency may exercise regulatory discretion with respect to veterinarians compounding from approved drugs under Compliance Policy Guide (CPG) 615.100, *Extra-label Use of New Animal Drugs in Food-Producing Animals.*

Definitions:

The Act and accompanying regulations do not define compounding as different from other processing of drug compounds.

Bulk drug is an active ingredient (in unfinished form) intended for manufacture into finished dosage form drug products (from *United States v. Algon Chemical Inc.*, 879 F.2d 1154 (3d Cir. 1989)). See also 21 CFR 207.3(a)(4). Bulk drugs (or ''bulk drug substances'') may be supplied in various size containers and may or may not meet USP standards.

Compounding is defined, for the purposes of this CPG, as any manipulation to produce a dosage form drug other than that manipulation that is provided for in the directions for use on the labeling of the approved drug product, for example, the reconstitution of a sterile powder with sterile water for injection.

Compounding ordinarily not subject to regulatory action, is defined as compounding by a licensed pharmacist or veterinary practitioner, when the criteria described in this document are met, within the confines of a legitimate practice. However, this document shall not be construed to bind the FDA or otherwise constrain its enforcement discretion. In addition, this document imposes no new obligations.

Compounding subject to regulatory action, is defined as compounding by a licensed pharmacist or other practitioner, when the criteria described in this document are not met, even if it is otherwise within the confines of a legitimate practice. Compounding outside the confines of a legitimate pharmacy or veterinary practice, whether by a pharmacist, veterinarian or other party, is subject to regulatory action.

''*Legitimate practice*'' is defined as follows:

(a) Pharmacist: A person licensed and operating in conformity with state law, and dispensing in response to a valid prescription.

(b) Veterinarian: A person licensed and operating in conformity with state law, and prescribing or dispensing in response to a valid Veterinarian-Client-Patient Relationship (VCPR.)

Valid Veterinarian-Client-Patient Relationship (VCPR)

A valid VCPR exists when: (1) the veterinarian assumes the responsibility for making medical judgments regarding the health of the animal(s) and the need for medical treatment, and the client (owner or other caretaker) agrees to follow the instructions of the veterinarian; and (2) the veterinarian has sufficient knowledge of the circumstances to initiate at least a general or preliminary diagnosis of the medical condition of the animal(s), i.e., the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal(s) by virtue of an examination of the animal(s), and/or by medically appropriate and timely visits to the premises where the animal(s) are kept; and (3) the practicing veterinarian is readily available for follow-up in case of adverse reactions or failure of the regimen of therapy. Source: American Veterinary Medical Association.

[1] This Update to the Compliance Policy Guides Manual (March 1995 edition) is a new CPG. This update will be included in the next printing of the Compliance Policy Guides Manual. The statements made in the CPG are not intended to create or confer any rights, privileges, or benefits on or any private person, but are intended for internal guidance.

Policy:

Circumstances exist when it may be necessary for a veterinarian to compound, or direct for a pharmacist to compound, an article that will result in an unapproved new animal drug. There is occasionally a need to utilize drugs labeled for human use, and much less commonly, bulk drug substances, for compounding into an appropriate dosage form. Some examples of these situations include: combinations of anesthetic drugs for titrated administration; preparation of dilute dosage forms for small, young, or exotic species patients; and usage of some antidote preparations. The Agency will exercise regulatory discretion and ordinarily would not take regulatory action against violations of the Act resulting from compounding an unapproved new animal drug if a determination is made that, in order to provide appropriate medical therapy, it is necessary to compound a new animal drug when the following conditions are met:

(1) A legitimate medical need is identified (the health of animals is threatened and suffering or death would result from failure to treat the affected animals),

(2) There is a need for an appropriate dosage regimen for the species, age, size, or medical condition of the patient, and

(3) There is no marketed approved animal drug which, when used as labeled or in an ''extra-label'' manner in conformity with criteria listed in CPG 615.100, or human-label drug, when used in conformity with criteria listed in CPG 608.100, may treat the condition diagnosed in the available dosage form, or there is some other rare extenuating circumstance. (For example, the approved drug cannot be obtained in time to treat the animal(s) in a timely manner, or there is a medical need for different excipients.)

After making the above determinations, the following criteria should be met and precautions observed:

(1) Dispensing by a licensed veterinarian; or the receipt of a valid prescription of a licensed veterinarian by a pharmacist. Dispensing should be within the confines of a valid veterinarian-client-patient relationship. Veterinarians should exercise professional judgment to determine when compounding requires the services of a pharmacist. Professional assistance is appropriate when the complexity of compounding exceeds the veterinarian's knowledge, skill, facilities, or available equipment.

(2) The veterinarian takes measures to ensure that:

(a) When used in food-producing animals: no illegal residues occur; a significantly extended time period is assigned for drug withdrawal; and steps are taken to assure that the assigned time frames are observed;

(b) The safety and efficacy of the compounded new animal drug is consistent with current standards of pharmaceutical and pharmacological practices, e.g., known incompatibilities are avoided;

(c) Appropriate steps are taken to minimize risk of personnel exposure to potentially harmful ingredients in the preparation process; and

(d) Procedures are instituted to assure that appropriate patient records for the treated animals are maintained.

(3) All drugs dispensed to the animal owner by the veterinarian or a pharmacist, bear labeling information which is adequate to assure proper use of the product. The following label information should be included:

(a) Name and address of the veterinary practitioner;

(b) the active ingredient or ingredients;

(c) the date dispensed and the expiration date, which should not exceed the length of the prescribed treatment except in cases where the veterinarian can establish a rationale for a later expiration date;

(d) directions for use specified by the practitioner, including the class/species or identification of the animals; and the dosage, frequency, route of administration, and duration of therapy;

(e) cautionary statements specified by the veterinarian and/or pharmacist (this would include all appropriate warnings necessary to ensure safety of human operators handling the finished drug, especially if there are potential hazards of exposure to any components);

(f) the veterinarian's specified withdrawal/discard time(s) for meat, milk, eggs, or any food which might be derived from the treated animal(s) (while the veterinarian must set the withdrawal time, the veterinarian in doing so may use relevant information provided by a dispensing pharmacist although the veterinarian retains ultimate responsibility);

(g) if dispensed by a licensed pharmacist, the name and address of the dispenser, serial number and date of order or its filing;

(h) if dispensed by a veterinarian, the serial number; and

(i) any other applicable requirements of state or federal law.

(4) The pharmacist adheres to the National Association of Boards of Pharmacy Good Compounding Practices (GCP), or to equivalent state good compounding practice regulations, except where provisions conflict with this CPG. Among other practices, pharmacists should keep records of compounding formulas, logs of compounded items and specific ingredients, record of assurance of quality of raw materials; and information on adverse effects and product failures. Pharmacists should label compounded products with expiration dates that do not exceed the prescribed period of treatment, and with withdrawal times furnished by the prescribing veterinarian.

Veterinarians and pharmacists who compound or prescribe compounded medicaments and pharmacists who compound medicaments according to these guidelines criteria set out above would be considered to be engaged in extemporaneous compounding not ordinarily subject to regulatory action.

Regulatory Action Guidance:

Investigations will be conducted in coordination with state officials as specified in the October 26, 1995 letter from Associate Commissioner for Regulatory Affairs (FDA) and Executive Director, National Boards of Pharmacy, to state pharmacy and drug regulatory officials, and FDA officials.

FDA actions based on violative conditions will be consistent with state laws and regulations to the extent possible. Deviations from GCP may be deferred to state authorities for action.

In general, the agency will place its highest regulatory priority on compounding products for use in food animals.

A. The following situations would likely indicate compounding subject to regulatory action and the existence of one or more would ordinarily be of high regulatory priority.

-Preparation for sale of *large* quantities of unapproved new animal drugs on an *ongoing* basis and where no valid *medical need* or VCPR exists. Compounding very limited quantities in anticipation of future need is acceptable provided that a history of past need can be documented;

-Compounding of medicaments that are essentially similar to FDA-approved products except in rare instances where a legitimate need can be established, for example, to treat animals on a timely basis or to avoid problems caused by certain excipients.

-Substitution or recommendation by a pharmacist of a compounded medicament for a prescription instead of using an FDA-approved product;

-Compounding from bulk drugs for use in food animals, with the rare exception of those medicaments that are permitted to be compounded by the Center for Veterinary Medicine (CVM) through compassionate regulatory discretion or other means (such as certain antidotes, large volume electrolyte products and other substances). Because these items may be revised, an official contact office at CVM has been designated to provide current information. That contact office is HFV–236, Case Guidance Branch, Division of Compliance, (301) 594–1785.

-Preparation for sale of unapproved new animal drugs on any scale which employ fanciful or trade names, colorings or other additives, or in any way imply that the products have some unique effectiveness or composition;

-Advertising, promotion, display, sale, or other means of marketing, prepared unapproved new animal drugs; and soliciting business to compound specific drug products, product classes or therapeutic classes of drug products;

-Offering compounded medicaments at wholesale to other state licensed veterinarians or pharmacists or other commercial entities for resale;

-Offering financial incentives such as rebates and consulting fees; and

-Dispensing of large quantities of compounded medicaments, where questions of stability of the finished product would arise;

-Failing to follow good compounding practices, including current standards of pharmaceutical and pharmacological practices, as described above;

-Labeling a product with an expiration date that exceeds the prescribed treatment period;

-Labeling a product with a withdrawal time established by the pharmacist instead of the veterinarian;

-Dispensing a disproportionate amount of compounded products out of state. The primary concern is the difficulty of maintaining proper relationships, for

example, pharmacist/veterinarian/client and VCPR. Rare instances of specialized compounding to meet emergency needs would not be considered disproportionate.

B. The following situations would indicate excessive risk to public health or to animals, or an otherwise adverse risk/benefit ratio, of high regulatory priority:

-Instances where illegal residues occur in meat, milk, eggs, honey, or aquaculture products and the residues were caused by the use of a compounded drug in association with the violation being investigated;

-Compounding of medicaments for food-producing animals, especially those used in lactating dairy animals, which cause a significant risk of illegal residues because, for example, withholding times have not been established by the veterinarian using adequate scientific information; and

-Preparation of drug products that are essentially similar to products that have been removed from the market due to regulatory concerns, for example, chloramphenicol, dimetridazole, DES in food animals.

C. The following activities would indicate compounding subject to regulatory action, and possibly of high regulatory priority. However, guidance from CVM should be solicited to assess the potential public health threat and/or animal safety (i. e., risk vs benefits).

-Instances where animals have been harmed or their safety unnecessarily compromised, such as compounding a nonsterile product for parenteral or ophthalmic administration where a sterile product is indicated, or other instances of not adhering to good compounding practices.

-Compounded substances that do not bear the required label information, including the name of the authorizing veterinarian, the active ingredients, directions for use, cautionary statements, and withdrawal times.

D. The following compounding situations would not ordinarily be considered for regulatory action. Appropriate state and local practice and pharmacy laws must be adhered to, however.

-Compounding for non-food animals and minor food animal uses where public health and animal safety have not been threatened, and are of great need and small risk. This would include such common practices as: veterinarians' combining agents for anesthesia, large volume parenterals, preparing appropriate dosage-forms for the size of the patient in question, ''animal-side'' compounding, and other similar common practices that are widely accepted in the day to day treatment of animal patients.

-Compounding from bulk drug substances for use in nonfood animals, including animals in public and private aquaria, when animal health is not threatened, and there is not a significant risk of diversion of the bulk drugs or compounded drugs for use in food animals. Bulk drug substances would ordinarily be expected to be in small packages that meet or exceed USP standards; see definition of ''bulk drugs'' above. Compounding should be performed in accordance with current standards of pharmaceutical practice (including referral to compendial monographs or established pharmacy textbooks).

If circumstances exist on a case-by-case basis that indicate otherwise, the Field should request guidance from CVM before considering regulatory action. The preceding is not intended to be a complete list of activities relating to compounding; there may be other factors which are appropriate when assessing an individual case.

Guidance for Charging Violations:

A warning letter is ordinarily the first choice of action, when referral to state authorities is not appropriate. Injunction would be the usual choice of court action, although seizure should be considered in the case of high priority drugs such as chloramphenicol or DES intended for use in food animals. Criminal action can be considered in egregious situations.

Compounded drugs subject to regulatory action under this policy will ordinarily be charged as unapproved new animal drugs, violative under Section 501(a)(5). Deviations from GCP, if not subject of state action will ordinarily be charged under Section 501(a)(2)(b). The tissue residue violations are covered under Section 402(a)(2)(D).

Dated: June 26, 1996.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 96–16973 Filed 7–2–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96F–0184]

Life Technologies, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Life Technologies, Inc., has filed a petition proposing that the food additive regulations be amended to provide for a change in the level of reactants for sulphopropyl cellulose ion-exchange resin for the recovery and purification of proteins for food use.

DATES: Written comments on the petitioner's environmental assessment by August 2, 1996.

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

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3071.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 6A4500) has been filed by Life Technologies, Inc., 8400 Helgerman Ct., Gaithersburg, MD 20874. The petition proposes to amend the food additive regulations in § 173.25 *Ion-exchange resins* (21 CFR 173.25) to provide for a change in the level of the reactants for sulphopropyl cellulose ion-exchange resin for the recovery and purification of proteins for food use. The amendment proposes that the amount of epichlorohydrin plus propylene oxide employed does not exceed 250 percent by weight of the starting quantity of cellulose. The current regulation provides that the amount of epichlorohydrin plus propylene oxide employed does not exceed 61 percent by weight of the starting quantity of cellulose.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before August 2, 1996, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the Federal Register. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: May 31, 1996.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–16975 Filed 7–2–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96F–0205]

Sumitomo Chemical America, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Sumitomo Chemical America, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the additional safe use of 3,9-bis{2-[3-(3-tert-butyl-4-hydroxy-5-methylphenyl)propionyloxy]-1,1-dimethylethyl}-2,4,8,10-tetraoxaspiro[5.5]-undecane as an antioxidant and/or stabilizer in propylene homopolymer and high-propylene olefin copolymer articles intended for use in contact with food.

DATES: Written comments on the petitioner's environmental assessment by August 2, 1996.

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

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 6B4510) has been filed by Sumitomo Chemical America, Inc., c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the additional safe use of 3,9-bis{2-[3-(3-tert-butyl-4-hydroxy-5-methylphenyl)propionyloxy]-1,1-dimethylethyl}-2,4,8,10-tetraoxaspiro[5.5]-undecane as an antioxidant and/or stabilizer in propylene homopolymer and high-propylene olefin copolymer articles intended for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before August 2, 1996, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the Federal Register. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: June 17, 1996.

George H. Pauli,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–16976 Filed 7–2–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95M–0195]

Ciba Corning Diagnostics Corp.; Premarket Approval of ACS™ AFP

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Ciba Corning Diagnostics Corp., Medfield, MA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of ACS™ AFP. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant by letter of September 29, 1995, of the approval of the application.

DATES: Petitions for administrative review by August 2, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter E. Maxim, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1293.

SUPPLEMENTARY INFORMATION: On October 18, 1993, Ciba Corning Diagnostics Corp., Medfield, MA 02052–1688, submitted to CDRH an application for premarket approval of ACS™ AFP. The device is a two-site chemiluminescence immunoassay and is indicated for the quantitative determination of alpha-fetoprotein (AFP) in human serum and in amniotic fluid from specimens obtained at 15 to 20 weeks gestation as an aid in detecting open neural tube defects (NTD's) when used in conjunction with ultrasonography and amniography; and in human serum, as an aid in managing nonseminomatous testicular cancer, when used in conjunction with physical examination, histology/pathology, and other clinical evaluation procedures, using the Ciba Corning ACS:180 automated chemiluminescence system.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Immunology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On September 29, 1995, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or

independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 2, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 13, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–16885 Filed 7–2–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96M-0199]

Bayer Corp.; Premarket Approval of Technicon Immuno 1® CEA Assay

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Bayer Corp., 511 Benedict Ave., Tarrytown, NY, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of Immuno 1 CEA Assay. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of January 30, 1996, of the approval of the application.

DATES: Petitions for administrative review by August 2, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter E. Maxim, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1293.

SUPPLEMENTARY INFORMATION: On September 29, 1994, Miles, Inc., Tarrytown, NY 10591, submitted to CDRH an application for premarket approval of Immuno 1® CEA Assay. The device is an in vitro diagnostic device intended to quantitatively measure carcinoembryonic antigen (CEA) in human serum on the Technicon Immuno 1® system. Measurements of CEA aid in the management of cancer patients by monitoring CEA concentrations. This diagnostic method is not intended for use on any other system.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Immunology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this committee.

On January 30, 1996, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 2, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 9, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–16972 Filed 7–2–96; 8:45 am]

BILLING CODE 4160–01–F

Product and Establishment License Applications, Refusal to File; Meeting of Oversight Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a meeting of its standing oversight committee in the Center for Biologics Evaluation and Research (CBER) that conducts a periodic review of CBER's use of its refusal to file (RTF) practices on product license applications (PLA's) and establishment license applications (ELA's). CBER's RTF oversight committee examines all RTF decisions that occurred during the previous quarter to assess consistency across CBER offices and divisions in RTF decisions.

DATES: The meeting will be held in July 1996.

FOR FURTHER INFORMATION CONTACT: Joy A. Cavagnaro, Center for Biologics Evaluation and Research (HFM–5), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0379.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 15, 1995 (60 FR 25920), FDA announced the establishment and first meeting of CBER's standing oversight committee. As explained in the notice, the importance to the public health of getting new biological products on the market as efficiently as possible has made improving the biological product evaluation process an FDA priority. CBER's managed review process focuses on specific milestones or intermediate goals to ensure that a quality review is conducted within a specified time period. CBER's RTF oversight committee meetings continue CBER's effort to promote the timely, efficient, and consistent review of PLA's and ELA's.

FDA regulations on filing PLA's and ELA's are found in 21 CFR 601.2(a) and 601.3. A sponsor who receives an RTF notification may request an informal conference with CBER, and thereafter may ask that the application be filed over protest, similar to the procedure for drugs described under 21 CFR 314.101(a)(3) (see 57 FR 17950, April 28, 1992).

CBER's standing RTF oversight committee consists of senior CBER officials, a senior official from FDA's Center for Drug Evaluation and Research, and FDA's Chief Mediator and Ombudsman. Meetings, ordinarily, will be held once a quarter to review all of the RTF decisions. The purpose of such a review is to assess the consistency within CBER in rendering RTF decisions.

Because the committee's deliberations will deal with confidential commercial information, all meetings will be closed to the public. The committee's deliberations will be reported in the minutes of the meeting. Although those minutes will not be publicly available because they will contain confidential commercial information, summaries of the committee's deliberations, with all confidential commercial information omitted, may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. If, following the committee's review, an RTF decision changes, the appropriate division will notify the sponsor.

Dated: June 26, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–16971 Filed 7–2–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[R–48]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Hospital Conditions of Participation—42 CFR Part 482; *Form No.:* HCFA–R–48; *Use:* Hospitals seeking to participate in the Medicare and Medicaid programs must meet the Conditions of Participation (COP) for Hospitals, 42 CFR Part 482. The information collection requirements contained in this package are needed to implement the Medicare and Medicaid COP for hospitals. *Frequency:* Annually; *Affected Public:* Not-for-profit institutions, Federal Government, and State, Local or Tribal Government; *Number of Respondents:* 1,500; *Total Annual Responses:* 1,500; *Total Annual Hours Requested:* 53,522.

To request copies of the proposed paperwork collections referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address:

OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503

Date: June 26, 1996

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–16897 Filed 7–2–96; 8:45 am]

BILLING CODE 4120–03–P

Health Resources and Services Administration

Request for Nominations to the Council on Graduate Medical Education

AGENCY: Health Resources and Services Administration, DHHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is requesting nominations to fill retiring members vacancies of the Council on Graduate Medical Education (COGME).

DATES: Nominations must be received by close-of-business on Friday, July 26, 1996.

ADDRESSES: Nominations and the curricula vitae of nominees should be sent to Enrique S. Fernandez, M.D., M.S. Ed., Executive Secretary, Council on Graduate Medical Education, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, Room 9A–27, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Enrique S. Fernandez, M.D., M.S.Ed., at the above address, or phone (301) 443–6190.

SUPPLEMENTARY INFORMATION: HRSA is requesting nominations under the authorities that established the Council on Graduate Medical Education, September 30, 1986, in accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463).

COGME was authorized by Congress in 1986 to provide an ongoing assessment of physician workforce trends and to recommend appropriate Federal and private sector efforts to address identified needs. Legislation calls for COGME to serve in an advisory capacity to the Secretary of the Department of Health and Human Services (DHHS), the Senate Committee on Labor and Human Resources, and the

House of Representatives Committee on Commerce.

The legislation specifies that the Council is to comprise 17 members. Appointed individuals are to include representatives of practicing primary care physicians, national and specialty physician organizations, international medical graduates, medical student and house staff associations, schools of medicine and osteopathy, public and private teaching hospitals, health insurers, business, and labor. Federal representation includes the Assistant Secretary for Health, DHHS; the Administrator of the Health Care Financing Administration, DHHS; and the Chief Medical Director of the Veterans Administration. Staff, logistical, and management support for the Council resides within the Department of Health and Human Services' Health Resources and Services Administration.

Each member serves up to a four-year term and is a voting member of the Council. Several positions in the Council are being vacated later this year by retiring members, and represent the following areas of expertise: practicing primary care physicians, national physician organizations, specialty physician organizations, medical and house staff associations, osteopathic and allopathic schools of medicine, public and private teaching hospitals, business, labor, and health insurers.

Nominations Procedure

In late May 1996, letters requesting nominees to the Council were sent to a variety of organizations representing the statutorily required composition of the retiring members of the Council. Because of the importance of the work of the Council, this notice expands the call for nominees from the public as well. Any other interested organization or person may nominate for consideration one or more qualified individuals for membership on the Council. Nominators shall note that the nominee is willing to serve as a member of the Council for the full four-year term, and that such person appears to have no conflict of interest that would preclude this service. For each nominee, include a complete curriculum vitae, a current business address, and a daytime telephone number. Your letter should include the name of the person(s) you recommend and your assessment of their special abilities for meeting the objectives of the Council. Individuals who are recommended should have relevant background and experience.

The Department has a special interest in assuring that appropriately qualified citizens who are women, member of racial and ethnic minority populations, or persons who have a physical disability are adequately represented on advisory bodies. It therefore encourages the nomination of such candidates to the Council on Graduate Medical Education. The department will also give close consideration to an equitable geographic representation.

Appointments shall be made without discrimination on the basis of age, race, ethnicity, sex, culture, religion, or socioeconomic status.

Please note that as a result of this notice, we are extending the date by which nominations to the Council must be received to July 26, 1996 for those organizations that received letters directly requesting nominees to the Council.

Dated: June 27, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–16978 Filed 7–2–96; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Board of Scientific Counselors, National Cancer Institute.

The meeting will be open to the public as indicated below, with attendance by the public limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation of other reasonable accommodations, should notify the contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sec. 552b(c)(6), title 5, U.S.C. The closed session will be devoted to the review, discussion and evaluation of individual programs and projects. This will include consideration of personnel qualifications and performance, the competence of individual investigators and similar matters, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Committee Name: Board of Scientific Counselors, National Cancer Institute—Basic Sciences Subcommittee.

Dates: July 22–23, 1996.

Place: National Institutes of Health, 9000 Rockville Pike, Bldg. 31, C Wing, 6th floor, Conference Rooms 10, Bethesda, MD 20892.

Open: July 22, 1996–8:30 a.m. to 9:30 a.m.

Agenda: Introductions and presentations regarding the NCI's current and future activities.

Closed: July 22, 1996–9:30 a.m. to 5 p.m.; July 23, 1996–8:30 a.m. to adjournment.

Agenda: To discuss administrative confidential site visit reports pertaining to laboratories in the Division of Basic Sciences.

Contact Person: Edward Harlow, Ph.D., Bldg. 31, Rm. 3A11, 9000 Rockville Pike, Bethesda, MD 20892, Telephone: 301–435–2277.

(Catalog of Federal Domestic Assistance Program numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Center Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: June 26, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–16905 Filed 7–2–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications

Committee Name: National Institute of Mental Health Special Emphasis Panel

Date: July 3, 1996.

Time: 3:30 p.m.

Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Rehana A. Chowdhury, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

The meeting will be closed in accordance with the provisions set forth in secs. 552(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: June 26, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–16906 Filed 7–2–96; 8:45 am]

BILLING CODE 4140–01–M

National Institutes on Aging; 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 meetings:

Name of Panel: Oldest-old Mortality—Demographic Models and Analysis (Teleconference Call).

Date of Meeting: July 10, 1996.

Time of meeting: 1:00 p.m. EST until adjournment.

Place of Meeting: National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, Maryland 20891.

Purpose/Agenda: To review a grant application.

Contact Person: Paul Lenz, Ph.D., Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of Panel: National Institute on Aging Special Emphasis Panel, (Teleconference Call).

Date of Meeting: July 11, 1996.

Time of meeting: 11:00 a.m. to 12:30 p.m. EST,

Place of Meeting: National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, Maryland 20891.

Purpose/Agenda: To review a grant application.

Contact Person: Maria Mannarino, M.D., Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of Panel: National Institute on Aging Special Emphasis Panel.

Date of Meeting: July 29–30, 1996.

Time of meeting: July 29—7:00 p.m. to recess; July 30—8:00 a.m. to adjournment.

Place of Meeting: Hyatt Dulles Hotel, Washington Dulles Airport, Herndon, Virginia.

Purpose/Agenda: To review grant applications.

Contact Person: James P. Harwood, Ph.D., Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institute of Health.)

Dated: June 26, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–16907 Filed 7–2–96; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: Biomedical Library Review Committee.

Date: July 31, 1996.

Time: 8:30 a.m. to approximately 5:00 p.m.

Place: Lister Hill Center, Fifth-floor Conference Room, Building 38A, 8600 Rockville Pike, Bethesda, MD 20894.

Contact person: Dr. Roger W. Dahlen, Scientific Review Administrator and Chief, Biomedical Information Support Branch, EP, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20894, 301/496–4221.

Purpose/agenda: To review and evaluate Internet Connections for Medical Institutions grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b (c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93–879—Medical Library Assistance, National Institutes of Health.)

Dated: June 26, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–16908 Filed 7–2–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: David Rostal, Georgia Southern University, Statesboro, GA, PRT–816535

The applicant request a permit to import samples from Eastern Pacific green sea turtles (*Chelonia mydas*) on nesting beaches on the coast of Mexico for the purpose of scientific research that will benefit the species in the wild. This notice covers activities conducted by the applicant over a five year period.

Applicant: Laurel Croft, Temecula, CA, PRT–816403

The applicant requests a permit to export five nene geese (*Branta sandvicensis*) and three Palawan peacock pheasants (*Polyplectron emphanum*) to the Hancock Wildlife Research Center, Surrey, British Columbia, Canada, for the purpose of enhancement of the survival of the species through captive propagation.

Applicant: Zoological Society of Milwaukee, Milwaukee, WI, PRT–816714

The applicant requests a permit to import blood, saliva, gastric fluid, and hair samples from two captive-held Chimpanzees (*Pan troglodytes*) and one captive-held bonobo (*Pan troglodytes*) from Zoofari, Cuernavaca, Mexico, for diagnostic testing and scientific research to enhance the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the

date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: June 28, 1996.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 96–17019 Filed 7–2–96; 8:45 am]

BILLING CODE 4310–55–P

Issuance of Permit for Marine Mammals

On May 15, 1996, a notice was published in the Federal Register, Vol. 61, No. 95, Page 24506, that an application had been filed with the Fish and Wildlife Service by the Center for Coastal Physical Oceanography for a permit (PRT–814695) for the import of tissue samples from one walrus (Odobenus rosmarus) and one polar bear (Ursus maritimus) in support of research on environmental contamination.

Notice is hereby given that on June 20, 1996, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 430, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: June 28, 1996.

Caroline Anderson

Acting Chief, Branch of Permits Office of Management Authority.

[FR Doc. 96–17018 Filed 7–2–96; 8:45 am]

BILLING CODE 4310-55–P

Geological Survey

Federal Geographic Data Committee (FGDC); Public Review of Vegetation Classification and Information Standards

ACTION: Notice; Request for comments.

SUMMARY: The FGDC is sponsoring a public review of the draft ''FGDC Vegetation Classification and Information Standards'' to be considered for adoption as an FGDC standard. If adopted, the standard must be followed by all Federal agencies for data collected directly or indirectly (through grants, partnerships, or contracts).

In its assigned leadership role for developing the National Spatial Data Infrastructure (NSDI), the FGDC recognizes that the standards must also meet the needs and recognize the views of State and local governments, academia, industry, and the public. The purpose of this notice is to solicit such views. The FGDC invites the community to review, test, and evaluate the proposed classification system and information standards. Comments are encouraged about the content, completeness, and usability of the proposed standard. The FGDC anticipates that the proposed vegetation classification and information standard, after updating or revision, will be adopted as a Federal Geographic Data Committee standard. The standard may be forwarded to other standards organizations for adoption if interest warrants such action.

DATES: Comments must be received on or before October 1, 1996.

CONTACT AND ADDRESSES: Requests for written copies of the classification system and information standards being proposed as a standard should be sent to Vegetation Standards Review, FGDC Secretariat (attn: Jennifer Fox), U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192; telephone 703–648–5514; facsimile 703–648–5755; or Internet ''gdc@usgs.gov''. The proposed standard is available for viewing through Internet on the Vegetation Subcommittee Home Page; the URL is: http://www.nbs.gov/~mikez/fgdc–sub.htm. The standard may also be downloaded from the FGDC Home Page at the following URL: www.fgdc.gov (select Public Documents) or directly from the FGDC anonymous ftp site by using the address: www.fgdc.gov/pub/standards/veg.

SUPPLEMENTARY INFORMATION: The overall objective of the Vegetation Classification and Information Standards is to support the production of uniform statistics on vegetation resources at the national level. It is important that, as agencies map or inventory Earth cover that is vegetated, they collect enough data to accurately and precisely translate it for national reporting, aggregation, and comparisons. This will eventually support the detailed, quantitative, geo-referenced basis for vegetation cover modeling, mapping and analysis at the field level. This document proposes a vegetation classification system and set of information standards to be used by Federal agencies and others in their activities for inventory, mapping, and reporting on the vegetation resources of the United States. It includes a description of the proposed Vegetation Classification and Information Standards, general policy regarding Federal agencies' use, suggested applications, the principles (basic ideas, requirements) that guided the development of this system, and a list of definitions used in the system and its development. This document does not detail the floristically defined units of the classification standard, the field methods, or the data management and analysis standards that will be required to develop and maintain this Vegetation Classification and Information Standard. This information will be presented in subsequent documents by the Subcommittee. Vegetation Cover is defined as vegetation that covers or is visible at or above the land or water surface. Vegetation data are the attributes of the vegetation that are used to classify and characterize the vegetation type and to map a vegetation stand. These data come from the interpretation; of remotely sensed imagery, field work, and other thematic data sources.

Input sought on the draft standards includes how well it meets user needs. Specific issues on which response is requested include: the threshold for separating vegetated from non-vegetated areas; the threshold for defining dominance; the criteria for separating tree from shrub; and the need for parallelism between tree-dominated cover classes and other life form cover classes. For examples, tree-dominated land is divided into open and closed canopy. Are similar divisions needed within the shrub and herbaceous life forms? Shrub classes are divided based upon shrub height; are height classes needed for other life forms?

Reviewer comments should be sent to the FGDC Secretariat at the above address. Please send comments in both hardcopy and softcopy, preferably on a 3.5-inch diskette.

Dated: June 25, 1996.

Richard E. Witmer,

Acting Chief, National Mapping Division.

[FR Doc. 96–16898 Filed 7–2–96; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Land Management

[NV–020–1900–01]

Twin Creeks Mine Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is given that the Winnemucca District of the Bureau of Land Management (BLM) has prepared, by third party contractor, a Draft Environmental Impact Statement on Santa Fe Pacific Gold Corporation's Twin Creeks Mine Consolidation and Expansion Project. This document is available for public review for a 45 day period.

DATES AND ADDRESSES: Written comments on the Draft Environmental Impact Statement must be postmarked by September 3, 1996.

A public meeting to receive oral and written comments has been scheduled for the date and place listed below. The meeting will begin at 7:00 p.m., August 15, 1996, at the Winnemucca District Office, Winnemucca, Nevada.

A copy of the Draft Environmental Impact Statement can be obtained from: Bureau of Land Management, Winnemucca District Office, ATTN: Gerald Moritz, Project Manager, 5100 E. Winnemucca Boulevard, Winnemucca, Nevada 89445.

The Draft Environmental Impact Statement is available for inspection at the following additional locations: Bureau of Land Management, Nevada State Office, 850 Harvard Way, Reno, Nevada; Humboldt County Library, Winnemucca, Nevada; Lander County Library, Battle Mountain, Nevada; and the University of Nevada Library in Reno, Nevada.

FOR FURTHER INFORMATION CONTACT: Gerald Moritz, Project Manager at the above Winnemucca District address or telephone (702) 623–1500.

SUPPLEMENTARY INFORMATION: The Draft Environmental Impact Statement analyzes the potential environmental impacts that could result from the consolidation and expansion of the current gold mining operation at the Twin Creeks Mine. Alternatives analyzed include the Proposed Action, No Action, the Partial Vista Pit Backfill Alternative, the Selective Handling of Overburden and Interburden Storage Area Alternatives. The project involves the consolidation of the Rabbit Creek and Chimney Creek Mines, expansion of the South Pit, overburden and interburden storage area, ore processing facilities, expanded dewatering system and water disposal facilities, and diversion of Rabbit Creek and tributaries.

Dated June 21, 1996.

Ron Wenker,

District Manager.

[FR Doc. 96–16882 Filed 7–2–96; 8:45 am]

BILLING CODE 4310–HC–P

[CA–930–06–2700 WARD]

Extension of Scoping Period for Ward Valley Supplemental Environmental Impact Statement (SEIS) Until July 15, 1996

SUMMARY: The Bureau of Land Management (BLM) in California announces an extension of the scoping period for the Ward Valley SEIS until July 15, 1996. Three public scoping workshops were held in Sacramento, San Bernardino and Needles, California. This extension is to allow the public more time to provide written comments on the scope of the SEIS.

FOR FURTHER INFORMATION CONTACT: Richard F. Johnson or John S. Miles at (916) 979–2800.

Philip L. Damon,

Acting Area manager.

[FR Doc. 96–17122 Filed 7–2–96; 8:45 am]

BILLING CODE 4310–40–P

[WO–300–1310–00]

Green River Basin Advisory Committee, Colorado and Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Green River Basin Advisory Committee.

SUMMARY: This notice announces the dates, time, and schedule and initial agenda for a meeting of the Green River Basin Advisory Committee (GRBAC).

DATES: July 17, 1996, from 8:00 a.m. until 6:00 p.m. and July 18, 1996, from 8:00 a.m. until 3:15 p.m.

ADDRESSES: Jeffrey Center, 3rd and Spruce Streets, Rawlins, WY 82301.

FOR FURTHER INFORMATION CONTACT: Terri Trevino, GRBAC Coordinator, Bureau of Land Management, P.O. Box 1828, Cheyenne, WY 82003, telephone (307) 775–6020.

SUPPLEMENTARY INFORMATION: The topics for the meeting will include:

(1) Road standards, alternative funding, and the NEPA process.

(2) Public comment.

This meeting is open to the public. Persons interested in making oral comments or submitting written statements for the GRBAC's consideration should notify the GRBAC Coordinator at the above address by July 10. The GRBAC will hear oral comments from 4:00 p.m. to 6:00 p.m. on July 17. The GRBAC may establish a time limit for oral statements.

Date Signed: June 28, 1996.

Mat Millenbach,

Acting Director, Bureau of Land Management.

[FR Doc. 96–17121 Filed 7–2–96; 8:45 am]

BILLING CODE 4310–84–M

[OR–030–06–1220–00: GP6–0196]

Notice of Meetings of Southeastern Oregon Resource Advisory Council

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meetings.

SUMMARY: Notice is given that a meeting of the Southeastern Oregon Resource Advisory Council will be held August 5, 1996 from 8:00 a.m. to 9:00 p.m. and August 6 from 8:00 a.m. to 12:00 noon at the Jordan Valley Lions Club Room, 902 Bassett Street, Jordan Valley, Oregon.

At an appropriate time, the Council will recess for approximately one hour for lunch and one and one-half hours for dinner. Public comments will be received from 7:00 p.m. to 7:30 p.m., August 6, 1996. Topics to be discussed during the meeting are administrative activities of the Council, the Southeastern Oregon Resource Management Plan, and the Interior Columbia Basin Ecosystem Management Project.

Notice is given that a meeting of the Southeastern Oregon Resource Advisory Council will be held September 19, 1996 from 1:00 p.m. to 9:00 p.m. and September 20 from 8:00 a.m. to 12:00 noon at the Harney County Museum Club Room, 18 West ''D'' Street, Burns, Oregon.

At an appropriate time, the Council will recess for approximately one and one-half hours for dinner. Public comments will be received from 7:00 p.m. to 7:30 p.m., September 19, 1996. Topics to be discussed during the meeting are administrative activities of the Council, the Southeastern Oregon Resource Management Plan, and the Interior Columbia Basin Ecosystem Management Plan.

DATES: The Southeastern Oregon Resource Advisory Council meeting will begin at 8:00 a.m. and continue to 9:00 p.m., August 5 and, 8:00 a.m. to 12:00 noon on August 6, 1996.

The Southeastern Oregon Resource Advisory Council meeting will begin at 1:00 p.m. and continue to 9:00 p.m., September 19, and 8:00 a.m. to 12:00 noon on September 20, 1996.

ADDRESSES: The Southeastern Oregon Resource Advisory Council meeting will take place in the Jordan Valley Lions Club Room, 902 Bassett Street, Jordan Valley, Oregon.

The Southeastern Oregon Resource Advisory Council meeting will take place in the Harney County Museum Club Room, 18 West ''D'' Street, Burns, Oregon.

FOR FURTHER INFORMATION CONTACT: Jonne Hower, Bureau of Land Management, Vale District, 100 Oregon Street, Vale, OR 97918 (Telephone 541–473–3144).

Geoffrey B. Middaugh,

Associate District Manager.

[FR Doc. 96–16899 Filed 7–2–96; 8:45 am]

BILLING CODE 4310–33–M

[ID–933–1430–01; IDI–15693 01]

Public Land Order No. 7203; Partial Revocation of Geological Survey Order Dated October 17, 1951; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Geological Survey order insofar as it affects 40 acres of public land withdrawn by the Bureau of Land Management for Powersite Classification No. 420. The land is no longer needed for this purpose and the revocation is needed to transfer the land by exchange. This action will open the land to surface entry. The land has been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: October 2, 1996.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706–2500, 208–384–3166.

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

1. The Geological Survey Order dated October 17, 1951, which established Powersite Classification No. 420, is hereby revoked insofar as it affects the following described land:

Boise Meridian

T. 29 N., R. 3 W.,
Sec. 21, NE1¼SW1¼.

The area described contains 40 acres in Idaho County.

2. The State of Idaho has a preference right for public highway rights-of-way or material sites for a period of 90 days from the date of publication of this order and any location, entry, selection, or subsequent patent shall be subject to any rights granted the State as provided by Section 24 of the Act of June 10, 1920, as amended 43 U.S.C. 818 (1988).

3. At 9 a.m. on October 2, 1996, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on October 2, 1996, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: June 24, 1996.

Bob Armstrong

Assistant Secretary of the Interior.

[FR Doc. 96–16900 Filed 7–2–96; 8:45 am]

BILLING CODE 4310–GG–P

[NV–930–4210–05; N–37127–01]

Notice of Realty Action: Lease/conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management.

ACTION: Recreation and public purpose lease/conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The City of Las Vegas proposes to use the land for a public park facility. The below described land was previously classified under the Recreation and Public Purposes Act for use as a church facility. The Oakey Baptist Church has relinquished their Recreation and Public Purposes Application for the below described land:

Mount Diablo Meridian

Nevada T. 21 S., R. 60 E., sec. 3: lots 88, 89, 90.

Containing 16.050 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe; and will be subject to:

1. An easement in favor of the City of Las Vegas for roads, public utilities and flood control purposes as follows: 30 feet wide on the south boundaries of Lots 88, 89 and 90, 30 feet wide along the east boundary of Lot 90 together with 15 foot radius corners of the NE and SE corners of Lot 90.

2. Those rights for roadway purposes which have been granted to the City of Las Vegas by Permit No. N–51520 under the Act of October 21, 1976 (43 U.S.C. 1761).

3. Those rights for a well site which have been granted to the Las Vegas Valley Water District by Permit No. N–53360 under the Act of October 21, 1976 (43 U.S.C. 1761).

Detailed information concerning this action is available for the review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada. Upon publication of this notice is the Federal Register, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except lease/purchase under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral disposal laws. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the Federal Register, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the District Manager, Las Vegas

District, 4765 W. Vegas Dr, Las Vegas, Nevada 89108.

Classification Comments

Interested parties may submit comments involving the suitability of the Land for a public park facility. Comments on the classification are restricted to weather the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a church facility.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the Federal Register. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: June 2, 1996.

Michael F. Dwyer,

District Manager, Las Vegas, NV.

[FR Doc. 96–16901 Filed 7–2–96; 8:45 am]

BILLING CODE 4310–HC–M

[CA–068–06–1220–00]

Notice for Public Comment, Proposed Supplementary Rule Affecting Public Lands Within the Barstow Resource Area; California

AGENCY: Bureau of Land Management, United States Department of the Interior.

ACTION: This notice proposes to establish a supplementary rule regarding recreational shooting within the Barstow Resource Area, Bureau of Land Management. This proposed supplementary rule requires that, on Public Lands within the Barstow Resource Area, in areas permitted by San Bernardino County Ordinance 22.011 for legal recreational target shooting of rifles, handguns and shotgun slugs, no person shall fire, shoot or discharge a firearm at any object other than a retrievable paper silhouette or bulls-eye target or a firearm target constructed of plate iron or plate steel such as an iron silhouette, knock-down or spinner target.

SUMMARY: In accordance with title 43, Code of Federal Regulations § 8365.1–6, the State Director may establish supplementary rules in order to provide for the protection of persons, property, and public lands and resources. This authority was delegated to the District and Area managers pursuant to BLM Manual 1203, California Supplement.

Copies of the final supplementary rule would be made available at the local BLM office, the supplementary rule would be published in local newspapers upon the effective date, and affected lands within the Barstow Resource Area would be posted.

PENALTIES: Failure to comply with this supplementaty rule would be punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months.

SUPPLEMENTARY INFORMATION: This supplementary rule was proposed to deter and prevent the accumulation of household refuse and trash which is being deposited on these Public Lands by a significant portion of recreational shooters. Shooters on public lands have used as targets and then discarded old television sets, glass bottles, propane gas cylinders, and other similiar items and, as a result, have adversely impacted the quality of these public lands. These types of discarded targets pose a significant public safety threat and cause unsightly litter. This supplementary rule will not infringe upon Constitutional rights of an individual to own or possess lawful firearms. This supplementary rule does not impact or effect lawful hunting of wild birds or game. All shooters will be responsible to retrieve and properly dispose of their targets and spent shells upon leaving Public Lands.

DATES FOR COMMENTS: Comments will be accepted by the Barstow Resource Area for thirty (30) days following this publication. A final rule which replies to comments and/or amends the rule will be published within thirty (30) days after the comment period has expired.

ADDRESSES: Comments should be sent to: United States Department of the Interior, Bureau of Land Management, Barstow Resource Area, 150 Coolwater Lane, Barstow, CA 92311, Attention: Tim Read, Area Manager.

FOR MORE INFORMATION CONTACT: Maps depicting areas affected by this proposed supplementary rule and other pertinent information may be obtained at the BLM Barstow Resource Area office (619–255–8700) or the California Desert Information Center (619–255–8760), both located in Barstow, California.

Tim Read,

Area Manager.

[FR Doc. 96–16501 Filed 7–2–96; 8:45 am]

BILLING CODE 4310–40–P

[AZ–025–06–1150–04; AZA 29318]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 1,119.24 acres of public land in Mohave County to protect endangered plant habitat. This notice closes the land for up to two years from surface entry and mining. The land will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by October 1, 1996.

ADDRESS: Comments and meeting requests should be sent to the Kingman Area Manager, BLM, 2475 Beverly Avenue, Kingman, AZ 86401.

FOR FURTHER INFORMATION CONTACT: Bob Hall, BLM Kingman Area Office, (520) 757–3161.

SUPPLEMENTARY INFORMATION: On April 30, 1996, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws subject to valid existing rights:

Gila and Salt River Meridian

T. 14 N., R. 11 W.,

Sec. 1, Lots 1 to 4, inclusive, S½N½ and S½;
Sec. 2, SE¼;
Sec. 11, NE¼;
Sec. 12, N½N½.

The area described contains 1,119.24 acres, in Mohave County.

The purpose of the proposed withdrawal is to protect, enhance and conserve habitat for the endangered Arizona Cliffrose.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Kingman Area Manager, Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is

afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Kingman Area Manager within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the Federal Register at least 30 days before the scheduled date of the meeting.

The application will be processed in accodance with the regulations set forth in 43 CFR 2300.

For a period of two years from the date of publication of this notice in the Federal Register, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are licenses, permits, cooperative agreements, and discretionary land use authorizations of a temporary nature, but only with the approval of an authorized officer of the Bureau of Land Management.

Dated: June 25, 1996.

David J. Miller,

Associate District Manager.

[FR Doc. 96–16948 Filed 7–2–96; 8:45 am]

BILLING CODE 4310–32–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Cancellation of Acceptance of the American Schools and Hospitals Abroad Application for Assistance

SUMMARY: This applicant notice is for private U.S. organizations requesting grant assistance for overseas institutions under Section 214 of the Foreign Assistance Act. ''Applicant'' refers to the United States founder or sponsor of the overseas institution. Due to budget cuts, The Office of American Schools and Hospitals Abroad (ASHA) will not accept applications for assistance on August 31, 1996 for consideration in FY 1997 and for future years.

FOR FURTHER INFORMATION CONTACT: The Office of American Schools and Hospitals Abroad (ASHA), (703) 351–0232.

SUPPLEMENTARY INFORMATION:

Title: American Schools and Hospitals Abroad.

Form No.: A.I.D. 1010–2.

OMB No.: 0512–0011.

Type of submission: Cancellation of Acceptance of Application.

Abstract: The application was used by U.S. founders or sponsors in applying for grant assistance from ASHA on behalf of their institutions overseas. ASHA is a competitive grant program. Decisions are based on an annual comparative review of all applications requesting assistance in that fiscal year, pursuant to Section 214 of the Foreign Assistance Act, as amended.

Annual Reporting Burden

Respondents: Not-for-profit organizations.

Number of respondents: 85.

Estimated total annual hour burden on respondents: 12.

Dated: June 27, 1996.

Howard B. Helman,

Director, Office of American Schools and Hospitals Abroad, Bureau for Humanitarian Response.

[FR Doc. 96–16988 Filed 7–2–96; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–739 (Final)]

Clad Steel Plate From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Japan of clad steel plate, provided for in subheading 7210.90.10 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective February 27, 1996, following a preliminary determination by the Department of Commerce that imports of clad steel plate from Japan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of March 13, 1996 (61 FR 10380). The hearing was held in Washington, DC, on May 7, 1996, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 25, 1996. The views of the Commission are contained in USITC Publication 2972 (June 1996), entitled ''Clad Steel Plate from Japan: Investigation No. 731–TA–739 (Final).''

By order of the Commission.

Donna R. Koehnke,

Secretary

Issued: June 25, 1996

[FR Doc. 96–16987 Filed 7–2–96; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 9, 1996 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–365–366 (Final) and 731–TA–734–735 (Final) (Certain Pasta from Italy and Turkey)—briefing and vote.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: July 1, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary

[FR Doc. 96–17182 Filed 7–01–96; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. American National Can Co. & KMK Maschinen AG; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have

been filed with the United States District Court for the District of Columbia in *United States* v. *American National Can Co. and KMK Maschinen AG*, Civil No. 96–01458.

The Complaint alleges that the defendants violated section 1 of the Sherman Act by entering a series of agreements, the purpose and effect of which was to eliminate competition between them in the North American markets for laminated tubes and laminated tube-making equipment and technology. The Complaint further alleges that pursuant to those agreements, KMK Maschinen AG (''KMK'') sold its U.S. tube-making affiliate to American National Can Co. (''ANC'') and agreed to sell its laminated tube-making equipment and to license its related technology exclusively to ANC, and ANC agreed to buy all its laminated tube-making equipment for use in North America from KMK and not to acquire or use anyone else's equipment or technology there while at the same time discontinuing its own manufacture of such equipment.

The proposed Final Judgment would end the extant exclusive, laminated tube-making equipment and technology arrangement between the defendants, and would bar them from collecting any payment from each other under that agreement. It also would enjoin defendants from entering agreements that restrict certain rights of any party relating to laminated tubes or laminated tube-making equipment or technology, where the parties compete directly against each other in the same segment of the laminated tube market (tubes, equipment, or technology) to which the restraint applies.

Laminated tubes are collapsible tubular containers of multiple, laminated plastic layers used to package virtually all toothpaste and many pharmaceutical products.

Public comment on the proposed Final Judgment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the Federal Register and filed with the Court. Comments should be directed to Mary Jean Moltenbrey, Chief, Civil Task Force, U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Suite 300, Washington, DC 20530 (202/616–5935).

Rebecca P. Dick,

Deputy Director of Operations.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

In the matter of; UNITED STATES OF AMERICA, Plaintiff, v. AMERICAN NATIONAL CAN CO., and KMK MASCHINEN AG, Defendant; Civil Action No. 96–01458, Filed June 25, 1996, Judge Thomas Pennfield Jackson.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto for purposes of this action, and venue of this action is proper in the District of Columbia;

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)–(h)), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court;

3. Each defendant agrees to be bound by the provisions of the proposed Final Judgment pending its approval by the Court; and

4. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: June 24, 1996.

For Plaintiff:

Anne K. Bingaman,

Assistant Attorney General.

Joel I. Klein,

Deputy Assistant Attorney General.

Rebecca P. Dick,

Deputy Director of Operations.

Mary Jean Moltenbrey,

Chief, Civil Task Force.

Robert J. Zastrow,

Assistant Chief, Civil Task Force.

Thomas H. Liddle.

Scott A. Scheele,

DC Bar No. 429061, Attorneys, Antitrust Division, U.S. Department of Justice, Suite 300, Liberty Place Building, 325 7th Street, N.W., Washington, DC 20530.

For Defendant American National Can Co.:

McDermott, Will & Emery

David Marx, Jr.,

A Member of the Firm.

For Defendant KMK Maschinen Ag:

Wilmer, Cutler & Pickering

Rajiv P. Santwan,

Chief Executive, KMK Maschinen AG.

C. Loring Jetton, Jr.,

A Member of the Firm, D.C. Bar No. 83766.

Final Judgment

Plaintiff, United States of America, filed its Complaint on June 25, 1996; plaintiff and defendants, by their respective attorneys, have consented to entry of this Final Judgment without trial or adjudication of any issue of fact or law, and defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court. This Final Judgment shall not be evidence against or an admission by any party with respect to any issue of fact or law herein.

Now, therefore, before the taking of any testimony and upon consent of the parties, it is hereby Ordered, Adjudged, and Decreed as follows:

I

Jurisdiction

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against defendants under Section 1 of the Sherman Act, 15 U.S.C. 1.

II

Definitions

As used in this Final Judgment:

A. ''Agreement'' means any contract, arrangement, or understanding, whether oral or written, or any term or provision thereof, together with any modification or amendment thereto;

B. ''Laminated tube'' means a collapsible, squeeze-to-use tubular package with a sideseam that consists of a body of multiple laminated plastic layers separated by a layer of either plastic or aluminum foil that serves as a barrier to moisture, light, gases, or other agents; a tube head attached to the body; and may include a cap;

C. ''Laminated tube-making equipment'' means machinery, apparatus, or devices for making and/or assembling laminated tubes, including forming a tube head, sealing or otherwise connecting it to a laminated tube body, or capping the laminated tube;

D. ''Laminated tube-making technology'' means any form of intellectual property relating to (i) the design, development, construction, or operation of laminated tube-making equipment or any component, feature, or use thereof; (ii) the fabrication of laminated tubes or any component

thereof; or (iii) the material used in making laminated tubes; but only to the extent such component, feature, use, or material relates to laminated tubes and not to other types of packaging;

E. ''North America'' means the United States of America, Canada, and the United Mexican States.

III

Applicability

This Final Judgment applies to each defendant; to each of its officers, directors, agents, employees, successors, assigns, subsidiaries, divisions, and any other organizational unit controlled by either defendant; and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

Injunctive Relief

Each defendant is enjoined and prohibited from:

A. Maintaining, enforcing, carrying out, or claiming any right or operating under the 1987 License and Technical Assistance Agreement (LTAA) between American National Can Co. and KMK Karl Maegerle Lizenz AG;

B. Collecting or attempting to collect any royalties, fees, or other payments under the LTAA for (i) the manufacture, sale, or use in North America of laminated tubes or laminated tube-making equipment or (ii) the license, sale, or use in North America of laminated tube-making technology;

C. Entering into, maintaining, enforcing, carrying out, or claiming any right under any agreement with any person who

(1) Owns or has the right to use, license, and transfer laminated tube-making technology that restricts the right of any party to the agreement to use, license, or transfer in North America laminated tube-making technology that it owns or has the right to use at the time of the agreement,

(2) Manufactures or sells laminated tube-making equipment that restricts the right of any party to the agreement to manufacture or sell such equipment in North America using or incorporating only laminated tube-making technology that it owns or has the right to use at the time of the agreement, or

(3) Manufactures or sells laminated tubes in North America that restricts the right of any party to the agreement to manufacture or sell, but not use, laminated tubes in North America.

The prohibitions of this Section IV.C shall not apply to either defendant's acquisition of substantially all of any person's assets or voting securities relating to laminated tube-making equipment or technology, provided that (1) the defendant gives the Antitrust Division of the United States Department of Justice written notice of the proposed acquisition at least 30 days prior to its consummation, and (2) if within that 30-day period the Antitrust Division requests additional information and/or documentary material relevant to the proposed acquisition, the defendant extends the consummation thereof for at least an additional 20 days after the date on which the Antitrust Division receives all the information and documentary material requested from the defendant.

V

Notification

Within 60 days of entry, each defendant shall provide a copy of this Final Judgment by mail or personal service to its officers, directors, and managerial employees responsible for defendant's laminated tubes and/or laminated tube-making equipment or technology businesses, and to its current laminated tube-making technology licenses in North America. Thereafter, each defendant shall distribute a copy of this Final Judgment to any new such officer, director, or managerial employee within 60 days of a person's assumption of duties as an officer, director, or manager of that defendant.

VI

Compliance Information

A. To determine or secure compliance with this Final Judgment, from time to time, duly authorized representatives of plaintiff, upon written request of the Assistant Attorney General in charge of the Antitrust Division, or reasonable notice to a defendant at its principal office and subject to any lawful privilege, shall be permitted:

1. Access during normal office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the defendant's possession, custody, and control relating to any matters contained in this Final Judgment; and

2. To interview the defendant's officers, employees, or agents regarding such matters, who may have counsel present, subject to the defendant's reasonable convenience but without its restraint or interference.

B. Upon written request of the Assistant Attorney General in charge of the Antitrust Division to a defendant's principal office, and subject to any lawful privilege, the defendant shall submit such written reports, under oath if requested, relating to any matters contained in this Final Judgment, as may be requested.

C. No information or documents obtained pursuant to this section shall be divulged by plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by a defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, ''subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then plaintiff shall give 10 days' notice to the defendant before divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendant is not a party.

VII

Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any party to this Final Judgment to apply to this Court at any time for further orders or directions as may be necessary or appropriate to implement or construe this Final Judgment, to modify or terminate any provision thereof, to enforce compliance therewith, and to punish violations thereof.

VIII

Term

This Final Judgment shall expire ten years from the date of its entry.

IX

Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

Court approval subject to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

_____

United States District Judge

Certificate of Service

I hereby certify that copies of the foregoing Complaint, Stipulation (to which is attached a copy of a proposed Final Judgment), and Competitive Impact Statement were served this 25th day of June 1996, by first class mail, postage prepaid, upon:

David Marx, Jr., Esq., McDermott, Will & Emory, 31st Floor, 227 West Monroe Street, Chicago, IL 60606–5096

Counsel for Defendant, American National Can Co.

C. Loring Jetton, Jr., Esq., Wilmer, Cutler & Pickering, 2445 M Street, N.W., Washington, D.C. 20037–1420

Counsel for Defendant KMK Maschinen AG.

Thomas H. Liddle,

Attorney, Antitrust Division, U.S. Department of Justice, 325 7th Street, N.W., Washington, D.C. 20530.

Competitive Impact Statement

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b), the United States of America hereby files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust action against American National Can Co. (''ANC'') and KMK Maschinen AG (''KMK'').

I

Nature and Purpose of the Proceeding

The government filed this civil antitrust suit on June 25, 1996, alleging that defendants violated Section 1 of the Sherman Act by engaging in a combination and conspiracy that unreasonably restrains interstate trade and commerce in the manufacture of laminated tubes and laminated tube-making equipment, and in the license and transfer of related laminated tube-making technology. The Complaint alleges that this combination and conspiracy consisted of a series of continuing agreements between defendants, the purpose and effect of which was to eliminate competition between them in the North American markets for laminated tubes and laminated tube-making equipment and technology. Specifically, KMK agreed to sell its laminated tube-making equipment and license its related technology exclusively to ANC, and ANC purchased KMK's U.S. laminated tube-making facility. These agreements harmed competition in several ways:

(a) They eliminated KMK as a competitor in the laminated tubes market, thereby reducing competition among tube manufacturers in the United States;

(b) They precluded KMK from selling laminated tube-making equipment or from licensing laminated tube-making technology to persons other than ANC for 15 years, and gave ANC effective control over KMK's existing laminated tube-making equipment in North America, thereby reducing competition among equipment manufacturers in the United States; and

(c) They gave ANC effective control over KMK's laminated tube-making technology in North America, thereby reducing competition generally in the United States laminated tube, laminated tube-making equipment, and related technology markets.

The complaint seeks: (1) A declaration that these agreements violate section 1 of the Sherman Act; and (2) an injunction preventing defendants from enforcing, maintaining, or renewing any such agreement or entering into or engaging in any other agreement having a similar purpose or effect.

The United States and the defendants have stipulated that the Court may enter the proposed Final Judgment at any time after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h). Under the provisions of section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(e), the proposed Final Judgment may not be entered unless the Court finds that its entry is in the public interest.

II

The Practices and Events Giving Rise to the Alleged Sherman Act Violations

A. The Markets Involved

1. Laminated Tubes

Laminated tubes are collapsible tubular containers of multiple, laminated plastic layers used to package virtually all toothpaste and many pharmaceutical products sold in the United States. These tubes preserve the product within a flexible tube without permitting air or moisture to enter the tube. Other packaging materials either cost more than or lack the barrier characteristics of laminated tubes. Thus, there are no viable economic substitutes for laminated tubes. Annual retail sales of such tubes in North America are about $110 million, or 1.1 billion tubes, of which approximately 800 million are sold to toothpaste manufacturers; approximately 300 million are sold to pharmaceutical manufacturers and others.

The market for laminated tubes is highly concentrated. Three companies manufacture over 95% of such tubes sold in the United States. ANC is the largest competitor with total sales comprising over 60% of the United States toothpaste tube market. There are only two other competitors in the United States that have 5% or more of the laminated tubes market. It is not economically feasible to ship laminated tubes into North America.

Successful new entry into, or expansion within, the laminated tube market is difficult. To be successful, a new entrant must acquire expensive laminated tube-making equipment and essential, related patented and unpatented laminated tube-making technology. The up-front investment in plant, machinery, research, technology, and sales is substantial relative to the profit opportunity available in a commodity market like this one.

2. Laminated Tube-Making Equipment

Laminated tube-making equipment consists of machinery used to manufacture laminated tubes. This equipment cannot efficiently be used for any other purpose, nor can other machines easily or efficiently be converted or adapted to make laminated tubes. Thus, there are no viable economic substitutes for this equipment.

The market for laminated tube-making equipment is highly concentrated. Besides KMK, only two companies worldwide currently manufacture such equipment.

KMK is, therefore, one of only a very few firms in the world that can provide laminated tube-making equipment for sale in the United States. KMK has sold such equipment worldwide, and its equipment enjoys a good reputation in the industry. KMK has numerous patents in countries around the world, including the United States.

Successful new entry into, or expansion within, the market for laminated tube-making equipment is difficult. To be successful, a new entrant must acquire or develop essential patented and unpatented laminated tube-making technology. Such technology is expensive to acquire or develop relative to the sales opportunity for the equipment.

3. Laminated Tube-Making Technology

The use of both patented and unpatented tube-making technology is essential to the profitable manufacture of laminated tubes and laminated tube-making equipment. There are only a few competing forms of such technology today, and KMK, ANC, and an affiliate of ANC's parent hold the rights to three of the four leading types of the technology worldwide.

Development of new competitive technology would require substantial investment with highly uncertain returns. New entry into the laminated tube-making technology market cannot reasonably be expected in the foreseeable future.

B. Illegal Agreements

In 1987, before entering into the agreements discussed below, both ANC and KMK were vertically integrated companies that owned rights to laminated tube-making technology, manufactured laminated tube-making equipment for use in the United States, and manufactured and sold laminated tubes in the United States.

In late 1987, KMK and ANC entered into several agreements, the purpose and effect of which was to eliminate competition between them in the North American laminated tube and tube-making equipment markets.

Pursuant to one of these agreements ANC purchased Swisspack Corporation, KMK's U.S. affiliate, for just under $15 million, although the laminated tube-making equipment covered by the transaction was valued at less than $5 million. As a result of its selling Swisspack to ANC, KMK exited the North American laminated tube market.

On the same day ANC acquired Swisspack, ANC and KMK entered into a License and Technology Assistance Agreement (''LTAA''). Pursuant to that agreement, KMK gave ANC an exclusive license to use KMK's laminated tube-making technology, and an exclusive right to but its tube-making equipment, in North America (''exclusivity provision''). In exchange, ANC agreed to license any laminated tube-making technology and buy all laminated tube-making equipment for use in North America only from KMK, and not to acquire or use any third party's laminated tube-making equipment or technology there. At or about the time of these agreements, ANC discontinued the manufacture of laminated tube-making equipment. By precluding KMK from selling laminated tube-making equipment or licensing laminated tube-making technology to others in North America, these agreements reduced competition in the North American laminated tube, laminated tube-making equipment, and laminated tube-making technology markets.

Several yeas after entering into these agreements, ANC was acquired by Pechiney SA, a French company, one of whose existing subsidiaries, Cotuplas SA, manufactures laminated tube-making equipment. Since being acquired by Pechiney SA, ANC has obtained substantially all its laminated tube-making equipment from the Pechiney SA subsidiary. Until very recently, however, ANC has enforced the exclusivity provisions of the LTAA against KMK, preventing KMK, its equipment, and its technology from competing with ANC in North America. KMK brought these agreements to the attention of the United States and cooperated in its investigation; after learning that the United States had commenced its investigation into these agreements, ANC agreed with KMK not to interfere with KMK's right to sell its laminated tube-making equipment or to license its tube-making technology in North America.

III

Explanation of the Proposed Final Judgment and Its Anticipated Effect on Competition

A. Terms

The proposed Final Judgment provides for injunctive relief that is intended to eliminate any residual anticompetitive effects of the restrictive agreements and other conduct challenged by the Complaint, and to prevent defendants from entering into similar agreements that would have the same effect. Section IV.A of the Final Judgment would terminate the defendants' 1987 LTAA and its exclusivity provisions, thus freeing KMK to sell or license its own laminated tube-making equipment and technology to anyone in North America. Section IV.B would bar defendants from collecting any payment from each other pursuant to the LTAA for the manufacture, sale, license, or use in North America of laminated tube-making equipment or technology.

Section IV.C of the Judgment would enjoin each defendant from entering certain agreements that restrict the right of any party (i) to use, license, or transfer in North America laminated plastic tube-making technology that the party owns or has the right to use at the time of the agreement, or (ii) to manufacture or sell laminated plastic tubes or tube-making equipment in North America, where such agreements likely would lessen competition among the parties. Such agreements would be barred if (i) at the time of the agreement both parties compete directly against each other in any of the three vertically related laminated plastic tube markets—*i.e.*, technology, equipment, or tubes, and (ii) the restraint involved applies to that common market.

For example, Section IV.C would prohibit either defendant from entering into an agreement with a tube-making equipment manufacturer that restricted any party from manufacturing or selling tube-making equipment in North America because both parties to such an agreement would be competitors in the tube-making equipment market. Section IV.C would not bar agreements that are essentially vertical in nature. For example, KMK and a company that does not manufacture tube-making equipment could enter into an agreement with KMK granting that company an exclusive right to use KMK's equipment in North America.

Finally, Section IV.C would require that defendants give the Department of Justice notice of, and provide certain discovery rights concerning, any acquisition of a laminated plastic tube competitor that included an agreement not to compete. This notification will enable the Department to investigate and prevent any anticompetitive acquisition, including any transaction that does not require notification under the Hart-Scott-Rodino Act, before it takes place, and thus would prevent these parties from engaging in anticompetitive non-reportable transfers such as their 1987 transaction.

B. Effect on Competition

The proposed Final Judgment will ensure that KMK will be able to compete in all three North American laminated plastic tube markets. KMK will be able to sell laminated plastic tubes, sell or lease tube-making equipment, and license or transfer laminate tube technology. Existing tube manufacturers will benefit from increased competition in the sale of laminate tube-making equipment and technology. New entrants into the North American laminated tube market now will have access to the requisite equipment and technology, which may lead to greater competition in the manufacture and sale of laminated tubes.

To preserve incentives to enter for those firms who may be reluctant to make the requisite investment without exclusive rights to technology or equipment, the injunction against exclusive licenses or otherwise restrictive agreements would apply only to those with persons already competing in the same level of the laminated tube market (technology, equipment, or tubes) as the defendant.

Similarly, to preserve important incentives to innovate, especially where a defendant is likely to be the primary source of the investment, the injunction would not bar that defendant from acquiring exclusive rights in laminated tube-making technology or equipment that is developed or marketed jointly with customers or suppliers, provided they are not also competitors in the same market level as that defendant.

The injunctive provisions also would exempt restrictions on sale to third parties of equipment made for a particular customer incorporating that customer's own technology.

Finally, prior notice to the Department of any acquisition by a defendant of a laminated tube competitor imposing non-compete obligations would ensure that the Department has an opportunity to get discovery and challenge any such arrangement deemed anticompetitive.

IV

Remedies Available to Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of such actions. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the Judgment has no *prima facie* effect in any subsequent lawsuits that may be brought against the defendants in the matter.

V

Procedures Available for Modification of the Proposed Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to Mary Jean Moltenbrey, Chief, Civil Task Force, U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Suite 300, Washington, DC 20530, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department of Justice, which remains free, pursuant to a stipulation signed by the United States and defendants, to withdraw its consent to the proposed Judgment at any time prior to entry. Section VII of the proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for modification, interpretation, or enforcement of the Final Judgment.

VI

Determinative Materials/Documents

No materials or documents of the type described in section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b), were considered by the United States in formulating the proposed Final Judgment. However, a letter, dated June 21, 1996, from plaintiff's counsel to counsel for defendant KMK, acknowledging KMK's right under current law to seek relief from the compliance provisions of Section VI in the event it believes a conflict has arisen between any request for information or documents under those provisions and foreign law, was considered determinative by KMK in agreeing to the proposed Judgment and is attached hereto as Exhibit A.

VII

Alternative to the Proposed Final Judgment

The alternative to the proposed Final Judgment is a full trial on the merits. While the Department is confident it would succeed in such a trial, this case involves difficult issues of law and fact, as well as obvious risks and costs to the United States, and success is not certain. The Final Judgment to which the parties have agreed provides virtually all the relief the Government sought in its complaint, and that relief will fully and effectively open the markets involved to competition.

Dated: June 25, 1996.

Respectfully submitted,

Thomas H. Liddle,

Scott A. Scheele,

DC Bar No. 429061, Attorneys, U.S. Department of Justice, Antitrust Division, 325 7th Street, NW, Washington, DC 20530.

U.S. Department of Justice

Antitrust Division

Liberty Place Building, Washington, DC 20530

June 21, 1996.

MJM:RJZ
60–3083–0001

C. Loring Jetton, Jr., Esq.,
Wilmer, Cutler & Pickering, 2445 M Street, N.W., Washington, D.C. 20037–1420, Fax (202) 663–6463.

Re: *KMK Maschinen AG/Laminated Tubes*

Dear Mr. Jetton: During our negotiations of a consent decree in this case, you suggested the possibility that a conflict could arise between the compliance provisions in Section VI of the proposed decree, which authorize the Assistant Attorney General to inspect documents or conduct interviews and to request written reports, and laws or orders of foreign governments, which appear to prohibit compliance with such provisions. Of course, we would attempt to work with KMK to avoid any such conflict in exercising our rights under Section VI. In the event that we could not reach agreement with you, however, KMK would be free to seek relief from the decree court from its obligations to comply with any Section VI request. Under the principles set forth in *Societe Internationale* v. *Rogers*, 357 U.S. 197 (1958) and its progeny, KMK would have the burden of showing that (1) compliance with the request is prohibited by foreign law, (2) KMK was not in any way responsible for creating the conflict between the judgment and foreign law, and (3) KMK has exercised its best efforts to obtain any waiver or permission from the foreign government and other relevant person(s) that would enable it to comply with the request.

Sincerely yours,

Robert J. Zastrow,

Assistant Chief, Civil Task Force.

[FR Doc. 96–16889 Filed 7–2–96; 8:45 am]

BILLING CODE 4410–01–M

United States v. AnchorShade, Inc., No. 96–08426, S.D. Fla., filed June 20, 1996

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the Southern District of Florida in the above-captioned case.

On June 20, 1996, the United States filed a complaint to prevent and restrain the defendant from violating Section 1 of the Sherman Act. The complaint alleges that the defendant conspired to fix the price of outdoor umbrellas sold by the defendant to dealers throughout the United States by obtaining agreements from dealers to maintain the minimum resale price as a condition of receiving outdoor umbrellas from the defendant, and permitting dealers to discount in order to meet competition, but only if they obtained written approval in advance from AnchorShade, Inc. As a result of the conspiracy, the resale price of outdoor umbrellas was fixed and competition among dealers of outdoor umbrellas was restrained.

The proposed Final Judgment prohibits the defendant from entering into or maintaining any unlawful agreement with any dealer that fixes the price at which the dealer may sell the defendant's outdoor umbrellas to consumers; adopting any resale pricing policy wherein the defendant (1) Will sell only to a dealer that prices the defendant's outdoor umbrellas at or above the defendant's suggested resale price, and/or (2) will terminate any dealer for pricing below such suggested resale price; and threatening any dealer with termination or terminating any dealer from pricing below the defendant's suggested resale price, and discussing with any dealer any decision regarding termination of any other dealer for any reason related to pricing below the defendant's suggested resale price.

Public comment is invited within the statutory 60-day period. Such comments

will be published in the Federal Register and filed with the Court. Comments should be addressed to Ralph T. Giordano, Chief, New York Office, U.S. Department of Justice, Antitrust Division, 26 Federal Plaza, Room 3630, New York, New York 10278 (telephone: (212) 264–0390).

Rebecca P. Dick,

Deputy Director of Operations.

United States District Court Southern District of Florida

In the matter of; UNITED STATES OF AMERICA, Plaintiff, v. ANCHORSHADE, INC., Defendant; Civil Action No. 96–08426, Judge Daniel T. K. Hurley.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties to this Stipulation consent that a Final Judgment in the form attached may be filed and entered by the Court, upon any party's or the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before entry of the proposed Final Judgment by serving notice on the defendant and by filing that notice with the Court.

2. If plaintiff withdraws its consent or the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and its making shall be without prejudice to any party in this or any other proceeding.

Dated: June 20, 1996.

For the Plaintiff:

Anne K. Bingaman,

Assistant Attorney General.

Joel I. Klein,

Deputy Assistant Attorney General.

Rebecca P. Dick,

Deputy Director of Operations.

Ralph T. Giordano,

Chief, New York Office.

For the Defendant:

Barry L. Haley,

Counsel for AnchorShade, Inc., Malin, Haley, DiMaggio and Crosby, P.A., Suite 1609, 1 East Broward Boulevard, Fort Lauderdale, Florida 33301.

Patricia L. Jannaco,

Attorney, Antitrust Division, United States Department of Justice, 26 Federal Plaza, Room 3630, New York, New York 10278, (212) 264–0660.

Final Judgment

Plaintiff, United States of America, having filed its complaint herein on , and plaintiff and defendant, AnchorShade, Inc., having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

And whereas defendant has agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

Now, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I

Jurisdiction

This Court has jurisdiction of the subject matter of this action and of the party consenting hereto. The complaint states a claim upon which relief may be granted against defendant under Section 1 of the Sherman Act (15 U.S.C. 1).

II

Definitions

As used in this Final Judgment:

A. ''Person'' means any individual, corporation, partnership, company, sole proprietorship, firm or other legal entity.

B. ''Dealer'' means any person, not wholly owned by AnchorShade, Inc., who purchases or acquires outdoor umbrellas manufactured or sold by AnchorShade, Inc. for resale.

C. ''Outdoor umbrellas'' means collapsible devices that provide shade for protection against sun or weather.

D. ''Resale price'' means any price, price floor, price ceiling, price range, or any mark-up, formula or margin of profit relating to outdoor umbrellas sold by dealers.

III

Applicability

A. This Final Judgment applies to defendant and to each of its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendant shall require, as a condition of the sale of all or substantially all of its assets or stock, that the acquiring party agree to be bound by the provisions of this Final Judgment.

IV

Prohibited Conduct

A. Defendant is hereby enjoined and restrained from directly or indirectly entering into, adhering to, maintaining, furthering, enforcing or claiming any right under any contract, agreement, understanding, plan or program with any dealer to fix, stabilize or maintain the resale prices at which outdoor umbrellas sold or distributed by the defendant may be sold or offered for sale in the United States by any dealer.

B. Defendant is further enjoined and restrained for a period of five years from the date of entry of this Final Judgment from directly or indirectly announcing to the public or to any present or potential dealer of its outdoor umbrellas that defendant has or is adopting, promulgating, suggesting, announcing or establishing any resale pricing policy for outdoor umbrellas that provides that: (1) Defendant will sell only to a dealer that prices at or above defendant's suggested resale price, and/or (2) defendant will terminate any dealer for pricing below defendant's suggested resale price.

C. Defendant is further enjoined and restrained for a period of five years from the date of entry of this Final Judgment from (1) threatening any dealer with termination or terminating any dealer for pricing below the defendant's suggested resale price, and (2) discussing with any present or potential dealer any decision regarding termination of any other dealer for any reason directly or indirectly related to the latter dealer's pricing below defendant's suggested resale price; provided, however, that nothing herein shall prohibit the defendant during this

five-year period from terminating a dealer for using any of defendant's products to promote the sale of products manufactured by other companies, or any other reasons other than pricing below defendant's suggested resale price. Furthermore, nothing in this paragraph shall be deemed to prohibit the defendant from adopting suggested resale prices and communicating such resale prices to dealers.

V.

Notification Provisions

Defendant is hereby ordered and directed:

A. To send a written notice, and in the form attached as Appendix A to this Final Judgment, a copy of this Final Judgment, within sixty days of the entry of this Final Judgment, to each dealer who purchased outdoor umbrellas from defendant from January 1, 1992 to the date of entry of this Final Judgment.

B. To send a written notice, in the form attached as Appendix A to this Final Judgment, and a copy of this Final Judgment, to each dealer who purchases outdoor umbrellas from defendant within ten years of entry of this Final Judgment and who was not previously given such notice. Such notice shall be sent within thirty days after the shipment of outdoor umbrellas is made to such dealer by defendant.

VI

Compliance Program

Defendant is ordered to establish and maintain an antitrust compliance program which shall include designating, within thirty days of entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for accomplishing the antitrust compliance program and with the purpose of achieving compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, supervise the review of the current and proposed activities of his or her company to assure that it complies with this Final Judgment. The Antitrust Compliance Officer shall be responsible for accomplishing the following activities:

A. Furnishing a copy of this Final Judgment within thirty days of entry of this Final Judgment to each of AnchorShade, Inc.'s officers and directors and each of its employees, representatives or agents whose duties include supervisory or direct responsibility for the sale or advertising of outdoor umbrellas in the United States, except those employees whose functions are purely clerical or manual.

B. Distributing in a timely manner a copy of this Final Judgment to any owner, officer or employee who succeeds to a position described in Section VI A.

C. Briefing annually those persons designated in Sections VA A and B on the meaning and requirements of this Final Judgment and the antitrust laws.

C. Obtaining from each owner, officer or employee designated in Section VI A and B certification that he or she (1) has read, understands and agrees to abide by the terms of this Final Judgment; (2) understands that failure to comply with this Final Judgment may result in conviction for criminal contempt of court; and (3) is not aware of any violation of the Final Judgment that has not been reported to the Antitrust Compliance Officer.

E. Maintaining a record of recipients from whom the certification in Section VI D has been obtained.

VII

Certification

A. Within seventy-five days of this Final Judgment, defendant shall certify to plaintiff whether the defendant has designated an Antitrust Compliance Officer and has distributed the Final Judgment in accordance with Section VI A above.

B. For ten years after the entry of this Final Judgment, on or before its anniversary date, the defendant shall file with the plaintiffs an annual statement as to the fact of its compliance with the provisions of Sections V and VI.

C. If defendant's Antitrust Compliance Officer learns of any violations of any of the terms and conditions contained in this Final Judgment, defendant shall immediately notify the plaintiff and forthwith take appropriate action to terminate or modify the activity so as to comply with this Final Judgment.

VIII

Plaintiff Access

A. For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of plaintiff shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant, be permitted, subject to any legally recognized privilege:

1. Access during defendant's office hours to inspect and copy all records and documents in the possession or under the control of defendant, which may have counsel present, relating to any matters contained in this Final Judgment.

2. To interview defendant's officers, employees and agents, who may have counsel present, regarding any such matters. The interviews shall be subject to the defendant's reasonable convenience.

B. Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to defendant at its principal office, defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested, subject to any legally recognized privilege.

C. No information or documents obtained by the means provided in this Section VIII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such materials, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten days notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding), so that defendant shall have an opportunity to apply to this Court for protection pursuant to Rule 26(c)(7) of the Federal Rules of Civil Procedure.

E. Within ten days after receiving any request under Sections VIII A or VII B, defendant may apply to this Court for an order to quash or limit the scope of the request, and after providing plaintiff with an opportunity to respond to such application, this Court shall enter such order or directions as may be necessary or appropriate for carrying out and ensuring compliance with this Final Judgment.

IX

Duration of Final Judgment

Except as otherwise provided hereinabove, this Final Judgment shall

remain in effect until ten (10) years from the date of entry.

X

Construction, Enforcement, Modification and Compliance

Jurisdiction is retained by the Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of its provisions, for its enforcement or compliance, and for the punishment of any violation of its provisions.

XI

Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

_____

United States District Court Judge

Appendix A

Dear AnchorShade Dealer. The Antitrust Division of the United States Department of Justice filed a civil suit alleging that from at least as early as December 1992 through at least February 1995, AnchorShade, Inc. (AnchorShade) entered into and maintained agreements with certain dealers to fix and maintain the resale prices of AnchorShade products. AnchorShade has agreed, without admitting any violation of the law and without being subject to any monetary penalties, to the entry of a civil Consent Order prohibiting certain pricing practices in the United States, including for a period of five years prohibiting AnchorShade from announcing to the public or to any dealer that AnchorShade has a resale pricing policy that contains any provision that provides that (a) AnchorShade will sell only to a dealer that prices at or above AnchorShade's suggested resale price, and/or (b) AnchorShade will terminate any dealer for pricing below AnchorShade's suggested resale price. A copy of the Order is enclosed.

Should you have any questions concerning this letter, please feel free to contact me.

Sincerely,

_____

Certificate of Service

I, Patricia L. Jannaco, hereby certify that on the 20th day of June, 1996, I served the foregoing Stipulation and Proposed Final Judgment by causing copies thereof to be hand-delivered to: Barry L. Haley, Esq., Malin, Haley, DiMaggio and Crosby, P.A., Suite 1608, 1 East Broward Boulevard, Fort Lauderdale, Florida 33301.

Patricia L. Jannaco,

Attorney, Antitrust Division, United States Department of Justice, 26 Federal Plaza, Room 3630, New York, New York, 10278, (212) 264–0660.

United States District Court Southern District of Florida

In the matter of; United States of America, Plaintiff, v. Anchorshade, Inc., Defendant; Civil Action No. 96–08426, Filed: 6/20/96; 15 U.S.C. 1; 15 U.S.C. 4; Judge Daniel T.K. Hurley.

Competitive Impact Statement

The United States of America, pursuant to section 2 of the Antitrust Procedures and Penalties Act (APPA), 15 U.S.C. 16(b), submits this Competitive Impact Statement in connection with the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On June 20, 1996, the United States filed a civil antitrust complaint under Section 4 of the Sherman Act, as amended, 15 U.S.C. 4, alleging that the defendant AnchorShade, Inc. engaged in a combination and conspiracy, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1, to fix the price of outdoor umbrellas sold by AnchorShade, Inc. to dealers throughout the United States. The complaint alleges that, in furtherance of this conspiracy, AnchorShade, Inc.:

(a) obtained agreements from dealers to maintain the minimum resale price as a condition of receiving outdoor umbrellas from AnchorShade, Inc.;

(b) permitted dealers to discount in order to meet competition, but only if the obtained written approval in advance from AnchorShade, Inc.

The complaint also alleges that the combination and conspiracy is illegal, and seeks to enjoin AnchorShade, Inc. from continuing or renewing the alleged combination or conspiracy and from engaging in any combination or conspiracy or adopting any practice or plan having a similar purpose or effect.

The United States and AnchorShade, Inc. have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States withdraws its consent.

The Court's entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction over the matter for possible further proceedings to construe, modify or enforce the Final Judgment, or to punish violations of any of its provisions.

II

Description of Practices Giving Rise to the Alleged Violation of the Antitrust Laws

AnchorShade, Inc., a Florida corporation, is a seller in the United States of outdoor umbrellas that are used on boats to provide shade for protection against sun or weather. AnchorShade, Inc. sells outdoor umbrellas to dealers, who sell them to consumers. AnchorShade, Inc. further stipulated that AnchorShade, Inc. would terminate its relationship with any dealer who sold its outdoor umbrellas below the stated resale price.

In December 1992, AnchorShade, Inc. entered into outright, written agreements with certain dealers which required them to sell its outdoor umbrellas to consumers at a resale price not lower than $169. The agreements further required a dealer that wanted to discount, in order to meet competition, to obtain advance written permission from AnchorShade, Inc. These agreements went well over the line established in the case law (*see, Business Electronics Corp.* v. *Sharp Electronics Corp.*, 485 U.S. 717 (1988), *Monsanto Co.* v. *Spray-Rite Service Corp.*, 465 U.S.752 (1984), *United States* v. *Colgate & Co.*, 250 U.S. 300 (1919)), and served to keep prices artificially high.

III

Explanation of the Proposed Final Judgment

The parties have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the APPA. The proposed Final Judgment states that it shall not constitute an admission by either party with respect to any issue of fact or law.

The proposed Final Judgment enjoins any direct or indirect continuation or renewal of the type of conspiracy alleged in the complaint. Specifically, Section IV enjoins and restrains the defendant from entering into, adhering to, maintaining, furthering, enforcing or claiming any right under any contract, agreement, understanding, plan or program with any dealer to fix, stabilize, or maintain the resale prices at which outdoor umbrellas sold or distributed by the defendant may be sold or offered for sale in the United States by any dealer.

The proposed Final Judgment not only bars AnchorShade, Inc.'s unlawful practice, but also contains additional provisions that are remedial in nature.

Section IV provides that the defendant is prohibited for five years from announcing to the public or to any present or potential dealer of its outdoor umbrellas that defendant has or is adopting, promulgating, suggesting, announcing or establishing any resale pricing policy for outdoor umbrellas that provides that: (1) defendant will sell only to a dealer that prices its outdoor umbrellas at or above defendant's suggested resale price, and/or (2) defendant will terminate any dealer for pricing below defendant's suggested resale price.

Additionally, the defendant is prohibited for a period of five years from the date of entry of the Final Judgment from (1) threatening any dealer with termination or terminating any dealer for pricing below the defendant's suggested resale price, and (2) discussing with any present or potential dealer any decision regarding termination of any other dealer for any reason directly or indirectly related to the latter dealer's pricing below defendant's suggested resale price.

Section V of the proposed Final Judgment is designed to ensure that AnchorShade, Inc.'s dealers are aware of the limitations imposed on it by the Final Judgment. Section V requires the defendant to send notice and copies of the Final Judgment to each dealer who purchased outdoor umbrellas from the defendant from January 1, 1992 to the date of entry of the Final Judgment. In addition, the defendant is required to send notices and copies of the Final Judgment to every other dealer who purchases outdoor umbrellas from AnchorShade, Inc. within ten years of the date of entry of the proposed Final Judgment.

Section VI requires the defendant to set up an antitrust compliance program. The defendant is also required to furnish a copy of the Final Judgment to each of its officers and directors and each of its nonclerical employees, representatives or agents with supervisory or direct responsibility for the sale or advertising of outdoor umbrellas in the United States.

In addition, the proposed Final Judgment provides a method of determining and securing the defendant's compliance with its terms. Section VIII provides that, upon request of the Department of Justice, the defendant shall submit written reports, under oath, with respect to any of the matters contained in the Final Judgment. Additionally, the Department of Justice is permitted to inspect and copy all books and records, and to interview officers, directors, employees and agents of the defendant.

Section IX makes the Final Judgment effective for ten years from the date of its entry.

Section XI of the proposed Final Judgment states that entry of the Final Judgment is in the public interest. Under the provisions of the APPA, entry of the proposed Final Judgment is conditional upon a determination by the Court that the proposed Final Judgment is in the public interest.

The United States believes that the proposed Final Judgment is fully adequate to prevent the continuation or recurrence of the violation of section 1 of the Sherman Act alleged in the Complaint, and that the disposition of this proceeding without further litigation is appropriate and in the public interest.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15, provides that any person who had been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendant.

V

Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wants to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in Federal Register. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the responses of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to: Ralph T. Giordano, Chief, New York Office, Antitrust Division, United States Department of Justice, 26 Federal Plaza, Room 3630, New York, New York 10278.

Under Section X of the proposed Final Judgment, the Court will retain jurisdiction over this matter for the purpose of enabling any of the parties to apply to the Court for such further orders or directions as may be necessary or appropriate for the construction, implementation, modification or enforcement of the Final Judgment, or for the punishment of any violations of the Final Judgment.

VI

Alternatives to the Proposed Final Judgment

The only alternative to the proposed Final Judgment considered by the United States will a full trial on the merits and on relief. Such litigation would involve substantial costs to the United States and is not warranted because the proposed Final Judgment provides appropriate relief against the violations alleged in the Complaint.

VII

Determinative Materials and Documents

No materials or documents were determinative in formulating the proposed Final Judgment. Consequently, the United States has not attached any such materials or documents to the proposed Final Judgment.

Dated: June 20, 1996.

Respectfully submitted,

Patricia L. Jannaco,

Attorney, Antitrust Division, United States Department of Justice, 26 Federal Plaza, Room 3630, New York, New York 10278, (212) 264–0660.

[FR Doc. 96–16890 Filed 7–2–96; 8:45 am]

BILLING CODE 4410–01–M

Immigration and Naturalization Service

Agency Information Collection Activities: Revision of Existing Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Affidavit of support.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' from the date listed at the top of this page in the Federal Register.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

Overview of this information collection:

(1) Type of Information Collection: *Revision of a currently approved collection.*

(2) Title of the Form/Collection: Affidavit of support.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–134. Office of Examinations, Adjudications, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. The information collection is used to determine whether the applicant for benefit will become a public charge if admitted to the United States.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 44,000 responses at 20 minutes (.333) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 14,652 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: June 26, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–16966 Filed 7–2–96; 8:45 am]

BILLING CODE 4410–18–M

Agency Information Collection Activities: Revision of existing collection; comment request

ACTION: Notice of Information Collection Under Review; Monthly Report Naturalization Papers.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' from the date listed at the top of this page in the Federal Register.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

Overview of this information collection:

(1) Type of Information Collection: *Revision of a currently approved collection.*

(2) Title of the Form/Collection: Monthly Report Naturalization Papers.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form N–4. Office of Examinations, Adjudications, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Federal and State Governments. This form is used by the clerk of courts that administer the oath of allegiance for naturalization to notify the Immigration and Naturalization Service of all persons to whom the oath was administered.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 1,920 responses at 30 minutes (.50) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 960 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: June 27, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–16937 Filed 7–2–96; 8:45 am]

BILLING CODE 4410–18–M

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Application to Replace Alien Registration Card.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the Federal Register on April 22, 1996, at 61 FR 17728–17729, allowing for a 60-day public comment period. No comments were received by the Immigration and Naturalization Service.

The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the Federal Register. This process is conducted in accordance with 5 CFR Part 1320.10.

Written 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 Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. The proposed collection is listed below:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection.* Application to Replace Alien Registration Card.

(3) *Agency for number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–90. Office of Examinations, Adjudications, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collected will be used by the INS to determine eligibility for an initial Alien Registration Card, or to Replace a previously issued card.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,300,000 responses at 55 minutes (.90) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,170,000 annual burden hours..

Public comment on this proposed information collection is strongly encouraged.

Dated: June 26, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–16968 Filed 7–2–96; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 27, 1996.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5095). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316, by August 2, 1996.

The OMB is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Title: Process Safety Management of Highly Hazardous Chemicals.

OMB Number: 1218–0200.

Frequency: On-going.

Affected Public: Business or other for-profit.

Number of Respondents: 24,939.

Estimated Time Per Respondent: 5,007.

Total Burden Hours: 126,505,297.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: These requirements/records are directed toward assuring that the hazards associated with processes using highly hazardous chemicals are managed. They established procedures for process safety management that will protect employees by preventing or minimizing the consequences of chemical accidents involving highly hazardous chemicals that could lead to a catastrophe.

Agency: Occupational Safety and Health Administration.

Title: Hazardous Waste Operations and Emergency Response (29 CFR 1910.120).

OMB Number: 1218–0202.

Frequency: On occasion; Annually.

Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 35,753.

Estimated Time Per Respondent: 62.35 hours.

Total Burden Hours: 2,229,062.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services: 0.

Description: 29 CFR 1910.120 regulates the safety and health of employees engaged in hazardous waste site operations and emergency response to the release of hazardous substances from their containers. It was mandated by Congress under section 126 of the Superfund Amendments and Reauthorization Act of 1986. Worker populations covered by the rule include workers at Superfund clean-sites and similar operations, workers at EPA permitted disposal sites, and emergency response workers at those sites, firefighters, emergency medical service personnel, police, and others involved in hazardous substance emergency response.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 96–16909 Filed 7–2–96; 8:45 am]

BILLING CODE 4510–23–M

Submission for OMB Emergency Review; Comment Request

June 24, 1996.

The Department of Labor has submitted the following (see below) information request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 Pub. L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by July 12, 1996. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5095).

Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316).

The Office of Management and Budget is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evalaute the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Agency: Bureau of Labor Statistics.

Title: Manual for Developing Local Area Unemployment Statistics.

OMB Number: 1220–0017.

Affected Public: State government.

Number of Respondents. 52.

Estimated Time Per Respondent: 1.73 hours.

Total Burden Hours: 130,755 Hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Description: The Department of Labor, through the Bureau of Labor Statistics, is responsible for the development and publication of local area labor force statistics. Data are gathered by State Employment Security Agencies and transmitted to the Bureau of Labor Statistics. This program includes the issuance of monthly estimates of the labor force, employment, unemployment, and the unemployment rate for each State and labor market area in the Nation.

The labor force estimates developed and issued in this program are used for economic analysis and as a tool in the implementation of Federal economic policy in such areas as employment and economic development under the Job Training and Partnership Act, the Public Works and Economic Development Act, among other.

The estimates are also used in economic analysis by public agencies and private industry, and for State and area allocations and eligibility determinations according to legal and administrative requirements. Implementation of policy and legislative prerogatives could not be accomplished as now written without collection of these data.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 96–16910 Filed 7–2–96; 8:45 am]

BILLING CODE 4510–24–M

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of June, 1996.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–32,350; Clear Pine Moulding, Prineville, OR

TA–W–32,205; Progressive Knitting Mills of Pennsylvania, Philadelphia, PA

TA–W–32,157; Fasco Industries, Inc., Motors Div., Tipton, MO

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified:

TA–W–32,193; GPM—Phillips Petroleum Co., Houston, TX

TA–W–32,206; General Cable Corp., Newport, AR

TA–W–32,306; Braun Medical, Inc., Cardiovascular Div., Plymouth, MN

TA–W–32,216; Barrett Refining Corp., Thomas, OK

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–32,208; El Paso Natural Gas Co., El Paso, TX

TA–W–32,153; Zenith Electronics Corp of Texas, McAllen, TX
TA–W–32,347; Fasco Consumer Products, Fayetteville, NC

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–32,158; Redco Foods, Inc., Little Falls, NY
TA–W–32,095; Caraway Manufacturing Corp., Caraway, KS

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

TA–W–32,410; Fourty Four West Mfg., New York, NY: May 22, 1995.
TA–W–32,170; A–1 Manufacturingl Louisville, AL: March 26, 1995.
TA–W–32,366; Badger Paper Mills, Inc., Peshtigo, WI: May 11, 1995.
TA–W–32,155; Chel-Mar Manufacturing, Tremont, PA: March 25, 1995.
TA–W–32,289; Red Kap Industries, Vienna, GA: April 7, 1995.
TA–W–32,188; Kalkstein Silk Mills, Inc., Paterson, NJ: April 12, 1995.
TA–W–32,438; Hilton Davis Co., Newark, NJ: May 30, 1995.
TA–W–32,431; Shaneco Manufacturing Co., El Paso, TX: May 23, 1995.
TA–W–32,159; Olympus America, Inc., Rio Rancho, NM: March 22, 1995.
TA–W–32,328; Thomas & Betts Electrical Components, Strongsville, OH: May 2, 1995.
TA–W–32,349; Border Apparel Laundry, Inc., El Paso, TX: May 2, 1995.
TA–W–32,232; The Timken Co., Columbus, OH: March 30, 1995.
TA–W–32,246; PAM Coat, Inc., West New York, NJ: April 22, 1995.
TA–W–32,331; Kenting Apollo Drilling, Inc., Headquartered in Denver, Co & Operating in the Following States: A; CO, B; ND, C; WY, D; UT: April 30, 1995.
TA–W–32,210; Blue Mountain Forest Product, Pendleton, OR: April 15, 1995.
TA–W–32,355; AVX Corp., Myrtle Beach, SC: May 7, 1995.
TA–W–32,355; AVX Corp., Myrtle Beach, SC: May 7, 1995.
TA–W–32,301; Hart Schaffner & Marx, Hartmarx Corp., Chaffee, MO: April 24, 1995.
TA–W–32,353; Johnson Controls, Inc., Systems Products Worldwide, Milwaukee, WI: May 7, 1995.
TA–W–32,336; Horvath Knitting Mills, Inc., Coopersburg, PA: April 30, 1995.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of June, 1996.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements for Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–00924; Bugle Boy Industries, North Little Rock AR
NAFTA–TAA–00954; Progressive Knitting Mills of Pennsylvania, Philadelphia, PA
NAFTA–TAA–01009; Shaw Industries, Inc., Yarn Div., Trenton, NJ
SCNAFTA–TAA–00868; Stone Ridge Farm, Livingston Manor, NY
NAFTA–TAA–01029; Snapp Tool & Die, Inc., El Paso, TX
NAFTA–TAA–00925; Caraway Manufacturing Corp., Caraway, AR
NAFTA–TAA–01008; Big J Apparel, Waco, TX
NAFTA–TAA–01030; Greenfield Research, Inc., Hermann, MO
NAFTA–TAA–01031; Hart Schaffner & Marx, Chaffee, MO

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–01017; PBB USA, Inc., Computer Services, Buffalo, NY
NAFTA–TAA–01035; Kendall Professional Medical Products, Inc., El Paso, TX

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–01003; Asarco, Inc., Omaha, NE: May 1, 1995.
NAFTA–TAA–01025; Mullen Lumber, Inc., Molalla, OR: May 8, 1995.
NAFTA–TAA–01040; Kaufman Footwear Corp., Batavia, NY: May 17, 1995.
NAFTA–TAA–01015: AVX Corp., Myrtle Beach, SC: May 7, 1995.
NAFTA–TAA–01006; Kenting Apollo Drilling, Inc., Headquartered in Denver, CO & Operating in Various Locations in the Following States A; CO, B: ND, C; WY, D; UT: April 30, 1995.
NAFTA–TAA–00986; Border Apparel Laundry, Inc., El Paso, TX: April 24, 1995.
NAFTA–TAA–01018; Johnson Controls, Inc., Systems Products Worldwide, Milwaukee, WI: May 7, 1995.
NAFTA–TAA–01020; Oz's Apparel, Inc., Pacoima, CA: April 30, 1995.
NAFTA–TAA–01028; Badger Paper Mills, Peshtigo, WI: May 14, 1995.
NAFTA–TAA–1023; Alcan Aluminum Co., Alcan Foil Products Div., LaGrange, GA: May 1, 1995.
NAFTA–TAA–1036; James Hardie Irrigation, El Paso Manufacturing, El Paso, TX: May 9, 1995.
NAFTA–TAA–1043; Harvard Sports, Inc., Compton, CA: May 20, 1995.

NAFTA–TAA–1054; Frank H. Fleer Corp., Philadelphia, PA: May 24, 1995.

I hereby certify that the aforementioned determinations were issued during the month of June 1996. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: June 21, 1996.

Russell T. Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–16917 Filed 7–2–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31, 936]

Boise Cascade Corporation, Vancouver, WA; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of June 13, 1996, the petitioners, Paper manufacturers of Local Union 293, Association of Western Pulp and Paper Workers, requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Transitional Adjustment Assistance under the trade act of 1974. The denial notice was signed on April 19, 1996, and published in the Federal Register on May 16, 1996 (61 FR 24814).

The petitioner presents evidence that the Department's analysis of U.S. imports of pulp, and all paper products produced at the subject firm, was incomplete.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 17th day of June 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–16912 Filed 7–2–96; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Leslie Corp. et al.

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than July 15, 1996.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than July 15, 1996.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, D.C. this 3rd day of June, 1996.

Linda G. Poole,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 06/03/96]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,394	Leslie Corp (Comp)	Anniston, AL	05/22/96	Orthpedic Supports.
32,395	Cambridge Industries, Inc. (Comp)	Ionia, MI	05/24/96	Automotive Plastic Parts.
32,396	Bill-Co Mfg, Inc. (Wkrs)	Albany, KY	05/20/96	Ladies' Blouses, Pants.
32,397	Buster Brown Apparel (Wkrs)	Chilhowie, VA	05/20/96	Children's Clothes.
32,398	H & E Apparel, Inc. (Comp)	Princeton, KY	05/16/96	Ladies' & Men's Jeans & Casual Pants.
32,399	Kerr Manufacturing Co. (Wkrs)	Messena, NY	05/10/96	Dental Drills.
32,400	Sunbeam Outdoor Products (Wkrs)	Linton, IN	05/15/96	Wrought Iron Furniture.
32,401	SMK Manufacturing, Inc. (Comp)	Placentia, CA	05/16/96	Electro-Mechanical Parts.
32,402	Fluid Pack Pump (Wkrs)	Woodward, OK	02/13/96	Oil Pump Products.
32,403	Huntsman Chemical Corp. (Wkrs)	Rome, GA	05/16/96	Chemicals.
32,404	Brasher Garment Cutting (Comp)	Parsons, TN	05/17/96	Garment Cutting.
32,405	Quaker-Maid Kitchens (Wkrs)	Leesport, PA	05/17/96	Kitchen Cabinets.
32,406	Unifi, Inc. (Comp)	Staunton, VA	04/25/96	Texturized Polyester Yarn & Thread.
32,407	Nolin Sportswear (Wkrs)	Brownsville, KY	05/04/96	Ladies' Jackets and Blazers.
32,408	Heritage Sportswear (Wkrs)	Marion, SC	05/15/96	Sportswear.
32,409	Farberware, Inc. (Wkrs)	Bronx, NY	05/24/96	Stainless Steel Cookware.
32,410	Fourty Four West Mfg (UFCW)	New York, NY	05/22/96	Leather Handbags.
32,411	Charter Fabrics, Inc (Wkrs)	Belville, NY	05/13/96	Domestic Textile Goods.
32,412	Bari Fashions, Inc. (Wkrs)	Hoboken, NJ	05/21/96	Ladies' Coats.
32,413	Carolina Dress Corp. (Comp)	Hayesville, NC	05/23/96	Ladies' Dresses & Sportswear.
32,414	R. Collard & Co. Inc. (Comp)	New York, NY	05/22/96	Design Studio for Apparel.
32,415	Medly Company Cedars Inc. (Wkrs)	Santa, ID	05/24/96	Cedar Posts & Railings.
32,416	Sulphur City Manufacture (Comp)	Red Boiling Spg, TN	05/24/96	Men's & Boy's Jeans.
32,417	Mabex Universal Corp. (Comp)	San Diego, CA	05/20/96	Plastic Packaging.

APPENDIX—Continued

[Petitions instituted on 06/03/96]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,418	Eaton Corp. (Wkrs)	Marshall, MI	05/20/96	Valves.

[FR Doc. 96–16915 Filed 7–2–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32, 383]

OshKosh B'Gosh, Red Boiling Springs, Tennessee; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 27, 1995 in response to a worker petition which was filed on behalf of workers at OshKosh B'Gosh, Red Boiling Springs, Tennessee.

All workers of the subject firm are covered under amended certification (TA–W–31, 543A). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C. this 13th day of June, 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–16913 Filed 7–2–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,542; TA–W–31,543; TA–W–31,543A]

OshKosh B'Gosh, McEwen, TN, Hermitage Springs, TN, and Red Boiling Springs, TN, Respectively; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 3, 1995, applicable to all workers of OshKosh B'Gosh, McEwen, Tennessee and OshKosh B'Gosh, Hermitage Springs, Tennessee. The notice was published in the Federal Register on November 24, 1995 (60 FR 58104).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that worker separations have occurred at the subject firms' Red Boiling Springs, Tennessee location. The workers are engaged in the production of children's and men's bib overalls.

The intent of the Department's certification is to include all workers of the subject firm who are adversely affected by increased imports of children's and men's bib overalls. Accordingly, the Department is amending the certification to cover the workers of OshKosh B'Gosh, Red Boiling Springs, Tennessee.

The amended notice applicable to TA–W–31,542 and TA–W–31,543 is hereby issued as follows:

All workers of OshKosh B'Gosh, McEwen, Tennessee (TA–W–31,542), OshKosh B'Gosh, Hermitage Springs, Tennessee (TA–W–31,543), and OshKosh B'Gosh, Red Boiling Springs, Tennessee (TA–W–31,543A) who became totally or partially separated from employment on or after October 3, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 13th day of June 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–16914 Filed 7–2–96; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Pioneer Balloon et al.

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than July 15, 1996.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than July 15, 1996.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 10th day of June, 1996.

Russell T. Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 06/10/96]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,419	Pioneer Balloon (USWA)	Willard, OH	05/02/96	Ballons.
32,420	E.D. Smith (Wkrs)	Byhalia, MS	05/30/96	Jams, Jellies, Pasta Sauce.
32,421	Mould Services, Inc. (Wkrs)	Malden, MA	05/28/96	Injection Molds for Shoe Manufactures.

APPENDIX—Continued

[Petitions instituted on 06/10/96]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,422	IBM Storage Systems Div. (Wkrs)	San Jose, CA	05/29/96	Hard Drive Storage Devices.
32,423	Best Form Foundations (Wkrs)	Johnstown, PA	05/21/96	Ladies' Undergarments.
32,424	Screen Pac (Wkrs)	Roseto, PA	05/30/96	Ladies' Blouses & Pants.
32,425	Jama Southside Apparel (Wkrs)	Petersburg, TN	05/24/96	Ladies' Apparel.
32,426	Ochoco Lumber Co. (Wkrs)	Princeton, ID	05/23/96	Dimensional Lumber.
32,427	McLouth Steel (USWA)	Trenton, MI	05/28/96	Flatt Rolled & Cold Rolled Steel.
32,428	NCC Industries, Inc. (UNITE)	Cortland, NY	05/24/96	Bras.
32,429	Cone Mills Corp. (Wkrs)	Greensboro, NC	05/22/96	Printed Textiles.
32,430	Pictsweet Mushroom Farm (Co.)	Salem, OR	05/30/96	Mushrooms.
32,431	Shaneco Manufacturing Co (Co.)	El Paso, TX	05/23/96	Sewing of Baby Products.
32,432	Amtrol, Inc. (Wkrs)	Plano, TX	05/15/96	Refrigerant Containers.
32,433	Paramount Headwear (Wkrs)	Bernie, MO	05/22/96	Straw Hats & Baseball Caps.
32,434	Todd's Sportswear, Inc. (Co.)	Smithville, TN	05/25/96	Ladies' Apparel.
32,435	Frank H. Fleer Corp. (Wkrs)	Philadelphia, PA	06/25/96	Gum Manufacturing Machines.
32,436	Elcom, Inc. (Co.)	St. Marys, PA	05/08/96	Package Finished Lamp Products.
32,437	Petro Corporation (Wkrs)	Oklahoma City, OK	05/23/96	Crude Oil, Natural Gas.
32,438	Hilton Davis Company (Wkrs)	Newark, NJ	03/04/96	Transoxide-Iron Pigments.
32,439	Moderne Gloves (UNITE)	Gloversville, NY	05/30/96	Men's & Ladies' Dress Gloves.
32,440	Valhall, Inc (Wkrs)	Eugene, OR	05/27/96	Wood Panels.
32,441	Plymouth Resources, Inc (Comp)	Tulsa, OK	05/30/96	Oil and Gas.
32,442	Oneita Industries (Wkrs)	Fingerville, SC	05/27/96	T Shirts.
32,443	Simpson Paper Co. (AWPPW)	Pomona, CA	05/30/96	Hardwood, Softwood Pulp.
32,444	Triangle Auto Spring (Comp)	Columbia, TN	05/29/96	Leaf Springs for Trucks.
32,445	Rubin Gloves, Inc. (UNITE)	Gloversville, NY	05/30/96	Gloves.
32,446	Sunbeam Household Prod (Wkrs)	Cookeville, TN	05/30/96	Motor Winding Parts.

[FR Doc. 96–19616 Filed 7–2–96; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00972 and NAFTA–00972A]

Sara Lee Knit Products, Lumberton Sewing; Lumberton, NC, and Jefferson Sewing, Jefferson, NC, Respectively; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on June 6, 1996, applicable to all workers of Sara Lee Knit Products, Lumberton Sewing, located in Lumberton, North Carolina. The certification will soon be published in the Federal Register.

At the request of the company, the Department reviewed the certification for workers of the subject firm. The findings show that worker separations have occurred at Sara Lee's Jefferson Sewing plant in Jefferson, North Carolina. The workers produce t-shirts.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports. Accordingly, the Department is amending the certification to include workers at the Jefferson Sewing production facility.

The amended notice applicable to NAFTA–00972 is hereby issued as follows:

All workers of Sara Lee Knit Products, Lumberton Sewing, Lumberton, North Carolina (NAFTA–00972) and Jefferson Sewing, Jefferson, North Carolina (NAFTA–00972A) who became totally or partially separated from employment on or after March 19, 1995, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, D.C., this 11th day of June 1996.

Russell T. Kile,

Acting Program Manger, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–16918 Filed 7–2–96; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00868]

Stone Ridge Farm, Livingston Manor, New York; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of April 30, 1996, the petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance for workers of the subject firm. The denial notice was signed on April 8, 1996.

The petitioner presents evidence that the Department's analysis of U.S. imports of cattle was incomplete.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 13th day of June 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–16919 Filed 7–2–96; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00923]

Weyerhaeuser Company Western Lumber, Kamiah, Idaho; Notice of Revised Determination on Reopening

On May 24, 1996, the Department issued a Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance, applicable to all workers of Weyerhaeuser Company, Western Lumber, located in Kamiah, Idaho. The notice was published in the Federal Register on June 6, 1996 (61 FR 28900).

Based on new information received from a customer of the subject firm, the Department, on its own motion, reviewed the findings of the investigation. New findings show that the customer increased import purchases of lumber from Mexico and Canada in 1995 compared to 1994. Sales, production and employment declined during the relevant period.

Conclusion

After careful review of the additional facts obtained on reopening, I conclude that increased imports of articles like or directly competitive with lumber contributed importantly to the declines in sales or production and to the total or partial separation of workers of Weyerhaeuser Company, Western Lumber, Kamiah, Idaho. In accordance with the provisions of the Act, I make the following certification:

All workers of Weyerhaeuser Company, Western Lumber, Kamiah, Idaho who became totally or partially separated from employment on or after March 19, 1995 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 17th day of June 1996.

Ruseell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–16920 Filed 7–2–96; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

Proposed Information Collection Request; Submitted for Public Comment and Recommendations; ERISA Procedure 76–1, Advisory Opinion Procedure

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of a currently approved collection of information, ERISA Procedure 76–1 (Advisory Opinion Procedure). A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted on or before September 3, 1996. The Department of Labor is particularly interested in comments which:

Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhance the quality, utility, and clarify the information to be collected; and

Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Washington, DC 20210, (202) 219–7933, FAX (202) 219–4745.

SUPPLEMENTARY INFORMATION:

I. Background

ERISA Procedure 76–1, Advisory Opinion Procedure is used by plan administrators and other individuals when requesting a legal interpretation from the Department regarding specific facts and circumstances (an advisory opinion). The Procedure informs individuals, organizations, and their authorized representatives of the procedures to be followed when requesting an advisory opinion. The procedures promote efficient handling of these requests. The information is used by the Department to determine the substance of the response and to determine whether the Department's response should be in the form of an advisory opinion or information letter. Advisory opinions and information letters issued under this procedure help fiduciaries, employers and other interested parties understand a particular provision of the law and promote compliance with ERISA. Advisory opinions are also useful to the Department as a means of clarifying Departmental policy on certain issues.

II. Current Actions

This existing collection of information should be continued because individuals or organizations affected directly or indirectly by ERISA need legal interpretations from the Department as to their status under the Act and as to the effect of certain actions and transactions. Requests for advisory opinions are voluntary. The information is used by the Department to determine the substance of the response and to determine whether the Department's response should be in the form of an advisory opinion or information letter.

Type of Review: Extension.

Agency: Pension and Welfare Benefits Administration.

Title: ERISA Procedure 76–1, Advisory Opinion Procedure.

OMB Number: 1210–0066.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals.

Total Respondents: 88.

Frequency: On occasion.

Total Responses: 88.

Average Time per Response: 10 hours.

Estimated Total Burden Hours: 90.

Respondents, proposed frequency of response, and annual hour burden: The Department staff estimates that 88 applicants will submit requests for advisory opinions in any given year. The respondents will be plans and parties in interest to plans. This burden is not normally incurred annually by any one plan. Based on past experience, the staff believes that approximately 10% of the materials required to be submitted under this procedure will be prepared by the respondents. Respondents are expected, in 90% of cases, to contract with service providers such as attorneys, accountants, and third-party administrators to prepare the materials, which is considered a burden cost and not an annual hour burden. Therefore, the Department will recommend that 90 hours be approved as the estimated burden, in light of the current requirements that time spent by service providers not be included in the hourly burden estimate.

Total Burden Cost (capital/start-up): $0.00.

Total Burden Cost (operating/maintenance): $64,780.00.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 27, 1996.

Gerald B. Lindrew,

Director, Pension and Welfare Benefits Administration, Office of Policy and Legislative Analysis.

[FR Doc. 96–17045 Filed 7–2–96; 8:45 am]

BILLING CODE 4510–29–M

Working Group on Guidance for Selecting and Monitoring Service Providers Advisory Council on Employee Welfare and Pension Benefits Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Guidance for Selecting and Monitoring Service Providers of the Advisory Council on Employee Welfare and Pension Benefits Plans will be held on July 16, 1996, in Room S3215 A & B, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

The purpose of the meeting, which will run from 9:30 a.m. to noon and from 1 to 3:30 p.m., is for the group to determine whether its focus will be on what type of general guidance would be useful to fiduciaries who must select and monitor service providers for plans or whether its focus should be narrowed to specific service providers such as investment consultants and investment managers.

The group also plans to conduct an informal survey on codes of conduct in the plan community to establish current industry practices.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before July 5, 1996, to Sharon Morrissey, acting executive secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group on Guidance for Selecting and Monitoring Service Providers should forward their request to the acting executive secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by July 10, 1996, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Acting Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 5.

Signed at Washington, DC, this 27th day of June 1996.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 96–17046 Filed 7–2–96; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL BANKRUPTCY REVIEW COMMISSION

Meeting

AGENCY: National Bankruptcy Review Commission

ACTION: Notice of Public Meeting

TIME AND DATES: Thursday, July 18, 1996; 9 A.M. to 4:45 P.M. and Friday, July 19, 1996; 8:30 A.M. to 2:30 P.M.

PLACE: Thurgood Marshall Federal Judiciary Building, Federal Judicial Center/Education Center, One Columbus Circle, NE., Washington, DC 20544. The public should enter through the South Lobby entrance of the Thurgood Marshall Federal Judiciary Building.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED: General administrative matters for the Commission, including substantive agenda; Commission working groups will consider the following substantive matters: improving jurisdiction and procedure; consumer bankruptcy; Chapter 11: uses and consequences; small businesses and partnerships: a special case?; government as creditor or debtor; mass torts, future claims, and bankruptcy; service to the estate: ethical and economic choices; the global economy: preparing for transnational insolvencies. An open forum for public participation will be held on July 18, 1996 from 11:15 a.m. to 12 p.m.

CONTACT PERSONS FOR FURTHER INFORMATION: Contact Susan Jensen-Conklin or Carmelita Pratt at the National Bankruptcy Review Commission, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE., Suite G–350, Washington, DC 20544; Telephone Number: (202) 273–1813.

Susan Jensen-Conklin,

Deputy Counsel.

[FR Doc. 96–17017 Filed 7–2–96; 8:45 am]

BILLING CODE 6820–36–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–348 and 50–364]

Southern Nuclear Operating Company, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating Licenses, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–2 and NPF–8, issued to Southern Nuclear Operating Company, Inc. (the licensee), for operation of the Joseph M. Farley Nuclear Plant, Units 1 and 2 located in Houston County, Alabama.

The proposed amendments would revise Technical Specification (TS) Table 4.3–1 to delete the requirement for surveillance of the manual safety injection to the reactor trip circuitry until the next unit shutdown, following which, this testing will be performed prior to Mode 2 entry. This change is applicable only during Unit 1, cycle 14 and Unit 2, cycle 11.

This requested TS change is a followup to a Notice of Enforcement Discretion (NOED) granted to the licensee that is in effect from the time of issuance on June 21, 1996, until approval of this exigent TS. NRC Inspection Manual, Part 9900, ''Operations—Notice of Enforcement Discretion,'' requires that a followup TS amendment be issued within 4 weeks from the issuance of the NOED.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the Farley Nuclear Plant Units 1 and 2 in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Since the SI [safety injection] manual actuation handswitch is not taken credit for in any transient or accident analyses, including LOCA [loss-of-coolant accident], non-LOCA, and steam generator tube rupture for either safety injection and/or reactor trip, failure to test the reactor trip function of the manually initiated SI signal for the remainder of operating cycle or following each units shutdown, prior to Mode 2 entry, would not increase the probability or consequences of an accident previously evaluated. In addition, operator action required by procedures will ensure that a reactor trip is verified to have occurred anytime SI is automatically actuated and prior to manual SI actuation.

2. The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of the proposed amendment does not introduce any change to the plant design basis. Any hypothetical failure of the handswitch contacts to cause a failure to manually trip the reactor is compensated for by the redundant trip features associated with the reactor trip system. Examples are the reactor manual trip handswitch, reactor trip setpoints set to actuate prior to reaching SI setpoints, and the redundant train manual SI handswitch. Therefore, SNC [Southern Nuclear Operating Company] concludes that the proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendment does not involve a significant reduction in a margin of safety.

Changing the surveillance frequency to allow for continued operation with the SI manual input to reactor trip system not tested does not involve a reduction in the margin of safety because of the redundant features associated with the reactor trip system and because of operator actions required by emergency response procedures (ERPs). In addition, for power levels above 35% RTP [rated thermal power], the SI handswitch has been shown to result in the intended function by tripping the reactor through the turbine trip logic. Therefore, SNC concludes based on the above, that the proposed change does not result in a significant reduction of margin with respect to plant safety as defined in the Final Safety Analysis Report or the bases of the FNP [Farley Nuclear Plant] technical specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 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 15-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 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 2, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Houston-Love Memorial Library, 212 W. Burdeshaw Street, P.O. Box 1369, Dothan, Alabama. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made 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 the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, 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 20555–0001, 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 Herbert N. Berkow: 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 20555–0001, and to M. Stanford Blanton, Esq., Balch and Bingham, P.O. Box 306, 1710 Sixth Avenue, Birmingham, Alabama, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 24, 1996, 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 Houston-Love Memorial Library, 212 W. Burdeshaw Street, P.O. Box 1369, Dothan, Alabama.

Dated at Rockville, Maryland, this 27th day of June 1996.

For the Nuclear Regulatory Commission.

Byron L. Siegel,

Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–16964 Filed 7–2–96; 8:45 am]

BILLING CODE 7590–01–P

Boraflex Degradation in Spent Fuel Pool Storage Racks; Issued

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Generic Letter 96–04 to notify all licensees of nuclear power reactors about problems that have been encountered with using Boraflex in spent fuel storage racks for the nonproductive absorption of neutrons, and for licensees that use Boraflex, to request implementation of certain actions and require the submittal of a written response. This generic letter is available in the NRC Public Document Room under accession number 9606240132.

DATES: The generic letter was issued on June 26, 1996.

ADDRESSEES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Laurence I. Kopp at (301) 415–2879.

SUPPLEMENTARY INFORMATION: The information that is being requested will enable the NRC staff to determine whether licensees are complying with the current licensing basis for the facility with respect to GDC 62 for the prevention of criticality in fuel storage and handling, and 5-percent subcriticality margins that are either contained in the technical specifications, or committed to in the updated FSARs, of plants containing Boraflex in the spent fuel storage racks. The staff is not establishing a new position for such compliance in this generic letter.

Dated at Rockville, Maryland, this 26th day of June, 1996.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Deputy Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 96–16963 Filed 7–2–96; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards; Meeting Notice

In accodance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Rector Safeguards will hold a meeting on August 8–10, 1996, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the Federal Register on Monday, November 27, 1995 (60 FR 58393).

Thursday, August 8, 1996

8:30 A.M.–8:45 A.M.: Opening Remarks by the ACRS Chairman

(Open)—The ACRS Chairman will make opening remarks regarding conduct on the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

8:45 A.M.–10:45 A.M.: Supplemental Safety Evaluation Report for Evolutionary Plant Designs

(Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff, General Electric Nuclear Energy (GENE), and ABB-Combustion Engineering (ABB–CE) regarding the proposed changes to the GENE Advanced Boiling Water Reactor (ABWR) and ABB–CE System 80+ evolutionary plant designs and the associated NRC staff Safety Evaluation Report. Other interested parties will participate, as appropriate.

A portion of this session may be closed to discuss GENE and ABB–CE proprietary information applicable to this matter.

11:00 A.M.–1:00 P.M.: SECY–96–128, ''Policy and Key Technical Issues Pertaining to the Westinghouse AP600 Standardized Passive Reactor Design''

(Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Westinghouse Electric Corporation regarding SECY–96–128, which includes proposed staff positions on three policy issues concerning Prevention and Mitigation of Severe Accidents, Post-72-Hour Actions, and External Reactor Vessel Cooling, as well as status of resolution of seven key technical issues, pertaining to the AP600 passive plant design. Other interested parties will participate, as appropriate.

A portion of this session may be closed to discuss Westinghouse proprietary information applicable to this matter.

2:00 P.M.–4:30 P.M.: Risk-Informed and Performance-Based Regulations and Related Matters

(Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding several issues raised in the Staff Requirements Memoranda dated May 15 and June 11, 1996, including:

- Role of performance-based regulation in the PRA Implementation Plan
- Plant-specific application of safety goals
- Requirement for risk neutrality versus the allowance for an acceptable increase in risk
- Risk-informed inservice testing and inservice inspection requirements
- Pilot applications for risk-informed and performance-based regulations

Representatives of the nuclear industry will participate, as appropriate.

4:45 P.M.–5:00 P.M.: Subcommittee Report

(Open)—The Committee will hear a report by and hold discussions with the Chairman of the ACRS Subcommittee on Instrumentation and Control Systems and Computers regarding the matters discussed at the August 7, 1996 Subcommittee meeting.

5:00 P.M.–7:00 P.M.: Preparation of ACRS Reports

(Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting as well as a proposed ACRS report on Steam Generator Tube issues.

Friday, August 9, 1996

8:30 A.M.–8:35 A.M.: Open Remarks by the ACRS Chairman

(Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 A.M.–9:30 A.M.: Risk-Based Analysis of Reactor Operating Experience

(Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding risk-based analysis of reactor operating experience.

Representatives of the nuclear industry will participate, as appropriate.

9:30 A.M.–11:00 A.M.: Spent Fuel Pool Cooling Issues

(Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the staff review of the safety issues associated with spent fuel pool cooling systems.

Representatives of the nuclear industry and other interested persons will participate, as appropriate.

11:15 A.M.–12:00 Noon: Report of the Planning and Procedures Subcommittee

(Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS staff.

A portion of this session may be closed to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of this Advisory Committee, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

1:15 P.M.–1:45 P.M.: Future ACRS Activities

(Open)—The Committee will discuss recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

1:45 P.M.–2:00 P.M.: Reconciliation of ACRS Comments and Recommendations

(Open)—The Committee will discuss responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports, including the EDO response related to the June 6, 1996 ACRS report on Regulatory Guidance Documents Related to Digital Instrumentation and Control Systems.

2:00 P.M.–7:00 P.M.: Preparation of ACRS Reports

(Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting as well as a proposed ACRS report on Steam Generator Tube issues.

Saturday, August 10, 1996

8:30 A.M.–12:30 P.M.: Preparation of ACRS Reports

(Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting as well as a proposed report on Steam Generator Tube issues.

12:30 P.M.–1:00 P.M.: Strategic Planning

(Open)—The Committee will continue its discussion of items that are of significant importance to NRC, including rebaselining of the Committee activities for FY 96–97.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on September 27, 1995 (60 FR 49925). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch, at least five days before the meeting, if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief of the Nuclear Reactors Branch prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Chief of the Nuclear Reactors Branch if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) Public Law 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss matters that relate solely to the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2); to discuss GENE, ABB–CE, and Westinghouse proprietary information per 5 U.S.C. 552b(c)(4); and

to discuss matters the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch (telephone 301/415–7364), between 7:30 A.M. and 4:15 P.M. EDT.

ACRS meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the ''NRC MAIN MENU.'' Direct Dial Access number to FedWorld is (800) 303–9672; the local direct dial number is 703–321–3339.

Dated: June 27, 1996.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 96–16962 Filed 7–2–96; 8:45 am]

BILLING CODE 7590–01–M

UNITED STATES NUCLEAR REGULATORY COMMISSION

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 June 8, 1996, through June 21, 1996. The last biweekly notice was published on June 19, 1996 (61 FR 31171).

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 Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, 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 August 2, 1996, 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 20555-0001, 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 20555-0001, 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.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: May 1, 1996

Description of amendment request: The proposed amendment would modify Table 3.1.1, ''Reactor Protection System (SCRAM) Instrumentation Requirement,'' Table 3.2.C.1, ''Instrumentation that Initiates Rod Blocks,'' and Technical Specification 3/4.4, ''Standby Liquid Control.''

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:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Note 7 to Table 3.1.1 and Note 6 to Table 3.2.C.1

The changes to Note 7 to Table 3.1.1 and the addition of Note 6 to Table 3.2.C.1 are proposed to clarify their requirements, the appropriate action to take, and their relationship to plant modes. This revised scram and rod block applicability is acceptable because control rods withdrawn from a core cell containing no fuel assemblies have a negligible impact on the reactivity of the core, and, therefore, these features are not required to be operable (i.e. provide the capability to scram). Provided all rods otherwise remain inserted, the RPS [Reactor Protection System] functions serve no purpose and are not required. In this condition, the required shutdown margin (Specification 3.3.A.1) and the required one-rod-out interlock (Specification 3.10.A) ensure that no event requiring the RPS or Rod Block will occur.

The Actions of Table 3.1.1 for inoperable equipment were previously revised in Amendment ι147 to be consistent with the improved STS [Standard Technical Specifications]. Action (A) requires fully inserting all insertable control rods in core cells containing one or more fuel assemblies. Since Specification 3.10.A requires all control rods to be fully inserted during fuel movement, the proposed applicable conditions cannot be entered while moving fuel. In addition, Specification 3.10.D used for controlling multiple control rod removal, requires all control rods in a 3X3 array centered on the CRDs [Control Rod Drive] being removed to be fully inserted and electrically disarmed and all other control rods fully inserted. The only possible action is control rod withdrawal, which is addressed by Action A.

Hence operating Pilgrim in accordance with the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

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The proposed change involves reformatting, renumbering, and rewording of the existing Technical Specifications and Bases along with other changes to the Technical Specifications discussed above. The reformatting, renumbering, and rewording along with the other changes listed involves no technical changes to existing Technical Specifications, and does not impact initiators of analyzed events. It also does not impact the assumed mitigation of accidents or transient events. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change relocates requirements to other sections of the Technical Specifications, to plant procedures, or to the Technical Specifications BASES. The procedure change and BASES change processes require any changes that reflect plant design as described in the FSAR [Final Safety Analysis Report] be evaluated in accordance with 10 CFR 50.59. Since any changes will be evaluated per 10 CFR 50.59, no increase (significant or insignificant) in the probability or consequences of an accident previously evaluated will be allowed. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change provides more stringent requirements than previously existed in the Technical Specifications. The more stringent requirements will not result in operation that will increase the probability of initiating an analyzed event. If anything the new requirements may decrease the probability or consequences of an analyzed event by incorporating the more restrictive changes discussed above. The change will not alter assumptions relative to mitigation of an accident or transient event. The more restrictive requirements will not alter the operation of process variables, structures, systems, or components as described in the safety analyses. Therefore, the change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change deletes the requirements for Standby Liquid Control (SLC) System operability during Hot Shutdown, Cold Shutdown, and Refueling. The SLC System is not assumed in the initiation of any previously evaluated events and therefore the proposed change will not increase the probability or consequence of a previously analyzed accident. The SLC System is not assumed to operate in the mitigation of any previously analyzed accidents which are assumed to occur during Hot Shutdown, Cold Shutdown or Refueling. This change will not result in operation that will increase the probability of initiating an analyzed event. This change will not alter assumptions relative to mitigation of an accident or alter the operation of process variables, structures, systems, or components as described in the safety analyses. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change adds an action for both SLC subsystems inoperable that delays the requirement to initiate plant shutdown immediately and allows time to recover at least one subsystem before subjecting the plant to a potentially unnecessary transient. Allowing a short period of time to recover one subsystem is acceptable because of the large number of independent control rods available to shut down the reactor and the diversity of means available to cause control rod insertion. This change will not alter assumptions relative to mitigation of an accident or alter the operation of process variables, structures, systems, or components as described in the safety analyses. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change deletes requirements for demonstrating operability of the redundant subsystems which eliminates excessive and unnecessary testing of safety significant equipment. This is consistent with guidance 10.1 of Generic Letter 93-05, ''Line-Item Technical Specifications Improvements to Reduce Surveillance Requirement for Testing During Power Operations''. The change does not affect the ability of the SLC system to perform on demand, and by actually lowering the number of demands to demonstrate operability, reduces the probability of equipment failure. Since the change will not alter assumptions relative to mitigation of an accident or alter the operation of process variables, structures, systems, or components as described in the safety analyses, the change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change replaces the requirement to verify B-10 enrichment concentration by test anytime boron is added to the solution and each refueling outage with verifying the enrichment prior to addition. Since enrichment of the solution in the tank cannot change by any other means but chemical addition, ensuring that only properly enriched material is available for addition is adequate to maintain enrichment at the required level. This change will not alter assumptions relative to mitigation of an accident or alter the operation of process variables, structures, systems, or components as described in the safety analyses. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Pilgrim Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Note 7 to Table 3.1.1 and Note 6 to Table 3.2.C.1

The changes to Note 7 to Table 3.1.1, and the addition of Note 6 to Table 3.2.C.1 are proposed to clarify their requirements, the appropriate action to take, and their relationship to plant modes. This revised scram and rod block applicability is acceptable because control rods withdrawn from a core cell containing no fuel assemblies have a negligible impact on the reactivity of the core, and, therefore, are not required to be operable. Provided all rods otherwise remain inserted, the RPS functions serve no purpose and are not required. In this condition, the required shutdown margin (Specification 3.3.A.1) and the required one-rod-out interlock (Specification 3.10.A) ensure that no event requiring the RPS or Rod Block will occur.

The Actions of Table 3.1.1 for inoperable equipment were previously revised in Amendment ι147 to be consistent with the improved STS. Action (A) requires fully inserting all insertable control rods in core cells containing one or more fuel assemblies. Since Specification 3.1O.A requires all control rods to be fully inserted during fuel movement, the proposed applicable conditions cannot be entered while moving fuel. In addition, Specification 3.10.D, used for controlling multiple control rod removal, requires all control rods in a 3X3 array centered on the CRDs being removed to be fully inserted and electrically disarmed and all other control rods fully inserted. The only possible action is control rod withdrawal, which is addressed by Action A. Hence, operating Pilgrim in accordance with the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

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The proposed change involves reformatting, renumbering, and rewording of the existing Technical Specifications and Bases along with other changes to the Technical Specifications discussed above. The reformatting, renumbering, and rewording along with the other changes listed involves no technical changes to existing Technical Specifications. These changes are administrative and do not impact the assumed mitigation of accidents or transient events. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change relocates requirements to other Technical Specification sections, to plant procedures, or to the Technical Specification BASES. Relocating requirements will not alter the plant configuration (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. Relocating requirements will not impose different requirements and adequate control of information will be maintained. Relocating requirements will not alter assumptions made in the safety analysis and licensing basis. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes make some existing requirements more restrictive and add additional requirements to the Technical Specifications but will not alter the plant configuration (no new or different type of equipment will be installed) or change methods governing normal plant operation. These changes do impose different requirements, however, they are consistent with assumptions made in the 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 change relaxes the modes of applicability for the SLC. Relaxing the applicability will not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

Note 7 to Table 3.1.1 and Note 6 to Table 3.2.C.1

This revised scram and rod block applicability is acceptable because control rods withdrawn from a core cell containing no fuel assemblies have a negligible impact on the reactivity of the core, and, therefore, are not required to be operable (provide a scram). Provided all rods otherwise remain inserted, the RPS functions serve no purpose and are not required. In this condition, the required shutdown margin (Specification 3.3.A.1) and the required one-rod-out interlock (Specification 3.10.A) ensure that no event requiring the RPS or Rod Block will occur.

The Actions of Table 3.1.1 for inoperable equipment were previously revised in

Amendment t147 to be consistent with the improved STS. Action (A) requires fully inserting all insertable control rods in core cells containing one or more fuel assemblies. Since Specification 3.10.A requires all control rods to be fully inserted during fuel movement, the proposed applicable conditions cannot be entered while moving fuel. In addition, Specification 3.10.D, used for controlling multiple control rod removal, requires all control rods in a 3X3 array centered on the CRDs being removed to be fully inserted and electrically disarmed and all other control rods fully inserted. The only possible action is control rod withdrawal, which is adequately addressed by Action A.

Therefore, operating Pilgrim in accordance with the proposed changes will not involve a significant reduction in a margin of safety.

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The administrative changes involve no technical changes. These proposed changes will not reduce a margin of safety because there is no impact on any safety analysis assumptions. Also, because the change is administrative in nature, no question of safety is involved. Therefore, these changes do not involve a significant reduction in a margin of safety. The change relocates requirements to other Technical Specification sections, to plant procedures, or to the Technical Specification BASES. These changes will not reduce a margin of safety since there is no impact on any safety analysis assumptions. In addition, the requirements to be transposed are the same as the existing Technical Specifications. Since any changes to plant procedures and Technical Specification BASES are required to be evaluated per 10 CFR 50.59, no reduction (significant or insignificant) in a margin of safety will be allowed. Therefore, these changes will not involve a significant reduction in a margin of safety.

The addition of new requirements and making existing ones more restrictive either increases or does not affect the margin of safety. These changes do not impact any safety analysis assumptions. As such, no question of safety is involved. Therefore, these changes will not involve a significant reduction in a margin of safety.

The proposed change would remove a backup (in the Hot Shutdown, Cold Shutdown, and Refueling Modes) to the available systems for reactivity control; however, this backup is not considered in the margin of safety when determining the required reactivity for shutdown and refueling events. This change will have no impact on any safety analysis assumptions. As such, no question of safety is involved. Therefore, this change does not involve a significant reduction in a margin of safety.

The SLC system is not assumed to function in any DBA or transient and is not the primary success path of a safety sequence analysis. It is a backup to the CRD scram function, therefore, allowing a short period of time to recover one subsystem will have no impact on any safety analysis assumptions. As such, no question of safety is involved. Therefore, this change does not involve a significant reduction in a margin of safety.

The change does not alter the requirements for enrichment/ concentration of the boron solution necessary to satisfy 10 CFR 50.62. Since enrichment of the solution in the tank cannot change by any other means but chemical addition, this change does 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 request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360

Attorney for licensee: W. S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199

NRC Project Director: Jocelyn A. Mitchell, Acting Director

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 amendments request: November 15, 1995

Description of amendments request: The proposed amendments would revise the Technical Specifications (TS) to alter the wording of TS 4.8.2.5.a in accordance with the guidance of Generic Letter (GL) 91-09, ''Modification of Surveillance Interval For The Electrical Protection Assemblies In Power Supplies For The Reactor Protection System.''

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:

1. The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed change does not alter the design, function, or operation of the EPAs [Electrical Protective Assemblies]. The proposed amendments modify the surveillance requirement for an electrical protective device on the Reactor Protection System [RPS]. The RPS-EPA units are designed to protect RPS equipment from abnormal operating voltage or frequency. The proposed change will preclude the need to test the RPS-EPA units during power operation. This will eliminate the potential for reactor scrams and Group isolations during performance of the surveillance, thus, preventing unwarranted challenges to safety systems. The proposed change does not affect any accident precursor or initiator. Therefore, the probability of an accident is not affected by the proposed change. The proposed amendments do not affect the operability of the RPS-EPA units. The proposed change does not affect the ability of the Reactor Protection System to maintain the integrity of the fuel cladding, protect the reactor coolant pressure boundary, or limit the amount of energy released to primary containment. Therefore, the consequences of an accident is not affected by the proposed change.

2. The proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated above, these proposed amendments do not alter the design, functions, or operation of the EPAs. The RPS relay trip logic remains protected from power supplies operating with abnormal voltage or frequency. Additionally, the redundancy of this protection is not changed.

Thus, the proposed amendments do not create the possibility of a new or different kind of accident.

3. The proposed amendments do not involve a significant reduction in a margin of safety because the benefit to safety by reducing the frequency of testing during power operation and attendant possible challenges to safety systems more than offsets any risk to safety from relaxing the surveillance requirement to test the EPAs during power operation. The testing of each EPA channel involves a dead-bus transfer and the momentary interruption of power results in a half scram and half isolation. Generic Letter 91-09 notes that many plants have encountered problems with the reset of the half trip resulting in inadvertent scrams and group isolations that challenge safety systems during power operation. Eliminating EPA testing at power operation increases the margin of safety by eliminating the potential for trips due to testing that challenge safety systems. An insignificant reduction in the margin of safety is introduced by increasing the test interval up to a maximum of a refuel cycle which will produce a small increase in risk that an inoperable EPA would not be detected. The elimination of potential challenges to safety systems provides a safety benefit that offsets the increased risks of component failure.

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: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Eugene V. Imbro

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: June 6, 1996

Description of amendment request: The proposed change would revise technical specifications (TS) Section 4.2.3 to allow the licensee to defer the ultrasonic inspection of the reactor coolant pump flywheel for one operating cycle.

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:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The safety function of the Reactor Coolant Pump (RCP) flywheel is to provide a coastdown period during which the RCPs would continue to provide reactor coolant flow to the core after a loss of power to the RCPs. The maximum loading on the RCP motor flywheel results from overspeed following a large break Loss of Coolant Accident (LOCA). The estimated maximum obtainable speed in the event of a Reactor Coolant System (RCS) piping break was established conservatively, and the proposed one-time change does not affect that analysis.

The RCP flywheels have been carefully designed and manufactured from high quality steel. Twenty-two inspections have been performed at HBRSEP, Unit No. 2 over the past 25 years and no indications have been discovered that would affect the integrity of the flywheel. The Westinghouse Owners Group (WOG) has performed an extensive study documented in WCAP-14535, ''Topical Report on Reactor Coolant Pump Flywheel Inspection Elimination,'' that includes an evaluation of industry experience, a stress and fracture evaluation, and a risk assessment, and has concluded that RCP flywheel inspections may be safely eliminated.

Reduced coastdown times due to a single failed flywheel would not place the plant in an unanalyzed condition since a locked rotor (i.e., an instantaneous coastdown) is analyzed in the Updated Final Safety Analysis Report (UFSAR). The proposed change also does not increase the amount of radioactive material available for release or modify any systems used for mitigation of releases during an accident. Therefore, the proposed change does not involve an increase in the probability of 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 will not change the design, configuration, or method of operation of the plant. Therefore, the proposed change will not create the possibility of a new kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The RCP flywheels have been carefully designed and manufactured from high quality steel. Twenty-two inspections have been performed at HBRSEP, Unit No. 2 over the past 25 years and no indications have been discovered that would affect the integrity of the flywheel. The Westinghouse Owners Group (WOG) has performed an extensive study documented in WCAP-14535, ''Topical Report on Reactor Coolant Pump Flywheel Inspection Elimination,'' that includes an evaluation of industry experience, a stress and fracture evaluation, and a risk assessment, and has concluded that RCP flywheel inspections may be safely eliminated. The proposed change would only result in a one-time deferral of the scheduled inspection for one operating cycle. In consideration of the historical integrity of the HBRSEP, Unit No. 2 RCP flywheels, the industry experience, the results of the WOG study, and the deferral of the risk of RCP flywheel damage during disassembly and inspection, we conclude that a one operating cycle deferral of the scheduled RCP flywheel inspection will not result in 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: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Eugene V. Imbro

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 amendment request: May 31, 1996

Description of amendment request: The proposed amendment would change the plant Technical Specifications (TS) Table 3.3-7, Seismic Monitoring Instrumentation, and TS Table 4.3-4, Seismic Monitoring Instrumentation Surveillance Requirements, to correct the location described for one of the three Triaxial Peak Accelerograph Recorders.

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:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

These recorders are passive components which serve only a recording function. They can neither initiate an accident nor serve to mitigate accident consequences. The proposed change serves only to correct the location, commensurate with design documents, for one of the three recorders described in the Technical Specifications. Accordingly, this change is administrative in nature. Therefore, there would be no increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed correction is an administrative change to correct the location of a recorder currently described in the Technical Specifications. No physical alterations to plant equipment are being made, and there will be no changes that alter how any safety-related system performs its function. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

Technical Specification Bases 3/4.3.3.3 specify the acceptance level for seismic instrumentation as ''consistency'' with the recommendations of Regulatory Guide 1.12. Since the regulatory guide states only that one recorder should be provided at a ''selected location on the reactor piping,'' it is not material whether it is installed on Loop 1 versus Loop 2. Therefore, the proposed change does not affect a margin of safety as defined in the Bases to the Technical Specifications.

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: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Eugene V. Imbro

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Dates of amendment request: December 18, 1995, May 3 and June 11, 1996

Description of amendment request: The licensee proposed to change the Turkey Point Units 3 and 4 Technical Specifications (TS) to uprate the core thermal output of Turkey Point Units 3 and 4 from 2200 MWt to 2300 MWt. The proposed TS changes were divided into eight groups. The submittal included a ''No Significant Hazards'' evaluation for each of the eight groups. The groupings are as follows:

TS changes associated with the uprated power level, the revised core safety limits, revised DNB [departure from nucleate boiling] parameters, Engineered Safety Features Actuation System (ESFAS) and reactor trip setpoint changes, and Reactor Coolant Pump (RCP) Breaker Position Trip, were evaluated together. The safety of these proposed changes were verified by the accident analyses that were completed in support of the uprated power.

TS changes associated with reducing the SI [safety injection] pump discharge head requirement and increasing usable volume requirements for the Demineralized Water Storage Tank (DWST) and the Condensate Storage Tank (CST) were addressed together.

TS changes associated with pressurizer and main steam safety valve (MSSV) setpoint tolerance increases were assessed together.

TS changes associated with operation at reduced power with inoperable MSSVs were assessed separately.

TS changes associated with the service period for heatup and cooldown pressure-temperature limit curves were assessed together.

The Surveillance Requirement change for the emergency containment cooling [ECC] unit operability was handled separately since this was a design change that required extensive evaluations.

TS change associated with the methyl iodide removal efficiency in the Control Room Emergency Ventilation System was assessed separately.

All LOCA [loss-of-coolant accident] related changes dealing with the peaking factor increase, COLR [core operating limit report] changes, Evaluation Model references, and relocation of peaking factors from the TS and subsequent inclusion in the COLR were included in one ''No Significant Hazards'' evaluation. All of the items are closely related since the LOCA analysis is performed to ensure peaking factor acceptability.

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.

LICENSE CONDITION, RATED THERMAL POWER, CORE SAFETY LIMITS, REACTOR TRIP SYSTEM INSTRUMENTATION TRIP SETPOINTS, ESFAS INSTRUMENTATION TRIP SETPOINTS, DNB PARAMETERS AND RCP BREAKER POSITION TRIP

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve an increase in the probability or consequences of an accident previously evaluated because operation with these revised values will not cause any design or analysis acceptance criteria to be exceeded. The structural and functional integrity of all plant systems are unaffected. The overtemperature Delta T and overpower Delta T reactor trip functions as well as ESFAS functions are part of the accident mitigation response and are not accident initiators. All proposed changes have been assessed and no design and analysis acceptance criteria have been exceeded. Therefore the probability of occurrence previously evaluated is not affected.

The proposed changes do not affect the integrity of the fission product barriers utilized for mitigation of dose consequences as a result of an accident. Dose consequences were reviewed and reanalyzed (as needed) and found acceptable. Therefore, the probability or consequences of an accident previously evaluated are not significantly increased.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because their effects do not affect accident initiation sequences. All new operating configurations have been evaluated and no new limiting single failures have been identified. In addition, no new failure modes have been identified. Therefore, it is concluded that no new or different kind of accident from any accident previously evaluated has been created as a result of these revisions.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The proposed changes do not involve a reduction in a margin of safety because the margin of safety associated with these parameters as verified by the results of the accident analyses, are within acceptable limits. All transients impacted have been analyzed and have met the applicable accident analyses acceptance criteria (e.g., DNBR [departure from nucleate boiling ratio], RCS [reactor coolant system] pressure, secondary side pressure, etc.). The margin of safety required for each affected safety analysis is maintained. The adequacy of the revised Technical Specifications values has been confirmed such that there is no reduction in the margin of safety. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

AVAILABLE VOLUME CHANGE FOR CONDENSATE STORAGE TANK (CST) AND DEMINERALIZED WATER STORAGE TANK (DWST), AND REDUCED SAFETY INJECTION (SI) PUMP DISCHARGE HEAD REQUIREMENT.

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The revised tank volumes and SI head requirements have been evaluated with respect to system performance and analysis impacts. All accident analysis acceptance criteria continue to be met. The design function of all affected systems have been reviewed and all system design criteria continue to be met. The structural and functional integrity of the affected systems are unaffected. These changes are not initiators for any accident and therefore the probability of occurrence of an accident previously evaluated has not increased.

The proposed changes do not affect the integrity of the fission product barriers for mitigation of dose consequences. All dose consequences remain well within the 10 CFR 100 limits. Therefore there is no increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The revised tank volumes and SI head requirements do not create the possibility of a new or different kind of accident from any accident previously evaluated because these modifications do not affect accident initiation sequences. No new operating configuration is being imposed by the adjustments that would create a new failure scenario. In addition, no new failure modes or limiting single failures have been identified. Therefore, it is concluded that no new or different kind of accident from any accident previously evaluated have been created as a result of these revisions.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The proposed changes do not involve a reduction in a margin of safety because the margin of safety associated with these parameters, as verified by the results of the accident analyses and system evaluations, are within acceptance limits. The margin of safety required for each affected safety analysis is maintained. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

PRESSURIZER AND MAIN STEAM SAFETY VALVE SETPOINT TOLERANCES

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The revised tolerances for main steam safety valves and pressurizer safety valves do not involve an increase in the probability or consequences of an accident previously evaluated because operation with these revised values will not cause any design or analytical acceptance criteria, such as those applicable to primary and secondary side pressures to be exceeded. The structural and functional integrity of the valves are unaffected by this proposed change. The tolerance changes do not initiate or cause initiation of any transient. Therefore, the probability of occurrence previously evaluated is not affected.

The changes do not affect the integrity of the fission product barriers utilized for dose consequence mitigation. Therefore, the probability or consequences of an accident previously evaluated is not increased.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The revised valve tolerances do not create the possibility of a new or different kind of accident from any accident previously evaluated because the tolerances do not affect accident initiation sequences. No new operating configuration is being imposed by the tolerances that would create a new failure scenario. In addition, no new failure modes or limiting single failures have been identified. Therefore, it is concluded that no new or different kind of accident from any accident previously evaluated have been created as a result of these revisions.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The changes to valve tolerances do not involve a reduction in a margin of safety because the margin of safety associated with the MSSVs and the pressurizer safety valves, as verified by the results of the accident analyses and valve evaluations, are within acceptable limits. Transients impacted by this change have been analyzed and have met the applicable accident analyses acceptance criteria, such as those applicable to primary and secondary side pressure. The margin of safety required for each affected safety analysis is maintained. This conclusion is not changed by the valve tolerances for the main steam safety valves and the pressurizer safety valves. Therefore, the changes do not involve a significant reduction in the margin of safety.

OPERATION AT REDUCED POWER WITH INOPERABLE MAIN STEAM SAFETY VALVES

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed maximum allowable power level values will ensure that the secondary side steam pressure will not exceed 110 percent of the design pressure following a Loss of Load/Turbine Trip event, when one or more main steam safety valves (MSSVs) are declared inoperable. The proposed change will not impact the classification of the Loss of Load/Turbine Trip event as a Condition II probability event (faults of moderate frequency) per ANSI - N18.2, 1973. Accordingly, since the proposed maximum allowable power level will maintain the capability of the MSSVs to perform their pressure relief function associated with a Loss of Load/Turbine Trip event, there will be no effect on the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve any change to the configuration of any plant equipment, and no new failure modes have been defined for any plant system or component. The proposed maximum allowable power level as specified in TS Table 3.7-1 will improve the capability of the MSSVs to perform their pressure relief function to ensure the secondary side steam pressure does not exceed 110 percent of design pressure following a Loss of Load/ Turbine Trip event. Therefore, since the function of the MSSVs is improved by the proposed changes, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The proposed changes to the Technical Specifications do not involve a significant reduction in a margin of safety. The algorithm methodology used to calculate the maximum allowable power level is conservative and bounding since it is based on a number of inoperable MSSVs per loop; i.e., if only one MSSV in one loop is out of service, the required action to reduce power to the maximum allowable power level would be the same as if one MSSV in each loop were out of service. Another conservatism with the algorithm methodology is with the assumed minimum total steam flow rate capability of the operable MSSVs. The assumption is that if one or more MSSVs are inoperable per loop, the inoperable MSSVs are the largest capacity MSSVs, regardless of which capacity MSSVs are actually inoperable.

Therefore, since the maximum allowable power level calculated for the proposed changes using the algorithm methodology are more conservative and ensure that 110 percent of secondary side steam pressure is not exceeded following a Loss of Load/ Turbine Trip event, this proposed license amendment will not involve a significant reduction in a margin of safety.

SERVICE PERIOD FOR HEATUP AND COOLDOWN PRESSURE-TEMPERATURE LIMIT CURVES

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Calculation of the service period for the heatup and cooldown curves does not involve an increase in the probability or consequences of an accident previously evaluated because the calculations were completed to verify the adequacy of the existing curves and to determine an appropriate service period. The use of approved methods and the acceptable results have shown that no design or analysis criteria are changed. The structural and functional integrity of the reactor vessel has been verified.

No fission product barriers or inputs to dose analyses are adversely affected by these calculations and reverification of the existing heatup/cooldown curves. Therefore, the probability or consequences of an accident previously evaluated are not increased.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The revised service period does not create the possibility of a new or different kind of accident from any accident previously evaluated because the recalculation of an acceptable service period does not affect accident initiation sequences. No new operating configuration is being imposed by the calculations that would create a new failure scenario. In addition, no new failure modes or limiting single failures have been identified. Therefore, the types of accidents defined in the UFSAR continue to represent the credible spectrum of events to be analyzed which determine safe plant operation. Therefore, it is concluded that no new or different kind of accident from any accident previously evaluated have been created as a result of these revisions.

(3) Operation of the facility in accordance with the proposed license amendments would not involve a significant reduction in a margin of safety.

Calculations were performed to determine the service period appropriate for the existing curves. The changes to service period do not involve a reduction in a margin of safety because the margin of safety associated with the heatup/cooldown curves, as verified by the results of the analyses, are unchanged. Therefore, the proposed change to the service period does not involve a significant reduction in the margin of safety.

MODIFICATION TO SURVEILLANCE REQUIREMENT FOR EMERGENCY CONTAINMENT COOLING SYSTEM

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The purpose of the ECC units is to help mitigate the consequences of an accident (i.e., to help maintain the containment pressure and temperature within their design

values following a design basis accident). The ECC units do not operate during normal operation of the plant. Failure of the ECC units would not initiate a plant transient or accident. Therefore, the proposed change involving the ECC units would not affect the probability of occurrence of an accident previously evaluated.

Evaluations demonstrate that, with two ECC units operating during a LOCA or MSLB [main steamline break], the containment pressure and temperature will be maintained within their design values. These evaluations also demonstrate that, with two ECC units operating during a LOCA or MSLB, the temperature of the CCWS [component cooling water system] will be maintained within its design temperature. Therefore, the proposed change involving the ECC units would not affect the consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The purpose of the ECC units is to mitigate design basis accidents, and failure of the ECC units would not cause a plant transient or accident. Furthermore, a single failure of an ECC unit during a LOCA or MSLB would not lead to a new or different kind of accident. Although the revised Technical Specifications require two ECC units to start automatically on a LOCA signal, they would also require that all three ECC units be operable. On a single failure of an operating ECC unit, there would be sufficient time to start the standby ECC unit to accomplish the design function of the ECC system. Therefore, the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The proposed change in the actuation logic of the ECC units would not cause either the containment pressure and temperature or the CCWS temperature to exceed their design values. While the energy released into containment and subsequently transferred to the CCWS will increase as a result of the thermal uprate, this increase is insignificant and will not result in either the containment or CCWS exceeding a design limit. Therefore, the proposed change would not affect the margin of safety.

CONTROL ROOM EMERGENCY VENTILATION SYSTEM

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not affect the integrity of the fission product barriers utilized for mitigation of dose consequences as a result of an accident. Only the iodide removal efficiency of the control room emergency ventilation system is increased, and this change is in the conservative direction.

To assure consistency between testing efficiency and analysis assumptions for post-accident control room doses, the methyl iodide removal efficiency required to be demonstrated by laboratory test, is being increased from 90% to 99%. This increase in testing efficiency is consistent with the recommendations set by the NRC staff in Regulatory Guide 1.52 to support analysis efficiencies for elemental iodine and methyl iodide removal of 95%, respectively. Testing performed to verify methyl iodide removal efficiency will be performed under conditions representative of the control room environment.

Since this change in removal efficiency is in the conservative direction, plant safety will not be adversely impacted.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the control room emergency ventilation system iodide removal efficiency does not create the possibility of a new or different kind of accident from any accident previously evaluated because operation of the control room emergency ventilation system is not identified in any accident initiation sequence. The system is provided to minimize operator exposure to airborne radioactivity released as a result of an accident. The new operating configuration has been evaluated and no new limiting single failures have been identified as a result of the proposed modification. Therefore, it is concluded that no new or different kind of accidents from any accident previously evaluated have been created as a result of these revisions.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The proposed changes do not involve a reduction in the margin of safety because the margin of safety associated with this change is in the conservative direction. Thus, plant safety will not be adversely impacted and the margin of safety required for the affected safety analysis is maintained. The adequacy of the revised Technical Specification values to maintain the plant in a safe operating condition has been confirmed, since the testing will be done to a more conservative criteria (i.e., 99% efficiency). Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

RELOCATION OF F_Q(Z) [HEAT FLUX HOT CHANNEL FACTOR] AND F Delta H [NUCLEAR ENTHALPY RISE HOT CHANNEL FACTOR] LIMITS FROM TECHNICAL SPECIFICATIONS TO CORE OPERATING LIMITS REPORT AND EDITORIAL CORRECTIONS

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The relocation of the values for F_Q and F Delta H from the Technical Specifications to the Core Operating Limits Report is administrative in nature and has no impact on the probability or consequences of any Design Bases Event (DBE) occurrence which was previously evaluated. The determination of the F_Q and F Delta H limits will be performed using methodology approved by the NRC and poses no significant increase in the probability or consequences of any accident previously evaluated.

The changes being proposed as editorial in nature do not affect assumptions contained in the safety analyses, the physical design and/or operation of the plant, nor do they affect Technical Specifications that preserve safety analysis assumptions. Therefore, these proposed changes do not affect the probability or consequences of accidents previously analyzed.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The relocation of the F_Q and F Delta H limits from the Technical Specifications to the Core Operating Limits Report is administrative in nature and has no impact, nor does it contribute in any way to the possibility of a new or different kind of accident from any accident previously evaluated.

The determination of the F_Q and F Delta H limits will be performed using NRC-approved methodology and are submitted to the NRC as a revision to the COLR to allow the NRC staff to trend peaking factors. The Technical Specifications will continue to require operation within the required core operating limits and appropriate actions will be taken if the F_Q and F Delta H limits are exceeded. Therefore, the proposed amendments does not in any way create the possibility of a new or different kind of accident from any accident previously evaluated.

The editorial changes proposed are administrative in nature and do not affect assumptions contained in plant safety analyses, the physical design and/or operation of the facility, nor do they affect Technical Specifications that preserve safety analysis assumptions. Therefore, these changes do not create the possibility of a new or different kind of accident.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The relocation of the F_Q and F Delta H limits from the Technical Specifications to the Core Operating Limits Report is administrative in nature and has no impact on the margin of safety. The determination of the F_Q and F Delta H limits will be performed using methodology approved by the NRC and does not constitute a significant reduction in the margin of safety.

The supporting Technical Specification values are defined by the accident analyses which are performed to conservatively bound the operating conditions defined by the Technical Specifications. Performance of analysis and evaluation have confirmed that the operating envelope defined by the Technical Specifications continues to be bounded by the analytical basis, which in no case exceeds the acceptance limits. Therefore, the margin of safety provided in the analyses in accordance with the acceptance limits is maintained and not significantly reduced.

The changes being proposed as editorial in nature do not relate to or modify the safety margins defined in, and maintained by the Technical Specifications. Therefore, the proposed changes which correct administrative errors and clarify existing Technical Specification requirements do not involve any 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 request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199

Attorney for licensee: J. R. Newman, Esquire, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036

NRC Project Director: Frederick J. Hebdon

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Dates of amendment request: April 19, 1996, May 10, 1996, and May 28, 1996

Description of amendment request: The licensee proposed to change the Turkey Point Units 3 and 4 Technical Specifications (TS) to address frequency extension for actions required on a periodic basis, delete the separate notification requirement for an inoperable startup transformer, and allow the operating RHR loop to be removed from operation during refueling operations under certain conditions.

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.

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed amendments are purely administrative in nature. These amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated because they do not affect assumptions contained in plant safety analyses, the physical design and/or operation of the plant, nor do they affect Technical Specifications that preserve safety analysis assumptions. Therefore, the proposed changes do not affect the probability or consequences of accidents previously analyzed.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The use of the modified specifications can not create the possibility of a new or different kind of accident from any previously evaluated since the proposed amendments will not change the physical plant or the modes of plant operation defined in the facility operating license. No new failure mode is introduced due to the administrative changes and clarifications, since the proposed changes do not involve the addition or modification of equipment nor do they alter the design or operation of affected plant systems, structures, or components.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The operating limits and functional capabilities of the affected systems, structures, and components are unchanged by the proposed amendments. The modified specifications which correct administrative errors and clarify existing Technical Specification requirements do not significantly reduce any of 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 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: Florida International University, University Park, Miami, Florida 33199

Attorney for licensee: J. R. Newman, Esquire, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036

NRC Project Director: Frederick J. Hebdon

Gulf States Utilities Company, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: May 30, 1996

Description of amendment request: The proposed amendment would revise the technical specifications surveillance requirement (SR) 3.8.3.4 to specify a 5-start pressure for the air receivers associated with the Division III, High Pressure Core Spray emergency diesel generator.

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:

1. Does the change involve a significant increase in the probability or consequence of an accident previously evaluated?

The purpose of the proposed Technical Specification change is to establish consistency between the basis for the air start pressure required for the Division I and II diesels and the value required for the Division III diesel. The value of 160 psig currently specified in SR 3.8.3.4 is representative of a 5-start value for the Division I and II diesels, however, this value is not representative of a 5-start for the Division III diesel. While the 160 psig value does serve to satisfy the requirements of 10 CFR 50.36 with regard to maintaining the lowest functional level required for the Division III diesel to perform its design safety function, the current value does not serve to maintain the design margin utilized when sizing the air receivers for the purpose of satisfying the Standard Review Plan guidance contained in section 9.5.6 (NUREG-0800 Revision 2).

The proposed value fully complies with the guidance provided in NUREG-0800 and is more conservative than the value currently included in the Technical Specifications. The proposed value is well within the capability of the air system's design and will not subject the air system to excessive pressures or undue cycling of the system's compressors. The proposed change has no effect on the probability of an accident as diesel generators have no bearing on the initiation of any analyzed event. In addition, the capability of the Division III diesel to perform its design basis function (i.e., starting, accelerating to rated speed and voltage, and connecting to its respective bus within 13 seconds) is not affected by this change. The ability of the diesel to support the mitigation of analyzed accidents is not affected and hence the consequences of any analyzed event are not affected. Therefore, the proposed change does not increase the probability or the consequences of previously analyzed accidents.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not introduce any new failure modes. All of the affected components remain within their applicable design limits. In addition, the environmental qualification of any plant equipment is not adversely affected by the proposed change. Since the performance of this system is not adversely affected by this change and the design margins of this system are not challenged in a manner differently than previously analyzed, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change raises the required starting air pressure for the Division III above that currently required by the Technical Specifications to establish consistency between the basis of the Division III value with the value used for the Division I and II diesels. Issuance of the proposed change will establish a 5 start air receiver pressure for each of the three safety-related diesels at

River Bend. While the proposed value is slightly less than the 5 start value discussed in River Bend's SER, the proposed value is supported by the River Bend site-specific test data and does not adversely affect existing analyses or system performance. Therefore, the proposed change does not result in a 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: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005

NRC Project Director: William D. Beckner

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: June 6, 1996, as supplemented by letters dated June 7 and 9, 1996

Description of amendment request: The proposed amendment would revise the technical specification Limited Safety System Setting for the MINIMUM CRITICAL POWER RATIO (MCPR) for dual recirculation loop operation and for single recirculation loop operation.

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:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The purpose of the Safety Limit Minimum Critical Power Ratio (SLMCPR) is to provide statistical confidence that less than 0.1% of the fuel rods in a core would experience transition boiling during the most limiting analyzed Anticipated Operational Occurrence (transient). While transition boiling in a BWR does not in and of itself signal the onset of fuel cladding failure, this criterion has been selected as a conservative and convenient parameter for the evaluation of fuel designs. Therefore, while this safety limit does not provide any control over either the probability or consequences of any accident previously evaluated, it does ensure that evaluated transients remain within NRC-approved criteria. Revision of the SLMCPR will establish in the CNS Technical Specifications a valid limit, based on the NRC approved GESTAR II methodology using cycle-specific inputs. This change will result in the input of more restrictive core operating limits into the plant process computer, ensuring that CNS will be operated within the constraints of the new SLMCPR limits of 1.07 for dual recirculation loop operation, and 1.08 for single recirculation loop operation. No plant hardware modifications are associated with this change. Therefore, since this proposed change will not change the physical configuration of the plant, nor result in operational changes which invalidate assumptions used in any CNS accident analysis, this change does not involve an increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed License Amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

This change revises the SLMCPR values in the CNS Technical Specifications in accordance with a cycle specific analysis performed for the remainder of the current cycle. The SLMCPR ensures that less than 0.1% of the fuel rods in a core would experience transition boiling during the most limiting Anticipated Operational Occurrence. Increasing the SLMCPR from 1.06 to 1.07 for dual recirculation loop operation and from 1.07 to 1.08 for single recirculation loop operation will ensure that the specified statistical confidence will be met for all analyzed transients. This change does not involve any plant hardware changes. The only operational changes will be the institution of appropriate thermal restrictions on reactor core operation in accordance with the SLMCPR changes. Therefore, this proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change create a significant reduction in the margin of safety?

This change will establish in the CNS Technical Specifications, SLMCPR values that ensure the margin of safety to the NRC approved Anticipated Operational Occurrence evaluation acceptance criteria will be met. Increasing the SLMCPR institutes more restrictive thermal limitations on core operation. The change of the SLMCPR from 1.06 to 1.07 for dual recirculation loop operation, and from 1.07 to 1.08 for single loop operation will ensure that the acceptance criteria for evaluated transients will continue to be met, and that the appropriate limit is reflected in the CNS Technical Specifications. Therefore, this proposed change does not create 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: Auburn Memorial Library, 1810 Courthouse Avenue, Auburn, NE 68305

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602-0499

NRC Project Director: William D. Beckner

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: May 15, 1996

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3/4.3.2, ''Isolation Actuation Instrumentation,'' to establish a range of allowable and trip setpoints for high temperature (varying as a function of ambient temperature) in the Main Steam Line Tunnel Lead Enclosure Area. Specifically, a new TS Figure 3.3.2-1 would be added to provide a curve of allowable temperature values and a curve of trip temperature setpoints, both plotted over a range of ambient temperatures. The new Figure would be referenced by Table 3.3.2-2 at item 1.d.3 (High Temperature Main Steam Line Tunnel Lead Enclosure Trip Function) by a new footnote stating:

The trip setpoint and allowable value for a channel may be established based on Figure 3.3.2-1, if:

a. The actual ambient temperature readings for all operable channels in the Lead Enclosure Area are equal to or greater than the ambient temperature used as the basis for the setpoint, and

b. The absence of steam leaks in the Main Steam Line Tunnel Lead Enclosure Area is verified by visual inspection prior to increasing a channel setpoint, and

c. A surveillance is implemented in accordance with Note (d) of Table 4.3.2.1-1.

Similarly, TS Surveillance Table 4.3.2.1-1 would be supplemented at item 1.d.3 (High Temperature Main Steam Line Tunnel Lead Enclosure) with a new footnote stating:

(d) In addition to the normal shift channel check, if a channel setpoint has been established using Figure 3.3.2-1, then once per shift, the actual ambient temperature reading for all operable channels in the Lead Enclosure Area shall be verified to be equal to or greater than the ambient temperature used as the basis for the setpoint.

Basis for proposed no significant hazards consideration determination: The main steam tunnel high temperature isolation actuation instrumentation is part of the Leak Detection System (LDS). It is used to detect leakage early at 25 gallons per minute (gpm) and initiate signals to automatically close the Main Steam Isolation Valves before a pipe break could occur. The existing temperature setpoints for the tunnel lead enclosure are based upon transient analyses for steam leaks in the steam tunnel utilizing

winter temperatures as an initial condition. The licensee finds that a change is needed because actual temperatures in the tunnel, especially during the summer, are approaching the setpoints when steam leakage is not occurring. Under the present conditions, a minor disturbance in the turbine building ventilation system could cause an unwarranted isolation actuation at full power with resulting Main Steam Isolation Valve closure and reactor scram.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The operation of NMP2 [Nine Mile Point Unit 2] in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The LDS instrumentation in the main steam line tunnel isolates the Main Steam Isolation Valves upon sensing a steam leak of 25 gpm. For an elevated ambient temperature in the Lead Enclosure area, a setpoint established using the proposed Figure 3.3.2-1 ensures that the Main Steam Isolation Valves continue to receive an isolation signal upon sensing a steam leak of 25 gpm. Verifying the absence of any steam leak in the area prior to raising any temperature instrument setpoint ensures that the ability to sense a 25 gpm leak is not compromised by an increased ambient temperature resulting from a smaller steam leak. The periodic surveillance to verify the actual ambient temperature ensures the continued validity of the ambient temperature used for the setpoint basis, and provides sufficient advance indication to take appropriate compensatory action. Accordingly, this change will not involve a significant increase in the consequences of any accident previously evaluated.

Furthermore, the LDS function provides a mitigation action for a postulated main steam line pipe leak which could lead to a pipe break. This function does not affect any accident precursors, and the proposed change does not affect the function of the LDS system. Accordingly, this change will not involve a significant increase in the probability of any accident previously evaluated.

2. The operation of NMP2 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated.

The qualification of safety-related equipment in the main steam lead enclosure is evaluated using actual temperatures and component qualified life is adjusted accordingly. The temperature elements are the only safety-related equipment affected by this change, therefore, the instrumentation response to previously evaluated accidents will not be adversely affected. This change will not affect the performance of safety related structures. Accordingly, the design capabilities of those structures, systems and components affected by the proposed change are not challenged in a manner not previously evaluated so as to create the possibility of a new or different kind of accident from any previously evaluated.

3. The operation of NMP2 in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The proposed change provides a range of setpoints and allowable values for the Main Steam Line Tunnel Lead Enclosure temperatures. The calculation of the allowable values and trip setpoints was performed using the same methodologies as previously employed. For an elevated ambient temperature in the Lead Enclosure area, a setpoint established using the proposed Figure 3.3.2-1 ensures that the Main Steam Isolation Valves receive an isolation signal upon sensing a steam leak of 25 gpm, resulting in a main steam line isolation prior to a pipe break. Therefore, the proposed change provides the same level of protection against a main steam line break as the existing setpoint values. The proposed setpoints will provide increased scram avoidance, and thereby reduce unnecessary challenges to the plant shutdown systems. Accordingly, the proposed change does not result in 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 request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Jocelyn A. Mitchell, Acting Director

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: March 25, 1996

Description of amendment request: These amendments revise the safety limit minimum critcal power ratios (SLMCPRs) to support use of GE-13 fuel at Peach Bottom Atomic Power Station.

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:

1)The proposed TS [technical specification] changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The derivation of the revised GE13 SLMCPRs for incorporation into the TS, and its use to determine cycle-specific thermal limits, have been performed using USNRC [U.S. Nuclear Regulatory Commission]-approved methods within the existing fuel licensing criteria as discussed in NEDE-32198P, ''GE13 Compliance With Amendment 22 of NEDE-24011-P-A (GESTAR II),'' and cannot increase the probability or severity of an accident.

The basis of the SLMCPRs calculation is to ensure that greater than 99.9% of all fuel rods in the core avoid boiling transition if the limit is not violated. The new SLMCPRs preserve the existing margin to transition boiling and fuel damage in the event of a postulated accident. The fuel licensing acceptance criteria for the SLMCPRs calculation apply to the GE13 fuel in the same manner that they have applied to previous fuel designs. The probability of fuel damage is not increased. Therefore, the proposed TS changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2) The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The SLMCPR for the GE13 fuel design is a Technical Specification numerical value, designed to ensure that transition boiling does not occur in 99.9% of all fuel rods in the core during the limiting postulated accident. It cannot create the possibility of any new type of accident. The new SLMCPRs are calculated using USNRC-approved methods and have the same calculational basis as the SLMCPR for other GE fuel designs previously used at PBAPS, Units 2 and 3. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident, from any accident previously evaluated.

3) The proposed TS changes do not involve a significant reduction in a margin of safety.

The margin of safety as defined in the TS Bases will remain the same. The new SLMCPRs are calculated using USNRC-approved methods which are in accordance with the current fuel licensing criteria. The SLMCPRs for the GE13 fuel remain high enough to ensure that greater than 99.9% of all fuel rods in the core will avoid boiling transition if the limit is not violated, thereby preserving the fuel cladding integrity. Therefore, the proposed TS changes do not involve a 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: Government Publications

Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: John F. Stolz

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50-277, Peach Bottom Atomic Power Station, Unit No. 2, York County, Pennsylvania

Date of application for amendment: June 13, 1996

Description of amendment request: The proposed amendment to the Technical Specifications (TS) will permit a one time performance of Surveillance Requirement 3.3.1.1.12, for the Average Power Range Monitor Flow Biased High Scram function, with a delayed entry into its associated TS Conditions and Required Actions for up to 6 hours provided core flow is maintained at or above 82 percent. This change would be in effect until the end of refueling outage 2R11, currently scheduled for early October 1996.

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:

i) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The APRM system provides monitoring and accident mitigation functions to limit peak flux in the core during startup and run modes. This proposed TS change for delaying entry into Conditions and Required Actions associated with SR 3.3.1.1.12 for the APRM flow bias function will have no impact on the APRM system or any system that interfaces with it. No pressure boundary interfaces or process control parameters will be challenged.

This change does not affect the operation of any equipment. Delaying entry into Conditions and Required Actions associated with SR 3.3.1.1.12 does not affect either the initiator of any accident previously evaluated or any equipment required to mitigate the consequences of an accident, or the isotopic inventory in the fuel. Thus, the change does not increase either the probability or the consequences of accidents previously evaluated.

ii) The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Because there is no direct pressure boundary interface or process control function associated with the APRM system or its interfacing electronics, the possibility of a new or different type of accident than any previously evaluated will not be created. Although the flow bias instrument loop does employ flow transmitters to measure recirculation drive flow, delaying entry into Conditions and Required Actions associated with SR 3.3.1.1.12 will have no impact on their pressure boundary function. Also, failure of the sensing line associated with these transmitters has already been accounted for in the initial plant design by including excess flow check valves for sensing line break isolation.

The proposed change does not introduce a new mode of plant operation and does not involve the installation of any new equipment or modifications to the plant. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

iii)The proposed change does not involve a significant reduction in a margin of safety.

The APRM flow biased high scram function is not specifically credited in the safety analysis. However, it is intended to provide an additional margin of protection from transient induced fuel damage during operation where recirculation flow is reduced to below the minimum required for rated power operation.

The margin of safety associated with this change refers to the margin inherent in the accident analyses that takes credit for the clamped high flux scram only (i.e., margin between scramming at 120% peak flux and the peak flux necessary for fuel damage). The current reactor operating state (end of cycle coast down extended core flow) dictates that only the 120% flux trip be enforced. This trip remains functional during the APRM flow biased high scram calibration.

Currently, the Conditions and Required Actions associated with SR 3.3.1.1.12 permit a one hour delay prior to entry because it minimizes risk while allowing time for restoration or tripping of channels by operations personnel. Because the APRM flow biased function is not enforced during end of cycle, coast down, extended core flow conditions, extending entry in associated Conditions and Required Actions from one to six hours has no impact on the margin associated with the clamped high flux scram. In the event core flow drops below 82%, the flow point below which APRM setpoints automatically become flow biased, the associated Conditions and Required Actions will be entered.

Therefore, extending entry into associated Conditions and Required Actions associated with SR 3.3.1.1.12, provided core flow remains at or above 82%, from one to six hours does not reduce any 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: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101

NRC Project Director: John F. Stolz

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: May 16, 1996

Description of amendment request: The proposed amendment to the James A. FitzPatrick Technical Specifications (TSs) proposes to delete the requirement for the Plant Operating Review Committee (PORC) to review the fire protection program and implementing procedures. This proposal will reduce the administrative burden on the committee while making PORC's responsibilities more consistent with the other responsibilities described in Section 6.1.5.6 of the TS.

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:

Operation of the FitzPatrick plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes delete the Plant Operating Review Committee (PORC) review of the fire protection program and implementing procedures, and deleted fire protection inspection and audit requirements that are redundant to those performed under the cognizance of the Safety Review Committee (SRC). The changes do not introduce any new modes of plant operation, make any physical changes, or alter any operational setpoints. Therefore, the changes do not degrade the performance of any safety system assumed to function in the accident analysis. Consequently, there is no effect on the probability or consequences of an accident.

2. Create the possibility of a new or different kind of accident from those previously evaluated.

No physical changes to the plant or changes to equipment operating procedures are proposed. The changes are administrative and will not have any direct affect on equipment important to safety. Therefore the changes cannot create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

Adequacy of the fire protection program and implementing procedures is assured by the fire protection license condition, the procedure review and approval process implemented by Amendment 222, the provisions of 10 CFR 50.59, and inspections and audits performed under the cognizance of the SRC. Consequently, deleting PORC's responsibility for review of the fire protection program and implementing procedures, and deleting the inspection and audit requirements contained in Specification 6.14.A and 6.14.B will not degrade the fire protection program. 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 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: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019

NRC Project Director: Jocelyn A. Mitchell, Acting Director

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: May 30, 1996

Description of amendment request: The proposed amendment would revise Minimum Critical Power Ratio Safety Limit and associated basis. The changes are required to support introduction of General Electric Company supplied, GE12, 10x10 fuel into the Cycle 13 reactor core.

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:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because:

A change in the SLMCPR [Safety Limit Minimum Critical Power Ratio] does not affect initiation of any accident. Operation in accordance with the revised SLMCPR ensures the consequences of previously analyzed accidents are not changed.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because:

The SLMCPR establishes a performance limit for the fuel. Therefore changing the limit will not initiate any accident.

3. Involve a significant margin of safety because:

The analyses performed to determine the revised SLMCPR assure maintenance of the same margin of safety as presently exists for the prevention of onset of transition boiling.

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: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019

NRC Project Director: Jocelyn A. Mitchell, Acting Director

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: May 30, 1996

Description of amendment request: The proposed amendment would revise Anticipated Transient Without Scram (ATWS) Recirculation Pump Trip Reactor Pressure - High setpoint when either zero or one Safety Relief Valves are out-of service.

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:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because:

A change in the ATWS Recirculation Pump Trip Reactor Pressure - High setpoint does not affect initiation of any accident. Operation in accordance with the revised setpoints ensures the consequences of previously analyzed accidents are not changed.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because:

RPV [reactor pressure vessel] pressure following an ATWS with MSIV [main steam isolation valve] closure event (worst case transient for RPV pressurization) remains within acceptable limits with the revised setpoint. Therefore changing the setpoint will not lead to a new type of accident.

3. Involve a significant reduction in a margin of safety because:

The analyses performed to determine the revised ATWS Recirculation Pump Trip Reactor Pressure - High setpoint assure maintenance of the same margin of safety as presently exists for limiting RPV pressure following an ATWS with MSIV closure (limiting transient).

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: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019

NRC Project Director: Jocelyn A. Mitchell, Acting Director

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: May 30, 1996

Description of amendment request: The proposed amendment would eliminate selected response time testing requirements. The affected Technical Specifications (TS) are TS 4.1.A, ''Surveillance Requirements, Reactor Protection System,'' and TS 4.2.A, ''Surveillance Requirements, Instrumentation, Primary Containment Isolation Functions.''

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:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because:

The purpose of the proposed TS change is to eliminate response time testing requirements for selected sensors in the RPS [reactor protection system] and Primary Containment Isolation System. The BWROG [Boiling Water Reactor Owners Group] has completed an evaluation which demonstrates that response time testing is redundant to the other TS required testing. These other tests

in conjunction with actions taken in response to NRC Bulletin 90-01, ''Loss of Fill-Oil in Transmitters

Manufactured by Rosemount,'' and Supplement 1 to Bulletin 90-01, are sufficient to identify failure modes or degradation in instrument response time and ensure operation of the associated systems within acceptable limits. Furthermore, failure modes detected by response time testing are detectable by other TS required testing. This evaluation was documented in Reference 1 [See application dated May 30, 1996]. NYPA [New York Power Authority] has confirmed the applicability of this evaluation to the FitzPatrick Plant. In addition, NYPA will complete the actions identified in the NRC staff's safety evaluation of NEDO-32291-A.

Because of the continued application of other existing TS required tests such as channel calibrations, channel checks, channel functional tests, and logic system functional tests, the response time of these systems will be maintained within the acceptance limits assumed in plant safety analyses and required for successful mitigation of an initiating event. The proposed changes do not affect the capability of the associated systems to perform their intended function within their required response time, nor do the proposed changes themselves affect the operation of any equipment. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from those previously evaluated because:

The proposed changes do not affect the ability of the systems to perform their intended function within the acceptance limits assumed in plant safety analyses and required for successful mitigation of an initiating event. No new failure modes are introduced by the changes. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in the margin of safety.

The current TS required response time test limits are based on the maximum allowable values assumed in the plant safety analyses. These analyses conservatively establish the margin of safety. As described above, the proposed changes do not affect the capability of the associated systems to perform their intended function within the allowed response time used as the basis for the plant safety analysis. Plant and system response to an initiating event will remain in compliance within the assumptions of the safety analyses, and therefore the margin of safety is not affected.

Further, although not explicitly evaluated, the proposed changes will provide an improvement to plant safety and operation by reducing the time safety systems are unavailable, reducing safety systems actuations, reducing plant shutdown risk, limiting radiation exposure to plant personnel, and eliminating the diversion of key personnel to conduct unnecessary testing. Therefore, the overall effect of the changes should increase the margin the 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: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019

NRC Project Director: Jocelyn A. Mitchell, Acting Director

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: March 6, 1996, as supplemented by letter dated May 30, 1996

Description of amendment request: The proposed change to Hope Creek Technical Specification (TS) 3.8.1, ''A.C. Sources - Operating'', would decrease the minimum fuel oil storage capacity of the Emergency Diesel Generator Fuel Oil Storage Tanks, from 48,800 to 44,800 gallons. In addition, footnote ** is deleted from TS 3.8.1.1.b.2. The proposed change would also add an Action Statement to address remedial action when a fuel oil transfer pump becomes inoperable.

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:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

TANK LEVEL

Amendment 59 provides an allowance for transferring fuel oil from a pair of storage tanks associated with an inoperable [Emergency Diesel Generator] EDG to another pair of storage tanks in order to demonstrate compliance with PSE&G's commitment to Regulatory Guide 1.137. The proposed change is consistent with that transfer strategy and extends this allowance to include using fuel oil in operable EDG storage tanks in order to reduce the amount of stored fuel oil. Transfer from operable EDG storage tanks is, actually, less complex than transferring from an inoperable EDG storage tank since power to the transfer pumps would be available.

The low level alarm setpoint is the only physical change to be made. No change is being made to the EDGs, to the fuel oil storage tanks, or to the fuel oil transfer system and since EDG fuel oil supply is associated with mitigating the consequences of an accident, there is no change in the probability of any accident analyzed in the [Updated Final Safety Analysis Report] UFSAR.

Since the proposed change still ensures the minimum fuel oil storage capacity meets the existing licensing basis and since off-site replacement oil is expected to be available within 60 hours there is no change in the consequences of an accident previously evaluated.

TRANSFER PUMP ACTION STATEMENT

Since no change is being made to the EDGs, to the fuel oil storage tanks or to the fuel oil transfer system, and since EDG fuel oil supply is associated with mitigating the consequences of an accident, there is no change in the probability of any accident analyzed in the UFSAR.

The proposed change provides compensatory action in the event a single fuel oil transfer pump is inoperable without having to immediately declare the EDG inoperable. The change ensures the affected EDG remains fully capable of functioning as assumed in the safety analyses, therefore, there is no significant impact on the consequences of an accident previously evaluated.

Therefore, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will not create the possibility of a new or different kind of accident from any previously evaluated.

TANK LEVEL AND TRANSFER PUMP ACTION STATEMENT

The proposed changes will result in a setpoint change to the low level alarm. No other physical changes to the EDGs, to the fuel oil storage tanks, or to the fuel oil transfer system will result from the proposed changes. Operation including the proposed changes will not impair the diesel generators from performing as provided in the design basis. In addition, EDG fuel oil supply is associated with mitigating accident consequences, not accident prevention. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will not involve significant reduction in a margin of safety.

TANK LEVEL

The margin of safety is provided by the on-site storage of an adequate supply of diesel fuel oil to ensure uninterrupted EDG operation for seven days. Although the proposed change may result in a reduction of stored fuel oil, the new minimum continues to provide for an on-site seven day supply of diesel fuel oil.

TRANSFER PUMP ACTION STATEMENT

The margin of safety is provided by the ability of the fuel oil transfer pumps to supply an adequate flow of the stored fuel to each EDG day tank. The proposed change continues to provide 100% capacity to the EDG day tank for a minimum of three days with no operator action. With the proposed action, adequate transfer capability is

provided for a minimum of seven days fuel oil supply at which time refilling of the tanks would provide an indefinite supply. With both transfer pumps on a single EDG inoperable, the remaining three EDGs would provide adequate power for safe shutdown. Transfer of fuel oil from the storage tanks with inoperable transfer pumps can still be effected using temporary hoses.

Since the proposed changes do not involve the addition of plant equipment, are consistent with the intent of the existing Technical Specifications, are consistent with allowances for fuel oil transfers approved in Amendment 59, meets the intent of Regulatory Guide 1.137, and are consistent with the design basis of the diesel generators and the accident analysis, no action proposed by this request will occur that will 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: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: John F. Stolz

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: May 10, 1996

Description of amendment request: The proposed amendments would change Technical Specification Sections, 1.0, 2.0, 3/4 1.0, 3/4 2.0, 5.0 and 6.0. These changes support the Margin Recovery Program (MRP) and support increased steam generator tube plugging, improved fuel reliability, reduced fuel costs, longer fuel cycles, reduced spent fuel storage, and enhanced reactor safety. These changes incorporate the results of the revised safety analyses (margin recovery) and the establishment of a Core Operating Limits Report.

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:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The accidents potentially affected by the parameters and assumptions associated with the MRP have been evaluated/ analyzed and all design standards and applicable safety criteria are met. The consideration of these changes does not result in a situation where the design, material, or construction standards that were applicable prior to the change have been altered. Therefore, the changes occurring with the MRP will not result in any additional challenges to plant equipment that could increase the probability of any previously evaluated accident.

The changes associated with the MRP do not affect plant systems such that their function in the control of radiological consequences is adversely affected. The safety evaluation documents that the design standards and applicable safety criteria limits continue to be met and therefore fission barrier integrity is not challenged. The MRP changes have been shown not to adversely affect the response of the plant to postulated accident scenarios. In all cases, the calculated doses are within the regulatory criteria and therefore do not constitute an increase in consequences. These changes will, therefore, not affect the mitigation of the radiological consequences of any accident described in the Updated Final Safety Analysis Report (UFSAR).

Based on the above, it is concluded that the probability or consequences of an accident previously evaluated is not significantly increased by the proposed changes.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The possibility for a new or difference[t] type of accident from any accident previously evaluated is not created since the changes associated with the MRP do not result in a change to the design basis of any plant component or system. The evaluation of the effects of the MRP changes shows that all design standards and applicable safety criteria limits are met. These changes therefore do not cause the initiation of a new accident nor create any new failure mechanisms. Component integrity is not challenged. The changes do not result in any event previously deemed incredible being made credible. The MRP changes will not result in more adverse conditions and will not result in any increase in the challenges to safety systems.

Therefore, the consideration of the MRP as described in the safety evaluation does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety is maintained by assuring compliance with acceptance limits reviewed and approved by the NRC. Since all of the appropriate acceptance criteria for the various analyses and evaluations have been met, by definition there has not been a reduction in any margin of safety.

Therefore, the margin of safety as defined in the Bases to the Salem Unit 1 and 2 Technical Specifications has not been significantly reduced.

Based on the above, PSE&G has determined that the proposed changes do not involve 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 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

South Carolina Electric & Gas Company (SCE&G), 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: April 16, 1996

Description of amendment request: The proposed amendment would revise the Virgil C. Summer Nuclear Station, Unit 1 (VCSNS), Technical Specifications (TS) to implement the amended regulation to 10 CFR Part 50, Appendix J, Option B (new rule), to provide a performance-based option for leakage-rate testing of containment. The proposed amendment will revise the VCSNS TS 3/4.6 ''Containment Systems,'' TS Bases 3/4.6, and TS 6.8 ''Administrative Controls - Programs and Procedures,'' to adopt the implementation requirements of 10 CFR Part 50, Appendix J, Option B. The proposed amendment utilizes the guidelines (guidelines) provided in ''Option B'' of Regulatory Guide (RG) 1.163 ''Performance-Based Containment Leak-Test Program, September 1995,'' and NEI 94-01, ''Industry Guideline for Implementing Performance-Based Option of 10 CFR 50, Appendix J, July 26, 1995.'' The licensee has stated that the proposed amendment is within these prescribed guidelines and does not propose any deviations to the established methods which would impact already approved analyses/ justifications and established review process.

The proposed change will remove the prescriptive TS requirements for the performance of containment leakage testing and allow leakage testing to be conducted as determined appropriate through the performance-based or risk-based alternatives described in the VCSNS Containment Leakage Rate Testing Program developed in accordance with RG 1.163 and NEI 94-01. Since the requirements of Appendix J to 10 CFR Part 50 will continue to

apply, the type of testing will not change. The proposed request does not modify any plant equipment or systems.

The requirements of Appendix J will continue to govern the type of test, testing methodology, and acceptance criteria for Type A, B, and C testing. The performance-based testing of Option B eliminates or modifies prescriptive regulatory requirements for which the burden is marginal to safety for which the reviews and analyses have been presented in NUREG-1493, ''Performance-Based Containment Leak-Test Program, Final Report, September 1995.''

Earlier leakage testing performed at VCSNS has demonstrated low overall containment leakage and supports the implementation of Option B.

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:

1. The probability or consequences of an accident previously evaluated is not significantly increased.

There is no increase in the probability of an accident since there is no work that would affect containment integrity. The testing of containment isolation valves (CIVs) and other containment penetration sealing devices is not postulated as an accident precursor or initiating event.

Type A testing is capable of determining the total leakage from both local leakage paths and gross containment leakage paths. Our Type B and C testing has consistently provided accurate leakage rates for valves and penetrations.

Administrative controls govern maintenance and testing such that there is very low probability that unacceptable maintenance or alignments can occur. Prior to and following maintenance on CIVs and penetrations, a local leak rate test (LLRT) is required to be performed. As a result, Type A testing is not required to accurately quantify the leakage through containment penetrations.

Any specific exemptions to the requirements of Appendix J will require approval by the NRC before implementation.

Therefore, this proposed change does not involve a significant increase in the possibility or consequences of an accident previously evaluated.

2. The possibility of an accident or a malfunction of a different type than any previously evaluated is not created.

The proposed request does not involve any physical changes to the plant, affect the operation of the plant, or change testing methods or acceptance criteria. The history of containment testing verifies that containment integrity has been maintained.

The frequency changes allowed by implementation of Option B will not significantly decrease the level of confidence in the ability of the reactor building to limit offsite doses to allowable values. No accident or malfunction can be the result of the allowed changes to test schedule or frequency.

Since the proposed request will not directly impact equipment, procedures or operations, the changes will not create the possibility of any new or different kind of accident from any previously evaluated.

3. The margin of safety has not been significantly reduced.

The reason for performing containment leakage rate testing is to assure that the leakage paths are identified, and that any accident release will be restricted to those paths assumed in the safety analysis. The purpose for the schedule is to assure that containment integrity is verified on a periodic basis.

Implementation of Option B to provide flexibility in the scheduled requirements does not mean that containment integrity will be compromised. The historical leakage rate test results for VCSNS and for the nuclear industry support extension of testing frequencies and demonstrate that structural integrity has been maintained.

Therefore, the margin of safety has not been significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, SC 29218

NRC Project Director: Eugene V. Imbro

Southern Nuclear Operating Company, Inc., Docket No. 50-364, Joseph M. Farley Nuclear Plant, Unit 2, Houston County, Alabama

Date of amendment request: April 22, 1996

Description of amendment request: The amendment would revise the Technical Specifications to implement the L* Tubesheet Region Plugging Criterion, which would allow a steam generator tube to remain in service with bands of axial degradation in the tubesheet region provided sufficient non-degraded tubing remains to satisfy regulatory guidance concerning structural and leakage integrity.

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:

1. Operation of the Farley Nuclear Plant Unit 2 steam generators in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The supporting technical evaluations of the subject criteria demonstrate that the presence of the tubesheet enhances the tube integrity in the region of the hardroll by precluding tube deformation beyond its initial expanded outside diameter. The resistance to both tube rupture and tube collapse is strengthened by the presence of the tubesheet in that region. The result of the hardroll of the tube into the tubesheet is an interference fit between the tube and the tubesheet. Tube rupture [cannot] occur because the contact between the tube and tubesheet does not permit sufficient movement of tube material. In a similar manner, the tubesheet does not permit sufficient movement of tube material to permit buckling collapse of the tube during postulated LOCA [loss-of-coolant accident] loadings.

The type of degradation for which the L* criterion has been developed (cracking with an axial or near axial orientation) has been found not to significantly reduce the axial strength of a tube. An evaluation including analysis and testing has been done to determine the strength reduction for axial loads with simulated axial and near axial cracks. This evaluation provides the basis for the acceptance criteria for tube degradation subject to the L* criterion.

The SRE [sound roll expansion] L* length is sufficient to preclude significant leakage from tube degradation located below the L* length. The existing Technical Specification leak rate requirements and accident analysis assumptions remain unchanged in the unlikely event that significant leakage from this region does occur. Any leakage from the tube within the tubesheet at any elevation in the tubesheet is fully bounded by the existing steam generator tube rupture analysis included in the Farley Nuclear Plant Final Safety Analysis Report. A conservative leakage allowance for each L* tube is provided to determine the impact of L* criterion upon offsite doses in the event of a postulated double ended guillotine break of the main steam line outside of containment, but upstream of the main steam line isolation valves. Since Farley Unit 2 has implemented the Interim Plugging Criteria (IPC) for ODSCC at the tube support plates, projected steam line break (SLB) leakage at the end of the next successive operating cycle must be evaluated. Per Generic Letter 95-05, plants implementing the IPC can utilize SLB leakage limits higher than the originally assumed 1.0 gpm primary to secondary leakage value provided an analysis of offsite doses consistent with the Standard Review Plan methodology is performed. This analysis performed for the Farley Unit 2 plant indicates that primary to secondary leakage of 11.2 gpm in the faulted loop (0.1 gpm in the intact loops) will result in offsite doses at the site boundary of less than 10% of the 10 CFR [Part] 100 guidelines. The total projected SLB leakage from all leakage sources must remain below this value. Per attachment 4 addressing the L* methodology,

the number of tube ends to which L* criterion can be applied is limited to 600 per steam generator. Using a bounding SLB leakage allowance per L* tube, the SLB leakage component from 600 L* tube ends will be less than 0.33 gpm in the faulted loop. The proposed alternate plugging criterion does not adversely impact any other previously evaluated design basis accident. As the current Unit 2 IPC SLB leakage has been calculated to be less than 2 gpm in the faulted loop, [an] SLB leakage margin of over 9 gpm is provided for this cycle.

As noted above, tube rupture and pullout is not expected for tubes using the L* criterion. In addition to the L* length, a minimum length of SRE below the identified degradation must be established. The aggregate L* distance of SRE provides the structural integrity to prevent tube pullout. Conservatively, it is assumed that the degraded band length does not provide any support in resisting tube pullout.

Therefore SNC [Southern Nuclear Operating Company, Inc.] concludes that Operation of the Farley Nuclear Plant Unit 2 steam generators in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of the proposed L* criterion does not introduce any significant changes to the plant design basis. Use of the criterion does not provide a mechanism to result in an accident initiated outside of the region of the tubesheet expansion. The structural integrity of L* tubes will be maintained during all plant conditions. Any hypothetical accident as a result of any tube degradation in the expanded portion of the tube would be bounded by the existing tube rupture accident analysis. If it is postulated that a circumferential separation of an L* tube were to occur below the PLRL [pullout load reaction length], tube structural and leakage integrity will be maintained during all plant conditions. Verification of the L* distance of non-degraded tube roll expansion prevents the postulated separated tube from lifting out of the tubesheet during all plant conditions. Verification of the L* criterion prevents tube displacement of any magnitude, and therefore, postulated axial cracks existing a minimum of 0.5 inch from either the bottom of the roll transition or top of tubesheet, whichever is lower, from migrating out of the tubesheet.

Therefore, SNC concludes that the proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendment does not involve a significant reduction in a margin of safety.

The use of the L* criterion has been concluded to maintain the integrity of the tube bundle commensurate with the requirements of draft Regulatory Guide 1.121 under normal and postulated accident conditions. The safety factors used in the verification of the strength of the degraded tube are consistent with the safety factors in the ASME [American Society of Mechanical Engineers] Boiler and Pressure Vessel Code used in steam generator design. The L* length has been verified by testing to be greater than the length of roll expansion required to preclude significant leakage during normal and postulated accident conditions. The leak testing acceptance criteria are based on the primary to secondary leakage limit in the Technical Specifications and the leakage assumptions used in the FSAR accident analyses. The L* distance provides for structural integrity during all plant conditions.

Implementation of the L* criterion will decrease the number of tubes which must be taken out of service with tube plugs or repaired with sleeves. Both plugs and sleeves reduce the RCS [reactor coolant system] flow margin, thus implementation of the L* criterion will maintain the margin of flow that would otherwise be reduced in the event of increased plugging or sleeving.

Therefore, SNC, concludes based on the above, it is concluded that the proposed change does not result in a significant reduction in a loss of margin with respect to plant safety as defined in the Final Safety Analysis Report [FSAR] or the bases of the FNP [Farley Nuclear Plant] technical specifications.

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: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

NRC Project Director: Herbert N. Berkow

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: May 29, 1996

Description of amendment request: The application requests staff review and approval of a modification to the facility, as described in the safety analysis report, that involves an unreviewed safety question. The modification will reduce the single failure trip potential for the main feedwater control and bypass valves.

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:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Callaway safety analysis assumes the MFC&BVs [main feedwater control and bypass valves] close during certain events in order to terminate fluid inventory addition to faulted steam generators and thereby preclude the diversion of auxiliary feedwater to the main feedwater system. This feature is necessary because each feedwater line at Callaway is equipped with only one MFIV [main feedwater isolation valve]. It should be noted that the safety analysis simply requires the valves to close and does not prescribe a mechanism for accomplishing that action.

The following are accidents that credit feedwater isolation or AFW [auxiliary feedwater] addition. There is no impact by the proposed modification on the consequences of each accident.

- Feedwater System Malfunctions That Result In An Increase In Feedwater Flow
- Inadvertent Opening Of A Steam Generator Relief or Safety Valve
- Steam System Piping Failure
- Loss of Nonemergency AC Power to the Station Auxiliaries
- Loss of Normal Feedwater Flow
- Feedwater System Pipe Break
- Decrease in Reactor Coolant Inventory

The modification will not change the radiological consequences of FSAR [final safety analysis report] Chapter 15 accidents because the feedwater isolation function (and NSSS [nuclear steam supply system] break response) has not changed. Therefore, there will be no increase in the consequences of an accident evaluated previously in the FSAR.

An analysis was performed to quantify the impact of the proposed modification on the probability of MFCV [main feedwater control valve] failure (closure) during normal plant operation. Comparison of this failure probability for the existing design (1.20E-1 per year) versus the proposed design (6.99E-2 per year) indicates that the percentage reduction in the system failure probability at power is 41.75%. Thus, the proposed design results in a reduction in the probability of inadvertent MFCV failures at power and hence, a reduction in the probability of a reactor trip and subsequent challenges to other safety systems.

While this modification reduces the probability of a reactor trip, it slightly increases the unavailability of the feedwater isolation function. This is because the original design required actuation of only one FWIS [feedwater isolation system] train to close the MFC&BVs, whereas the new design requires actuation of both trains. The impact of the modification on the probability of incurring a feedwater isolation failure was therefore quantified, utilizing PRA [probabilistic risk assessment] techniques. Fault trees were developed for both the new and existing designs. Failure probabilities for each event were then obtained from the IPE [individual plant examination] and utilized to calculate failure probabilities for the feedwater isolation safety function. This calculation considered hardware failures

only, i.e., failure of an MFIV to close after receiving an actuation signal. The failure probability of feedwater isolation, based on the proposed design, was determined to be 6.1E-5 per demand (1 event every 16,400 demands). The existing design was found to have a failure probability of 2.8E-5 per demand (1 event every 35,700 demands). Therefore, this modification will not significantly increase the probability or consequences of an accident evaluated previously in the FSAR.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The modification maintains the present de-energize-to-actuate configuration of the MFC&BV trip solenoid valves.

Thus, the proposed modification does not create the possibility of an accident of a different type than any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Credit is taken in the accident analyses for the MFIVs to close on demand for feedwater isolation. Because of this, the MFIVs have been incorporated into the Callaway Technical Specifications. Action Statements and surveillance requirements have been developed to assure the availability of the valves when needed.

The MFC&BVs are not addressed by any of the Callaway Technical Specifications or their bases. Therefore, this modification will not involve a significant reduction in the margin of safety as defined in the basis for any technical specification.

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: 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: William H. Bateman

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Power Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: May 29, 1996

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Section 15.4.4, ''Containment Tests,'' to incorporate the provisions of 10 CFR Part 50, Appendix J, ''Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors,'' Option B. Revisions would also be made to TS Sections 15.1, ''Definitions,'' 15.3.6, ''Containment System,'' and 15.6, ''Administrative Controls,'' to support the proposed changes to Section 15.4.4.

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:

1. Operation of this facility under the proposed Technical Specifications will not create a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve a change to structures, systems, or components which would affect the probability or consequences of an accident previously evaluated in the PBNP [Point Beach Nuclear Plant] Final Safety Analyses Report (FSAR). Furthermore, containment leakage rate testing is not an initiator of any accident. The proposed change simply provides a mechanism within the Technical Specifications for implementing a performance-based method of determining the frequency for leakage rate testing which has been approved by the NRC. The proposed change does not affect reactor operations or accident analysis and has no significant radiological consequences. Therefore, this change will not create a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of this facility under the proposed Technical Specifications change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a change to the plant design or operation. As a result, the proposed change does not affect any of the parameters or conditions that contribute to initiation of any accidents. This change involves a potential reduction of Type A, B, and C test frequency. Except for the method of defining the test frequency, the methods for performing the actual tests are not changed. No new accident modes are created by extending the testing intervals. No safety-related equipment or safety functions are altered as a result of this change. Extending the test frequency has no influence on, nor does it contribute to, the possibility of a new or different kind of accident or malfunction from those previously analyzed. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of this facility under the proposed Technical Specifications change will not create a significant reduction in a margin of safety.

The proposed change potentially affects only the frequency of Type A, B, and C testing. Except for the method of defining test frequency, the methods for performing the actual tests are not changed. The proposed change is based on NRC accepted provisions and maintains necessary levels of system and component reliability affecting containment integrity. Evaluation of the performance-based approach to leakage rate testing, as documented in NUREG-1493, concludes that the impact on public health and safety due to revised testing intervals is negligible. Furthermore, the proposed change will not reduce the availability of systems associated with containment integrity when they are required to mitigate accident conditions. Therefore, the proposed change will not create 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: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: June 4, 1996

Description of amendment request: The proposed amendment would revise the Kewaunee Nuclear Power Plant Technical Specifications (TS) by reducing the surveillance test frequencies for the radiation monitoring system (Table TS 4.1-1) and the control rods (Table TS 4.1-3) in accordance with the guidance of Generic Letter 93-05, ''Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation,'' dated September 27, 1993.

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:

Table TS 4.1-1, ''Minimum Frequencies for Checks, Calibrations and Test of Instrument Channels,'' Item 19

The proposed changes were reviewed in accordance with the provisions of 10 CFR 50.92 to determine that no significant hazards exist. The proposed changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The radiation monitors are not accident initiators; therefore, they cannot increase the probability of an accident occurring. The reliability of the radiation monitors is not expected to decrease due to the decreased surveillance frequency; therefore, this change does not increase the consequences of an accident.

The addition of comment (a) to the Check, Calibrate, and Test columns is merely a clarification of the existing information in the table and does not change the intent of the Technical Specifications.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change revises only the testing frequency and does not revise the test method or operational performance of the radiation monitors. The radiation monitors are not accident initiators; therefore, they cannot create a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

Quarterly testing of the radiation monitoring system channels will continue to verify operability of the monitors. Decreasing the test surveillance frequency is not expected to decrease the reliability of the radiation monitors. This change is acceptable in accordance with Generic Letter 93-05 and NUREG-1366, ''Improvements to Technical Specifications Surveillance Requirements.''

Table TS 4.1-3, ''Minimum Frequencies for Equipment Tests,'' Item 1

The proposed change in test frequency for control rod exercising was reviewed in accordance with the provisions of 10 CFR 50.92 to determine that no significant hazards exist. It has been determined that the proposed change will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change revises only the testing frequency for control rod exercising. The control rod exercise surveillance procedure will continue to be conducted, on a quarterly basis, to ensure that the equipment remains operable. The reduced frequency of control rod exercising reduces the probability of an inadvertent reactor trip occurring during testing due to a dropped control rod. Surveillance procedure SP 49-075 is conducted to verify rod movement. In accordance with NUREG-1366, the frequency of a stuck control rod occurring is very low. This condition is most often discovered during reactor startup or during low power physics testing. The reduction in control rod exercising is, therefore, considered acceptable and is not expected to affect the probability of a stuck control rod occurring.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change revises only the testing frequency and does not revise the test method or the design of the control rod system. Therefore, a new or different kind of accident will not be created by this change.

3. Involve a significant reduction in the margin of safety.

Quarterly control rod exercising will continue to verify movement of the control rods. No adverse consequences are expected to occur due to decreasing the test frequency. This change is acceptable in accordance with Generic Letter 93-05 and NUREG-1366.

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: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, Wisconsin 54311-7001

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P. O. Box 1497, Madison, Wisconsin 53701-1497

NRC Project Director: Gail H. Marcus

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: June 10, 1996

Description of amendment request: The proposed amendment would revise Technical Specification 4.2.b, ''Steam Generator Tubes,'' and its associated basis, by allowing the use of Westinghouse laser-welded sleeves to repair defective steam generator tubes. A description of the sleeving repair process and supporting technical justification are contained in WCAP-13088, Revision 3, ''Westinghouse Series 44 and 51 Steam Generator Generic Sleeving Report.'' WCAP-13088, and a non-proprietary version (WCAP-13089), were submitted to the Nuclear Regulatory Commission on April 13, 1995, to support a similar TS amendment request for the DC Cook Nuclear Power Plant, Unit 1.

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:

1. Operation of the KNPP [Kewaunee Nuclear Power Plant] in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The LWS [laser-welded sleeve] configuration has been designed and analyzed in accordance with the requirements of the ASME [American Society of Mechanical Engineers] Code. Fatigue and stress analyses of the sleeved tube assemblies produced acceptable results; i.e., the applied stresses and fatigue usage for the sleeve and weld are bounded by the limits established in the ASME Code. ASME Code minimum material property values are used for the structural and plugging limit analysis. Ultrasonic inspection is used to verify that minimum weld fusion zone thicknesses are produced. Mechanical testing of 7/8'' tubesheet sleeves installed in roll expanded tubes has shown that the individual joint structural strength of Alloy 690 LWSs provides margin to acceptance limits. These acceptance limits bound the most limiting loadings (3 times normal operating pressure differential) recommended by RG [Regulatory Guide] 1.121. Therefore, each individual joint provides for structural integrity exceeding RG recommendations. A hypothetical loss of integrity of one of the joints will not result in a loss of structural integrity for the sleeve. Leakage testing for 3/4'' and 7/8'' full length tubesheet sleeves has demonstrated that unacceptable levels of primary-to-secondary leakage are not expected during all plant conditions for non-welded tubesheet sleeve lower joints. The welded joint produces a hermetic seal, and therefore will not leak under any plant conditions. Laser welded sleeves will not contribute to the current SLB [steam-line break] primary-to-secondary leakage limit of 34 gpm in the faulted loop. The 34 gpm leakage limit was calculated in accordance with the standard review plan methodology to support implementation of the voltage-based repair criteria for tube support plate intersections.

The sleeve minimum acceptable wall thickness (used for developing the depth based plugging limit for the sleeve) is determined using the guidance of RG 1.121 and the pressure stress equation of Section III of the ASME Code. With respect to the design of the sleeve for KNPP, the limiting requirement of the RG which applies to part throughwall degradation is that the minimum acceptable wall must maintain a factor of safety consistent with the analysis conditions as defined by the ASME Code. A bounding set of design and transient loading input conditions was used for the minimum wall thickness evaluation in the generic evaluation. Evaluation of the minimum acceptable wall thickness for normal, upset and postulated accident condition loading per the ASME Code indicates the limiting condition is established for the normal operating conditions, and the minimum acceptable wall thickness for this case bounds the upset and faulted condition values.

According to RG recommendations, an allowance for non-destructive evaluation (NDE) uncertainty and operational growth of existing tube wall degradation indications within the sleeve must be accounted for when determining the sleeve plugging limit. A conservative tube wall degradation growth rate per cycle and an NDE uncertainty has been assumed for determining the sleeve TS plugging limit. The sleeve wall degradation extent determined by NDE, which would require plugging sleeved tubes, is developed using the guidance of RG 1.121 and is defined in WCAP-13088 [non-proprietary WCAP-13089] to be 25% throughwall (plugging limit = 100% - structural limit + NDE uncertainty + growth) for KNPP.

The hypothetical consequences of failure of the sleeve joint would be bounded by the current SG [steam generator] tube rupture analysis included in the KNPP Updated Safety Analysis Report. Due to the slight reduction in diameter caused by the sleeve wall thickness, primary coolant release rates would be slightly less than assumed for the SG tube rupture analysis (depending on break location), and therefore, would result

in lower total primary fluid mass release to the secondary system.

The proposed TS change to use Alloy 690 LWSs does not adversely impact any other previously evaluated design basis accidents or the results of LOCA [loss of coolant accident] and non-LOCA accident analyses for the current TS minimum reactor coolant system flow rate. The results of the analyses and testing, as well as plant operating experience, demonstrates that the sleeve assembly is an acceptable means of maintaining tube integrity. Plugging limit criteria are established using the guidance of RG 1.121. Furthermore, per RG 1.83 recommendations, the sleeved tube will be monitored through periodic inspections with present NDE techniques. These measures demonstrate that installation of sleeves spanning degraded areas of the tube will restore the tube to a condition consistent with its original design basis.

Corrosion testing of free span LWS joint has indicated that the corrosion resistance (relative to roll transitions) can be increased by greater than a factor of ten with the application of a PWHT [post weld heat treatment] step. Estimations of joint susceptibility based on expected far field stresses after heat treatment using the expected original tube-to-tubesheet hydraulic expansion transition residual stresses and actual time to crack in these transitions at KNPP indicate that LWS joint lifetime should exceed the current plant license. Consistent with other license amendments addressing LWS, all free span laser welds will receive a PWHT; therefore, rapid corrosion degradation of the free span joint is not expected. Recently performed corrosion testing of LWS joints in locked tube conditions indicates that with PWHT the stress corrosion cracking resistance and initiation potential in the parent tube weld region is greatly enhanced. Similar test results and conclusions would be expected for KNPP. The Model 51 SG tube span between the top of the tubesheet and the first support plate is such that even lower PWHT residual stresses would be expected. Also, the weld placement within the hydraulically expanded area and sleeve installation sequence have been optimized to provide for some level of heat treatment at the upper transition above the weld and lower far field residual stress levels. While no parent tube degradation has been detected at this elevation, or any other elevation in a laser welded sleeve assembly, the relocation of the weld serves to provide further resistance to PWSCC [primary water stress corrosion cracking] at this elevation. The suggested target PWHT temperature has also been optimized in that this temperature provides for adequate PWHT while maintaining the parent tube far field stresses.

Approximately 19,500 LWSs have been installed in the U.S. Of this number, over 300 which have up to 3 cycles of operation were inspected in 1995 using the CECCO-5 probe. No degradation of the sleeves or the parent tube was detected. Operating experience in Europe has shown good performance of the LWS joint for up to 5 cycles of operation. In 1994, approximately 11,200 LWSs were installed in the Doel-4 Plant. After one year of operation, all in-service sleeves were inspected using the +point probe. No service induced corrosion was detected. In 1995, approximately 18,600 LWSs were installed in two different U.S. plants. Due to their limited operational time, these sleeves have not been inspected.

Conformance of sleeve design with the applicable sections of the ASME Code and results of the leakage and mechanical tests support the conclusion that installation of LWSs will not increase the probability or consequences of an accident previously evaluated.

2. The proposed license amendment request does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Installation of LWSs will not introduce significant or adverse changes to the plant design basis and does not represent a potential to affect any other plant component. Stress and fatigue analysis of the repair has shown that the ASME Code and RG 1.121 criteria are not exceeded. Installation of LWSs maintains overall tube bundle structural and leakage integrity at a level consistent to that of the originally supplied tubing during all plant conditions; stresses are bounded by the Code and the tubing is leaktight. Sleeving of tubes does not provide a mechanism resulting in an accident outside of the area affected by the sleeves. Any hypothetical accident as a result of potential tube or sleeve degradation in the repaired portion of the tube is bounded by the existing tube rupture accident analysis. Since the sleeve design does not affect any component or location of the tube outside of the immediate area repaired, in addition to the fact that the installation of sleeves and the impact on current plugging level analyses is accounted for, the possibility that laser welded sleeving creates a new or different type of accident is not supported.

Installation of LWSs will reduce the potential for primary-to-secondary leakage during postulated steam line break while not significantly impacting primary coolant flow area in the event of a LOCA. By effectively isolating degraded areas of the tube through repair, the potential for steam line break leakage is reduced.

3. The proposed license amendment does not involve a significant reduction in the margin of safety.

The LWS repair of degraded SG tubes as identified in WCAP-13088 [non-proprietary WCAP-13089] has been shown by analysis to restore the integrity of the tube bundle consistent with its original design basis conditions; i.e., tube/sleeve operational and faulted conditions stresses and cumulative fatigue usage are bounded by the ASME Code requirements and the repaired tubes are leaktight. The safety factors used in the design of sleeves for the repair of degraded tubes are consistent with the safety factors in the ASME Code used in SG design. The design of the LWS lower joint for 7/8'' tube sleeves has been verified by testing to sufficiently preclude leakage during normal and postulated accident conditions. The portions of the installed sleeve assembly which represents the reactor coolant pressure boundary will be monitored for the initiation and progression of sleeve/tube wall degradation, thus satisfying the requirements of RG 1.83. The portion of the tube bridged by the sleeve joints is effectively removed from the pressure boundary, and the sleeve then forms the new pressure boundary. The areas of the sleeved tube assembly which require inspection are defined in WCAP-13088 [non-proprietary WCAP-13089]. Since the installed sleeves represent a portion of the pressure boundary, a baseline inspection of these areas is required prior to operation with sleeves installed.

The effect of sleeving on the design transients and accident analyses has been reviewed based on the installation of sleeves up to the level of SG tube plugging coincident with the minimum reactor coolant flow rate. The installation of sleeves is evaluated as the equivalent of some level of SG tube plugging. This is based on determining the minimum reactor coolant flow for the LOCA evaluation. Information provided in WCAP-13088 [non-proprietary WCAP-13089] describes the method to determine the flow equivalent for all combinations of tubesheet and tube support plate sleeves. Therefore, installation of LWSs will not result in 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: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, Wisconsin 54311-7001

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P. O. Box 1497, Madison, Wisconsin 53701-1497

NRC Project Director: Gail H. Marcus

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Power Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: June 4, 1996 (VPNPD-96-035)

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Section 15.2.3, ''Limiting Safety System Settings and Protective Instrumentation,'' and Section 15.5.3, ''Design Features - Reactor,'' to incorporate changes associated with the operation of Point Beach Nuclear Plant (PBNP), Unit 2, with replacement steam generators.

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:

1. Operation of this facility under the proposed Technical Specifications will not

create a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve a change to structures, systems, or components which would affect the probability or consequences of an accident previously evaluated in the PBNP Final Safety Analyses Report (FSAR). The proposed setpoints maintain the margin to safe operation of Unit 2 with the replacement steam generators. In order to maintain one set of safety analyses for both units, the analyses for operation of Unit 2 with the replacement steam generators were performed to encompass the operation of Unit 1. Therefore, the proposed changes apply to the operation of both units and maintain the margin of safety for each. The proposed change to the description of nominal RCS [reactor coolant system] volume is an administrative change and has no effect on plant operation. Therefore, the probability or consequences of a previously evaluated accident are not significantly increased as a result of these changes.

2. Operation of this facility under the proposed Technical Specifications change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve a change to the plant design. The proposed setpoints maintain the margin to safe operation of Unit 2 with the replacement steam generators. In order to maintain one set of safety analyses for both units, the analyses for operation of Unit 2 with the replacement steam generators were performed to encompass the operation of Unit 1. Therefore, the proposed changes apply to the operation of both units and maintain the margin of safety for each. These changes do not affect any of the parameters or conditions that contribute to initiation of any accidents. The proposed change to the description of nominal RCS volume is an administrative change and has no effect on plant operation or initiation of any accidents. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of this facility under the proposed Technical Specifications change will not create a significant reduction in a margin of safety.

The proposed setpoints maintain the margin to safe operation of Unit 2 with the replacement steam generators. In order to maintain one set of safety analyses for both units, the analyses for operation of Unit 2 with replacement steam generators were performed to encompass the operation of Unit 1. Therefore, the proposed changes apply to the operation of both units and maintain the margin of safety for each. The proposed change to the description of nominal RCS volume is an administrative change and has no effect on plant operation. Therefore, the proposed changes will not create 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: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Power Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: June 4, 1996 (VPNPD-96-036)

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Section 15.2.1, ''Safety Limit, Reactor Core,'' 15.2.3, ''Limiting Safety System Settings, Protective Instrumentation,'' and Section 15.3.1.G, ''Operational Limitations,'' to maintain safety margin for Unit 2 with replacement steam generators.

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:

1. Operation of this facility under the proposed Technical Specifications will not create a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve a change to structures, systems, or components which would affect the probability or consequences of an accident previously evaluated in the PBNP [Point Beach Nuclear Plant] Final Safety Analyses Report (FSAR). The proposed changes maintain the margin to safe operation for Unit 2 with the replacement steam generators. In order to maintain one set of safety analyses for both units, the analyses for operation of Unit 2 with the replacement steam generators were performed to encompass the operation of Unit 1. Therefore, the proposed changes apply to the operation of both units and maintain the margin of safety for each. The proposed changes do not change, degrade, or preclude the prevention or mitigation of the consequences of any accident described in the FSAR. Therefore, the probability or consequences of a previously evaluated accident are not significantly increased as a result of these changes.

2. Operation of this facility under the proposed Technical Specifications change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve a change to the plant design. The proposed changes maintain the margin to safe operation for Unit 2 with the replacement steam generators. In order to maintain one set of safety analyses for both units, the analyses for operation of Unit 2 with the replacement steam generators were performed to encompass the operation of Unit 1. Therefore, the proposed changes apply to the operation of both units and maintain the margin of safety for each. These changes do not affect any of the parameters or conditions that contribute to initiation of any accidents. In addition, the safety functions of safety-related systems and components, which are related to accident mitigation, have not been altered. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of this facility under the proposed Technical Specifications change will not create a significant reduction in a margin of safety.

The proposed changes maintain the margin to safe operation for Unit 2 with the replacement steam generators. In order to maintain one set of safety analyses for both units, the analyses for operation of Unit 2 with replacement steam generators were performed to encompass the operation of Unit 1. Therefore, the proposed changes apply to the operation of both units and maintain the margin of safety for each. The proposed changes have no affect on the availability, operability, or performance of the safety-related systems and components described in the Technical Specifications. Therefore, the proposed changes will not create 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: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

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.

Florida Power and Light Company, et al., Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: June 1, 1996

Description of amendment request: Revise Technical Specifications to reflect reduced reactor coolant system flows resulting from increased percentage of plugged steam generator tubes.

Date of publication of individual notice in the Federal Register: June 7, 1996 (61 FR 29140)

Expiration date of individual notice: June 24, 1996

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

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: May 31, 1996

Brief description of amendment request: The amendments (1) revise the Reactor Vessel Level Indication System (RVLIS) Action Statements to facilitate actions necessary for channel testing to be performed in Mode 3, (2) revise the Channel Calibration definition to better account for temperature detector channel calibration methodology, and (3) delete a requirement to install a jumper in the Auxiliary Feedwater actuation logic since a design change will result in the jumper function being performed by a relay.

Date of publication of individual notice in Federal Register: June 17, 1996 (61 FR 30641)

Expiration date of individual notice: July 17, 1996

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

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.

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 application for amendments: May 28, 1996, as supplemented by letters dated May 31 and June 5, 1996

Brief description of amendments: These amendments authorize the licensee to revise applicable Updated Final Safety Analysis Report sections to reflect the installation of a variable flow controller for the service water inlet control valves for the containment air coolers that is not within the current licensing basis of Calvert Cliffs Nuclear Power Plant Units No. 1 and No. 2. These amendments are being issued pursuant to the requirements of 10 CFR 50.59(c) because the review by Baltimore Gas and Electric Company identified the changes as an unreviewed safety question. No changes to the Technical Specifications are required by these amendments.

Date of issuance: June 17, 1996

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 215 and 192

Facility Operating License Nos. DPR-53 and DPR-69: The amendments revised the Updated Final Safety Analysis Report. Public comments requested as to proposed no significant hazards consideration: Yes (61 FR 27371 dated May 31, 1996). The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by July 1, 1996, but indicated that if the Commission makes a final no significant hazards consideration determination, any such hearing would take place after issuance of the amendments. The May 31 and June 5, 1996, letters provided additional information that did not change the scope of the May 28, 1996, application.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and a final no significant hazards consideration determination are contained in a Safety Evaluation dated June 17, 1996.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678

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: October 24, 1994, as supplemented August 31, 1995 and February 8, 1996. The August 31, 1995 and February 8, 1996, letters provide clarification information. The new information changed the scope of the October 24, 1994, letter and was re-noticed on May 8, 1996, but did not change the initial no significant hazards consideration determination.

Brief description of amendment: The proposed amendment would revise the TS to allow the relocation of TS 3/4.11.2.6, Gas Storage Tanks; and the associated Bases in the TS to licensee-controlled documents.

Date of issuance: June 12, 1996

Effective date: June 12, 1996

Amendment No.: 64

Facility Operating License No. NPF-63. Amendment revises the Technical Specifications

Date of initial notice in Federal Register: November 23, 1994 (59 FR 60379). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated

June 12, 1996. 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: December 21, 1995

Brief description of amendments: The amendments delete the requirement to place the reactor mode switch in the Shutdown position if a stuck open safety/relief valve can not be closed within 2 minutes. The operator will still be required to scram the reactor if suppression pool average water temperature reaches 110 degrees Fahrenheit or greater. The amendment also includes editorial changes to the index pages.

Date of issuance: June 18, 1996

Effective date: Immediately, to be implemented within 60 days

Amendment Nos.: 113 and 98

Facility Operating License Nos. NPF-11 and NPF-18: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 8, 1996 (61 FR 20844) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 18, 1996. 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, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: July 18, 1994, as supplemented by letter dated October 9, 1994

Brief description of amendments: The amendments revise the current combined Technical Specifications (TS) for Units 1 and 2 by separating them into individual volumes for Unit 1 and Unit 2. In addition to the changes required by the TS split, some administrative and editorial changes were made, such as the correction of typographical errors and the deletion of unnecessary blank pages.

Date of issuance: June 12, 1996

Effective date: As of the date of issuance to be implemented within 30 days

Amendment Nos.: 148 and 142

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: September 14, 1994 (59 FR 47166) The October 9, 1995 and June 6, 1996, letters provided clarifying information that did not change the scope of the July 18, 1994, application and the initial proposed no significant hazards consideration. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 12, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: February 22, 1996

Brief description of amendment: The amendment increased the safety function lift setpoint tolerances for the safety and relief valves that are listed in Surveillance Requirement 3.4.4.1 (Page 3.4-10) of the Technical Specifications (TSs) for the Grand Gulf Nuclear Station, Unit 1. The tolerances were increased from the current plus or minus 1 percent of the safety function (i.e., safety relief valve) lift setpoint to plus or minus 3 percent.

Date of issuance: June 12, 1996

Effective date: June 12, 1996

Amendment No: 123

Facility Operating License No. NPF-29. Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: March 27, 1996 (61 FR 13524) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 12, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, MS 39120

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: May 1, 1996

Brief description of amendment: The amendment revises the Operating License and Technical Specifications (TS) to implement 10 CFR Part 50, Appendix J - Option B, by referring to Regulatory Guide 1.163, ''Performance-Based Containment Leak-Test Program.'' Specifically, changes have been made to paragraph 2.D of the Operating License; TS Section 1.1, ''Definitions;'' TS 3.6.1.1, ''Primary Containment;'' TS 3.6.1.1, ''Primary Containment Air Locks;'' TS 3.6.1.3, ''Primary Containment Isolation Valves (PCIVs);'' and TS Section 5.5, ''Programs and Manuals.''

Date of issuance: June 21, 1996

Effective date: June 21, 1996

Amendment No.: 105

Facility Operating License No. NPF-62: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 21, 1996 (61 FR 25708) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 21, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: January 25, 1996

Brief description of amendment: The amendment revises Technical Specification 3/4.3.3, Emergency Core Cooling System Actuation Instrumentation, to more clearly define when, during shutdown and refueling, the Loss of Voltage and Degraded Voltage relays for the Loss of Power actuation trip functions are required to be operable.

Date of issuance: June 10, 1996

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 72

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: May 8, 1996 (61 FR 20851) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 10, 1996. 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

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: January 5, 1996, as supplemented on May 31, 1996

Brief description of amendment: The amendment implements the guidance of Generic Letter 93-08 by relocating Tables 3.3-2, ''Reactor Protective Instrumentation Response Times'' and 3.3-5, ''Engineered Safety Features Response Times'' from the Technical Specifications to the Millstone Unit No. 2 Technical Requirements Manual (TRM). In accordance with Generic Letter 93-08, the Limiting Conditions for Operations for Technical Specifications 3.3.1.1, 3.3.2.1, and 3.7.1.6 are revised to eliminate their references to the aforementioned tables. The amendment also revises Bases 3/4.3.1 and 3/4.3.2 to reference that the instrument response times are located in the TRM and that these tables in the TRM are now controlled under 10 CFR 50.59. The amendment also removes a cycle-specific note from Tables 3.3-3 and 3.3-4.

Date of issuance: June 10, 1996

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 198

Facility Operating License No. DPR-65: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 14, 1996 (61 FR 5816) The May 31, 1996, letter provided additional information that did not change the scope of the January 5, 1996, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 10, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360 and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut 06385

PECO Energy Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: February 15, 1996

Brief description of amendments: The amendments change the Technical Specifications to implement 10 CFR Part 50, Appendix J, Option B, by creating Technical Specification Section 5.5.12, ''Primary Containment Leakage Rate Testing Program,'' which refers to Regulatory Guide 1.163, ''Performance-Based Containment Leakage-Test Program.''

Date of issuance: June 18, 1996

Effective date: Both units, as of date of issuance, to be implemented by June 28, 1996.

Amendments Nos.: 214 and 219

Facility Operating License Nos. DPR-44 and DPR-56: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: March 27, 1996 (61 FR 13531) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 18, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: April 25, 1996

Brief description of amendments: The amendments relocate Technical Specification Traversing In-Core Probe System Limiting Condition for Operation 3/4.3.7.7 and its Bases 3/4.3.7.7, to the Limerick Generating Station Technical Requirements Manual, and modify Note (f) of TS Table 4.3.1.1-1.

Date of issuance: June 11, 1996

Effective date: As of date of issuance, to be implemented within 30 days.

Amendment Nos.: 117 and 79

Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 8, 1996 (61 FR 20840) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 11, 1996 No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: March 14, 1996

Brief description of amendment: The proposed changes would allow a one-time extension of the intervals for the steam generator tube inspection that is due in July 1996.

Date of issuance: June 19, 1996

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 166

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 8, 1996 (61 FR 20854) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 19, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610

Tennessee Valley Authority, Docket Nos. 50-390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: February 28, as supplemented April 15, and June 3, 1996.

Brief description of amendment: The proposed amendment would revise the Technical Specifications (TS) to increase the surveillance intervals for ice bed weight sampling and flow passage inspection from 9 months to 18 months. The TS would also be changed to provide an increased ice sublimation allowance, associated with the increased surveillance interval, by increasing the minimum total ice weight from 2,360,875 pounds to 2,403,800 pounds (1214 pounds/basket to 1236 pounds/basket).

Date of issuance: June 13, 1996

Effective date: June 13, 1996

Amendment No.: 2

Facility Operating License No. NPF-90: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: April 10, 1996 (61 FR 15998) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 13, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, TN 37402

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, OES Nuclear, Inc., Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440 Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: April 26, 1996

Brief description of amendment: The amendment corrected minor technical and administrative errors in the Improved Technical Specifications prior to its implementation.

Date of issuance: June 18, 1996

Effective date: June 18, 1996

Amendment No.: 85

Facility Operating License No. NPF-58: This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 9, 1996 (61 FR 21213) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 18, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

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 requests: April 25 (TXX-94119) and August 12, 1994 (TXX-94216), as supplemented by letters dated February 15 (TXX-96055), March 7 (TXX-96078), and April 11, 1996 (TXX-96111).

Brief description of amendments: These amendments modified the Administrative Controls specifications, relocate/remove requirements that are adequately controlled by existing regulations other than 10 CFR 50.36 and the technical specifications. Guidance on the proposed changes was developed by NRC and provided in the Standard Technical Specifications for Westinghouse Plants, NUREG-1431. The changes also update unit staff qualification requirements to Regulatory Guide 1.8, Revision 2.

Date of issuance: June 12, 1996

Effective date: June 12, 1996, to be implemented witnin 60 days.

Amendment Nos.: Unit 1 - Amendment No. 50; Unit 2 - Amendment No. 36

Facility Operating License Nos. NPF-87 and NPF-89. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 3, 1994 (59 FR 39599) and September 28, 1994 (59 FR 49439). The additional information contained in the supplemental letters dated February 15, March 7, and April 11, 1996, were clarifying in nature and thus, within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 12, 1996. 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, Texas 76019

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: March 12, 1996 (TXX-96008)

Brief description of amendments: The amendments revised the Technical Specifications to reflect the approval for the licensee to use of the new Containment Leakage Rate Testing Program as required by 10 CFR Part 50, Appendix J, Option B for Comanche Peak Steam Electric Station, Units 1 and 2. Implementation of the new performance based leakage rate testing program will be based on the guidance provided by Regulatory Guide 1.163, September 1995.

Date of issuance: June 13, 1996

Effective date: June 13, 1996, to be implemented within 60 days

Amendment Nos.: 51 and 37

Facility Operating License Nos. NPF-87 and NPF-89. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 10, 1996 (61 FR 15999) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 13, 1996. 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

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: September 9, 1994, as superseded by letter dated July 25, 1995, and subsequently supplemented by letters dated February 28, 1996, and April 9, 1996.

Brief description of amendment: The amendment would revise TS 3/4.8.1 and its associated Bases to improve the overall emergency diesel generator reliability and availability.

Date of issuance: June 17, 1996

Effective date: June 17, 1996, to be implemented within 30 days of the date of issuance.

Amendment No.: 112

Facility Operating License No. NPF-30: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 30, 1995 (60 FR 45188) The February 28, 1996, and April 9, 1996 supplemental letters provided additional clarifying information and did not change the staff's original no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 17, 1996. No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251

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 application for amendments: April 15, 1996

Brief description of amendments: These amendments would revise the Technical Specifications to indicate that the quadrant power tilt ratio requirements are applicable only at power levels greater than 50% of rated core power.

Date of issuance: June 7, 1996

Effective date: June 7, 1996

Amendment Nos.: 210 and 210

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 8, 1996 (61 FR 20860) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 7, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Dated at Rockville, Maryland, this 26th day of June 1996.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[Doc. 96–16879 Filed 7–2–96; 8:45 am]

BILLING CODE 7590–01–F

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescission and Deferrals

To the Congress of the United States:

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report one revised deferral of budgetary resources, totaling $7.4 million. The deferral affects the Social Security Administration.

William J. Clinton.

The White House,
June 24, 1996.

BILLING CODE 3110–01–M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

Deferral No.	ITEM	Budgetary Resources
	Social Security Administration	
D96-2A	Limitation on administrative expenses.....	7,365
	Total, deferral.....	7,365

D96-2A

Supplemental Report
Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D96-2, which was transmitted to Congress on October 19, 1995.

This revision increases by $44,285 the previous deferral of $7,320,543 in the Limitation on administrative expenses, Social Security Administration, resulting in a total deferral of $7,364,828. This increase results from the deferral of additional carryover of funds from FY 1995 that cannot be used in FY 1996.

Deferral No. 96-2A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Health and Human Services	**New budget authority.....** $* 167,000,000
BUREAU: Social Security Administration	**Other budgetary resources.....** $* 261,623,563
Appropriation title and symbol: Limitation on administrative expenses 1/ 75X8704	**Total budgetary resources.....** $* 428,623,563
	Amount to be deferred: **Part of year.....** $ _____ **Entire year.....** $* 7,364,828
OMB identification code: 20-8007-0-7-651	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other _____
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

JUSTIFICATION: This account includes funding for construction, renovation, and expansion of Social Security Trust Fund-owned headquarters and field office buildings. In addition, funds remain available for costs associated with acquisition of land in Colonial Park Estates adjacent to the Social Security Administration complex in Baltimore, Maryland. The Social Security Administration has received an approved FY 1996 apportionment for $50,000 to cover potential upward adjustments of prior-year costs related to field office roof repair and replacement projects. The remaining funds will not be needed for obligation in FY 1996. This deferral reflects the actual amount available for construction in FY 1996, less the $50,000 apportioned for potentia upward adjustments in FY 1996. This action is taken pursuant to the Antideficiency Act (31 U.S..C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1995 (D95-6A).
* Revised from previous report.

[FR Doc. 96–17033 Filed 7–2–96; 8:45 am]
BILLING CODE 3110–01–C

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (P.L. 92–463), notice is hereby given that the forty-ninth meeting of the Federal Salary Council will be held at the time and place shown below. At the meeting the Council will continue discussing issues relating to locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meeting is open to the public.

DATES: July 25, 1996, at 10:00 a.m.

ADDRESSES: Office of Personnel Management, 1900 E Street NW., Room 7B09, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth O'Donnell, Chief, Salary Systems Division, Office of Personnel Management, 1900 E Street NW., Room 6H31, Washington, DC 20415–0001. Telephone number: (202) 606–2838.

For the President's Pay Agent:

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–16943 Filed 7–2–96; 8:45 am]
BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–37364; File No. SR–CBOE–96–36]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Interruption of RAES Due to Unusual Market Activity

June 25, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 12, 1996, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 CBOE proposes to amend CBOE Rule 6.6, Unusual Market Conditions, to give the Order Book Official (''OBO'') or the Post Director authority to turn off the Exchange's Retail Automatic Execution System (''RAES'') for a class or classes of options and for a short period of time when, in the judgement of that OBO or Post Director, there is unusual market activity in such options or their underlying securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to add a new paragraph (e) to CBOE Rule 6.6 that will authorize OBOs, and, in the case of options traded at Designated Primary Market-Maker (''DPM'') stations, Post Directors temporarily to deactivate RAES in specified classes of options traded at the posts where such persons are stationed when in their judgement such action is warranted by an influx of orders or other unusual market conditions in such options or their underlying securities and the OBO or Post Director determines that such action is appropriate in the interests of maintaining a fair and orderly market. Whenever such action is taken, notice thereof shall immediately be given to two Floor Officials who may continue the deactivation of RAES for more than five minutes or take such actions as they deem necessary pursuant to their authority under Rule 6.6.

This rule change is being proposed to permit a more immediate response to events, such as significant news announcements, that can cause temporary order imbalances and otherwise disrupt the market for stocks that underlie options traded on CBOE. In these situations stock prices may move sharply, and Exchange market-makers may not have time to adjust their options quotes in the numerous series of options that overlie these stocks. This may result in published options quotes that do not reflect current stock prices. Because orders sent to RAES are executed automatically at published quotations, customers may receive executions at unrealistic prices, some at a price more favorable than fair market prices and some less favorable than fair market prices.

Exchange Rule 6.6 currently authorizes two Floor Officials to respond to this situation by declaring the market in particular classes of options to be ''fast,'' and then turning off RAES (and taking other action) until there has been time for prices to be adjusted. Because of the speed with which computerized order routing systems can direct orders to RAES, and because RAES itself provides for instantaneous automatic executions, there can be a significant number of executions at stale prices during the several minutes that it might take for two Floor Officials to declare a fast market. By authorizing OBOs and Post Directors to turn off RAES for up to five minutes, the response time to such a situation will be considerably shortened, and the number of executions at stale prices should be reduced accordingly. In this respect, the proposed rule change is not unlike the recently approved rule change that authorized Post Directors or OBOs to suspend trading in specified classes of options for up to five minutes when there is a trading halt or suspension of trading in the underlying security in the primary market.[2] There, as is proposed here, authority is given to the OBO or Post Director to deal quickly and on an interim basis with a situation where immediate response is called for, pending further consideration of the matter by two Floor Officials.

It is anticipated that in most instances where RAES is deactivated by an OBO or Post Director, the period of time when RAES is unavailable should be very brief, lasting less than five minutes. Even then, orders will continue to be delivered to the trading crowd via the Exchange's electronic order routing system (''ORS'') and the trading crowd will remain obligated to fill customer

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] File No. SR–CBOE–95–44 approved in Exchange Act Release No. 36135 (August 22, 1995), 60 FR 44921.

orders in accordance with Exchange rules, including the firm quote rule.[3]

Members will be notified of any deactivation of RAES in particular classes of options by an OBO or a Post Director pursuant to proposed Rule 6.6(e) by means of a message that is printed at each trading post on the floor and is transmitted to terminals throughout the floor over the Exchange's TextNet system.

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act in that, by permitting the Exchange to act expeditiously to prevent automatic executions of options transactions at stale prices in the event of significant news announcements or other potentially disruptive situations, 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 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 change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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.

[3] The firm quote rule, which obligates the trading crowd to fill public orders for up to 10 contracts at published quotes, remains in effect unless suspended by two Floor Officials acting under Rule 6.6(b) in the event of a fast market. The proposed rule change would not authorize an OBO or DPM to declare a fast market or suspend the firm quote rule.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–CBOE–96–36 and should be submitted by July 24, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–16921 Filed 7–2–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37368; File No. SR–GSCC–96–01]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to the Enhancement of Risk Management Processes

June 25, 1996.

On January 5, 1996, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–GSCC–96–01) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the Federal Register on March 13, 1995.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

[4] 17 CFR 200.30–3(a) (12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 36933 (March 6, 1996), 61 FR 10045.

I. Description

As part of GSCC's continuous process of reviewing its risk management mechanism, GSCC has made various enhancements and revisions to that mechanism. The design of the risk management process for GSCC's newly implemented netting service for repurchase agreements (''repos'') and recommendations made by Commission staff during their inspection of GSCC last year provided the impetus for certain of the enhancements and revisions. Each of the changes to GSCC's risk management process is described in detail below.

A. Change in the Clearing Fund Formula

1. Funds Adjustment Component

There are three components to a netting member's clearing fund deposit requirement: (1) the funds adjustment component, (2) the receive/deliver settlement component, and (3) the repo volatility component. The sum of the three components is a member's total clearing fund deposit requirement. The first component of the clearing fund, the funds adjustment component, addresses the potential risk that a member might not pay a funds-only settlement amount due to GSCC.[3]

Prior to this amendment, the funds adjustment component was 125% of the average of a member's ten largest funds-only settlement amounts measured on an absolute basis during the most recent seventy-five business days.[4] Under the proposed rule change, the funds adjustment component is now 100% of the average of the member's twenty largest funds-only settlement amounts during the most recent seventy-five business days.[5] However, GSCC retains the right to reinstitute at its discretion

[3] Historically, this component has represented about ten percent of the total clearing fund requirement.

[4] Prior to the implementation of GSCC's netting service for repos, GSCC's rules required computation of the average of a member's absolute funds amounts over the prior twenty business days. Securities Exchange Act Release No. 36491 (November 17, 1995), 60 FR 61577 (order approving proposed rule change).

[5] This change has been made to both paragraphs (b) and (d) of Rule 4, Section 2 of GSCC's rules. Paragraph (b) applies to bank netting members, Category 1 dealer netting members, Category 1 futures commission merchant netting members, Category 2 inter-dealer broker netting members, government securities issuer netting members, insurance company netting members, and registered investment company netting members. Paragraph (d) applies to Category 2 dealer netting members and Category 2 futures commission merchant netting members.

all or a part of the twenty-five percent cushion for a temporary period. For example, GSCC might reinstitute this cushion during volatile market conditions.

2. Receive/Deliver Settlement Component

The second component of the clearing fund requirement is the receive/deliver settlement component, which is based on the size and nature of a member's net settlement positions. The receive/deliver component for GSCC netting members other than Category 2 dealer or Category 2 future commission merchant members [6] is the largest of the following four calculations based on a member's gross margin:[7]

(1) *Post-Offset Margin Amount (''POMA''):* The POMA essentially is a member's total gross margin taking into account allowable offset percentages.[8]

(2) *Average POMA:* Prior to this amendment, the average POMA typically was based on a member's ten highest POMA amounts occurring in the most recent seventy-five business days, including the current day's POMA amount. Under the proposed rule change, GSCC will now use an average of the twenty largest POMA amounts during the most recent seventy-five business days.

(3) *Adjusted POMA:* The adjusted POMA is calculated the same way as the POMA with the exception of excluding all trades that are scheduled to settle on the current day.[9]

(4) *Liquidation Amount:* This is a floor amount which previously equalled fifty percent of the total gross margin on all long and short positions without offsets. The proposed rule change lowers this amount to twenty-five percent.

The proposed rule change also deletes sections (2)(g)(i) and (2)(g)(ii) of Rule 4 regarding alternative formulas for the receive/deliver settlement component of the required clearing fund deposit. GSCC rarely used the alternative calculation under subsection (g)(i), which disregards when-issued trades that have been issued. Subsection (g)(ii) has been made obsolete by the changes approved in GSCC's filing pertaining to its repo netting service.[10]

With respect to Category 2 dealer or Category 2 futures commission merchant members, the receive/deliver settlement component was the largest of (1) the member's total gross margin without offsets, (2) the member's total gross margin without offsets and excluding positions due to settle that day, or (3) the average of the member's largest ten gross margin amounts over the most recent seventy-five business days. GSCC has revised the third calculation to use the average of the largest twenty gross margin amounts over the most recent seventy-five business days.

3. Repo Volatility Component

The third component of the clearing fund requirement is the repo volatility component. This component was recently added to GSCC's clearing fund formula to cover securities' settlement exposure posed by repo activity. The repo volatility component was the greater of (1) the product of the repo volatility factor and the market value of the member's repo transactions taking into account allowable offset percentages (''repo offset amount'') or (2) the average of a member's ten highest repo offset amounts over the most recent seventy-five business days. GSCC has revised the second element of this calculation to take the average of a member's twenty highest repo offset amounts over the most recent seventy-five business days.

B. Providing GSCC With Discretion, Within Parameters, To Lower Margin Factors

GSCC's Membership and Standards Committee (''Committee'') reviews on an ongoing basis the appropriateness of its margin factors [11] by examining third-party price volatility data and GSCC's own short-term and long-term data covering ninety-five and ninety-nine percent of all price movements. However, prior to this amendment, GSCC was not allowed to lower any of its margin factors without first obtaining Commission approval through a formal rule filing process.

GSCC has revised its rules to permit the Committee to lower a margin factor subject to a predefined limitation if the Committee determines it appropriate based on its review of historical price volatility data and if the GSCC Board of Directors approves such a lower margin factor. With respect to GSCC netting members other than Category 2 dealer members and futures commission merchant members, the predefined limitation permits GSCC to reduce a margin factor to a level that is no lower than the higher of (1) the price volatility for that remaining maturity category taking into account ninety-five percent of all movements during the last calendar quarter or (2) the price volatility for that remaining maturity category taking into account ninety-five percent of all movements during the last calendar year. With respect to the margin factors for Category 2 dealer members and futures commission merchant members, the limitation provides that GSCC can reduce a margin factor to a level that is no lower than the higher of (1) the price volatility for that remaining maturity category taking into account ninety-nine percent of all movements during the last calendar quarter or (2) the price volatility for that remaining maturity category taking into account ninety-nine percent of all movements during the last calendar year.

C. Revision of Certain Margin Factors for Zero-Coupon Government Securities Other Than Treasury Bills (''Zeros'')

As noted above, GSCC's margin factors are based on an assessment of historical daily price volatility data. Zeros require different margin factors than other Treasury securities because zeros generally are subject to greater price volatility than are other Treasury securities with the same maturity.[12] The applicable margin percentages for zeros range from percentages that are the same as those for other Treasury securities with respect to shorter-term maturities to percentages that are two-and-a-half times the percentages applicable to other Treasury securities with respect to long-term maturities.[13]

[6] GSCC's method of calculating the receive/deliver/settlement component for Category 2 dealer and Category 2 futures commission merchant members is set forth below.

[7] Gross margin is the product of GSCC's margin factors multiplied by the dollar value of a member's current outstanding net settlement position. GSCC's margin factors are designed to estimate daily security price movements, are expressed as percentages, and are determined by historical daily price volatility. See Section 4 below for a discussion of GSCC's margin factors.

[8] Margin amounts on receive (long) and deliver (short) positions are allowed to offset each other. The extent to which an offset is allowed is determined by product and the degree of similarity in time remaining to maturity.

[9] This is done based on the assumption that those trades will settle on the current day; thus, calculating POMA in this manner will more accurately reflect GSCC's settlement exposure during the current day.

[10] *Supra* note 4.

[11] As defined in GSCC's rules, margin factors and Category 2 margin factors are percentage, which GSCC publishes from time to time, representing variations weighted by maturity and product type. These margin factors are used in GSCC Rule 4, Section 2 to calculate the receive/deliver settlement component of the required fund deposit for GSCC's members described above in Section 2.

[12] GSCC's margin factor schedule for zeros is contained in GSCC's filing. A copy of the filing is available for copying and inspection in the Commission's Public Reference Room.

[13] These differences initially were based on the differences in the amount of haircut factors between zeros and other Treasury securities found in the United States Treasury Department's liquid capital requirements for government securities brokers and dealers.

Prior to this filing, the margin factors for zeros in several categories were well above the price volatility that GSCC's internal data show for such categories under any measure. GSCC has lowered the applicable margin factor for zeros in the seven to ten years remaining maturity category from 1.870 percent to 1.50 percent. GSCC has lowered the applicable margin factor for the ten to fifteen years remaining maturity category from 2.813 percent to 1.813 percent. GSCC has lowered the applicable margin factor for the fifteen years and higher remaining maturity category from 3.625 percent to 2.625 percent.

D. Introduction of a Tiered Surveillance Status Mechanism

GSCC is placing members that pose a heightened level of potential risk to GSCC in various classes of surveillance status instead of in one surveillance status.[14] GSCC's rules required that a member be placed on surveillance status if one or more of a number of circumstances is present. These circumstances include, but are not limited to, a significant reorganization or change in control or management of the member. In addition, GSCC could place a member on surveillance status if one or more of a number of factors, such as a member experiencing a condition that could materially affect its financial or operational capability so as to potentially increase GSCC's exposure to loss or liability, was present.

The proposed rule change establishes three surveillance categories. A member will be placed on Class 1 surveillance status if one or more of a number of factors pertaining to its financial condition is present,[15] if it has been placed on surveillance status by another self-regulatory organization, or if it has been upgraded from Class 2 surveillance status within the past three calendar months. Class 1 surveillance status will result in GSCC more thoroughly monitoring a member's financial condition and activities and will provide GSCC with discretion to require a member to make more frequent financial disclosures, including interim and/or pro forma reports.

GSCC will place a netting member on Class 2 surveillance status if one or more of a number of factors is present. These factors include but are not limited to (1) any element of a member's capital position falls below the minimum requirements, (2) a member has been upgraded from Class 3 surveillance status within the last three calendar months, (3) a member temporarily experiences an inability to meet its securities settlement obligations to GSCC in a timely fashion, and (4) a member's designated examining authority or appropriate regulatory agency has a pending action against or investigation of the member that could call into question the member's ability to meet its obligations to GSCC. In addition to the consequences resulting from placement on Class 1 surveillance status, a member placed on Class 2 surveillance status will be required to maintain a required fund deposit in excess of the amount ordinarily required, as permitted under GSCC's rules.

A GSCC netting member will be placed on Class 3 surveillance status if GSCC is considering taking action under GSCC Rule 18 (Ceasing to Act for a Member) or GSCC Rule 20 (Insolvency of a Member).[16] A GSCC netting member on Class 3 surveillance status will be placed on a final notification list. A netting member will remain on such final notification list until the condition(s) that resulted in its assignment to Class 3 surveillance status have improved to an extent that GSCC deems appropriate to support reassignment of the member to Class 2 surveillance status.

E. Simplification of the Clearing Fund Deficiency Call Mechanism

GSCC's rules permit GSCC to make clearing fund deficiency calls on a same day basis under the following four circumstances: (1) a member's current day's required clearing fund deposit exceeds by twenty-five percent the value of its clearing fund collateral, (2) a member's current day's required clearing fund deposit level exceeds by more than $250,000 the value of its clearing fund collateral, (3) a member is on surveillance status and its required clearing fund deposit as of the current day exceeds the value of its clearing fund collateral, or (4) a member's ''clearing fund funds-only settlement amount,'' which excludes clearance difference, invoice amount, and other miscellaneous amounts, for the current day exceeds by more than twenty-five percent its average daily clearing fund funds-only settlement amount over the most recent twenty business days.[17]

The fourth circumstance, a twenty-five percent jump in the member's clearing fund funds-only settlement amount, has rarely been used and is now eliminated.[18] A clearing fund deficiency call that is based on a member being on surveillance status can now be invoked only if a member is on Class 2 or Class 3 surveillance status. Finally, because GSCC has the authority to make clearing fund deficiency calls on a same day basis, GSCC's rule permitting GSCC automatically to make a clearing fund deficiency call at the beginning of each month has been deleted.

F. Elimination of the Noon Deadline for Satisfaction of Clearing Fund Deficiency Calls

By 9:00 a.m., GSCC issues by telephone calls followed by telefax notices calls for additional clearing fund deposits by 9:00 a.m. The exact time that each telephone call is made is recorded. Prior to this filing, a member had until the later of two hours after the receipt of a clearing fund deficiency call or noon to satisfy the call.

GSCC's long term goal is to develop an automated mechanism pursuant to which it will be in receipt of clearing fund collateral by the time that the securities Fedwire opens in the morning, which is currently at 8:30 a.m. As an interim step toward achieving this goal, GSCC is eliminating the noon alternative deadline for satisfaction of clearing fund deficiency call and is requiring a member to satisfy a deficiency call within two hours after it is received. The practical effect of this change is that, in the ordinary course, a member will have to satisfy a deficiency call by approximately 11:00 a.m.

[14] At the conclusion of their recent inspection of GSCC, Commission staff suggested that, in line with what many other clearing agencies have in place, GSCC should establish different classes of surveillance for its members.

[15] The financial condition factors that will result in Class 1 surveillance status include but are not limited to (1) a member incurring recent significant net losses, (2) a member's required fund deposit obligation representing a significant portion of its net worth or net capital, and (3) a member experiencing any condition that could materially affect its financial or operational capacity.

[16] Under Rule 18 (Ceasing to Act for a Member), GSCC may cease to act for a member upon notice to such member for such reasons as: (1) the member has failed to perform its obligations to GSCC or materially violated any GSCC rule, procedure, or agreement, (2) the member has failed to pay GSCC any payment required, (3) the member no longer meets its admissions or continuance standards, or (4) the member has been responsible for fraudulent or dishonest conduct. Under Rule 20 (Insolvency of a Member), GSCC will cease to act for a member if such member meets one of several tests of insolvency (*e.g.*, such member files a petition seeking relief under the Bankruptcy Code).

[17] The clearance difference is the dollar difference between GSCC's system price for a settlement obligation and the actual value at which the settlement obligation was settled. The invoice amount means all fees that a member owes GSCC.

[18] At the conclusion of their recent inspection of GSCC, Commission staff suggested that GSCC should either monitor the funds-only deficiency call requirements or file with the Commission a proposed rule change eliminating it.

However, a clearing fund deficiency call does not need to be satisfied before 10:00 a.m. regardless of when the call actually is made.

II. Discussion

Section 17A(b)(3)(F)[19] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes GSCC's proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) because the proposal, by enhancing and revising GSCC's risk management mechanism, should help ensure that the mechanism accurately reflects GSCC's risk and provides CSCC appropriate risk protection while increasing members' liquidity and minimizing the operational burdens on GSCC netting members.

Specifically, based upon its assessment of historical data, GSCC has found that certain components of its clearing fund formula are overly conservative. Therefore, GSCC is revising the Average POMA calculation of the receive/deliver component, the funds adjustment component, and the repo volatility component of its clearing fund formula to utilize the twenty largest, rather than the ten largest, POMA amounts, funds-only settlement amounts, and repo offset amounts during the most recent seventy-five business days. GSCC also is modifying the funds adjustment component of its clearing fund formula to eliminate the twenty-five percent cushion in the component's calculation. Because GSCC will retain the right to reinstitute at its discretion all or part of the twenty-five percent cushion for a temporary period, GSCC will be able to react quickly to changing market conditions. GSCC also is lowering the liquidation amount of the receive/deliver component of its clearing fund requirement from fifty percent to twenty-five percent of the total gross margin on all long and short positions without offsets. GSCC believes that, based on historical performance, the twenty-five percent floor should provide sufficient protection to GSCC from the risk that its margin offsets will not reflect actual market conditions during a liquidation period while enabling members that engage in activity on a fully hedged basis to receive the benefits afforded by being fully hedged. Because these modifications are based upon GSCC's assessment of historical data, the changes should ensure appropriate risk protection for GSCC, while providing members with increased liquidity.

GSCC also is revising its rules to permit its Membership and Standards Committee to lower a margin factor subject to a predefined limitation if the Committee determines it appropriate based on its review of historical price volatility and if GSCC's Board of Directors approves such a lower margin factor. The Committee reviews the appropriateness of its margin factors on an ongoing basis. Thus, the proposed rule change should provide GSCC with the flexibility to lower margin factors more readily for the benefit of its members without compromising GSCC's risk protection. The limitation on the Committee's ability to lower margins (95% of all movements during the last quarter or year) should ensure that GSCC will always have a sufficient level of protection. GSCC also is lowering certain margin factors for zeros to reflect more accurately GSCC's needs based upon GSCC's data at the ninety-nine percent level over the past two years. Accordingly, members will not be subject to margin requirements that exceed GSCC's current needs.

In addition, GSCC is introducing a tiered surveillance status mechanism. The new surveillance mechanism should enable GSCC to monitor more effectively the potential risk posed by its members and to react more swiftly to changes in a member's condition. Finally, as a step toward GSCC's goal to develop an automated mechanism by which GSCC will receive clearing fund collateral by the time that the securities Fedwire opens, GSCC is eliminating the noon alternative deadline for satisfaction of a clearing fund deficiency call and to require a member to satisfy a deficiency call within two hours after it is received. By increasing the efficiency of GSCC risk management processes, the tiered surveillance mechanism and the modifications to GSCC's clearing fund deficiency call rules should help GSCC fulfill its obligation to safeguard securities and funds which are in its custody or control or for which it is responsible.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is Therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–96–01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–16922 Filed 7–2–96; 8:45 am]

BILLING CODE 8010–01–M

[19] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

[20] 17 CFR 200.30–3(a)(12)(1995).

[Release No. 34–37370; File No. SR–NASD–96–23]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Small Order Execution System Tier Size Classifications

June 26, 1996.

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 June 17, 1996, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') 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 submitting this filing to effectuate The Nasdaq Stock Market, Inc.'s (''Nasdaq'') periodic reclassification of Nasdaq National Market (''NNM'') securities into appropriate tier sizes for purposes of determining the maximum size order for a particular security eligible for execution through Nasdaq's Small Order Execution System (''SOES'') and the minimum quote size requirements for Nasdaq market makers in NNM securities. Specifically, under the proposal, 728 NNM securities will be reclassified into a different SOES tier size effective July 1, 1996. Since the NASD's proposal is an interpretation of existing NASD rules, there are no language changes.

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 purpose of the rule change is to effectuate Nasdaq's periodic reclassification of NNM securities into appropriate tier sizes for purposes of determining the maximum size order for a particular security eligible for execution through SOES and the minimum quote size requirements for Nasdaq market makers in NNM securities. Nasdaq periodically reviews the SOES tier size applicable to each NNM security to determine if the trading characteristics of the issue have changed so as to warrant a tier size adjustment. Such a review was conducted using data as of March 31, 1996, pursuant to the following established criteria:[1]

NNM securities with an average daily non-block volume of 3,000 shares or more a day, a bid price less than or equal to $100, and three or more market makers are subject to a minimum quotation size requirement of 1,000 shares and a maximum SOES order size of 1,000 shares;

NNM securities with an average daily non-block volume of 1,000 shares or more a day, a bid price less than or equal to $150, and two or more market makers are subject to a minimum quotation size requirement of 500 shares and a maximum SOES order size of 500 shares; and

NNM securities with an average daily non-block volume of less than 1,000 shares a day, a bid price less than or equal to $250, and less than two market makers are subject to a minimum quotation size requirement of 200 shares and a maximum SOES order size of 200 shares.

Pursuant to the application of this classification criteria, 728 NNM securities will be reclassified effective July 1, 1996. These 728 NNM securities are set out in the NASD's *Notice To Members 96–40* (June 1996).[2]

In ranking NNM securities pursuant to the established classification criteria, Nasdaq followed the changes dictated by the criteria with two exceptions. First, an issue was not moved more than one tier size level. For example, if an issue was previously categorized in the 1,000-share tier size, it would not be permitted to move to the 200-share tier even if the reclassification criteria showed that such a move was warranted.

In adopting this policy, Nasdaq was attempting to maintain adequate public investor access to the market for issues in which the tier size level decreased and to help ensure the ongoing participation of market makers in SOES for issues in which the tier size level increased. Second, for securities priced below $1 where the reranking called for a reduction in tier size, the tier size was not reduced.

The NASD believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act. Section 15A(b)(6) requires, among other things, that the rules of the NASD governing the operation of The Nasdaq Stock Market be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market. The NASD believes that the reclassification of NNM securities within SOES tier size levels and minimum quotation size levels will further these objectives by providing an efficient mechanism for small, retail investors to execute their orders on Nasdaq and by providing investors with the assurance that they can effect trades up to a certain size at the best prices quoted on Nasdaq.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective immediately pursuant to Section 19(b)(3)(A)(i) of the Act and subparagraph (e) of Rule 19b–4 thereunder in that the reranking of NNM securities into appropriate SOES tier sizes was done pursuant to the NASD's stated policy and practice with respect to the administration and enforcement of two existing NASD rules. Further, in the SOES Tier Size Order, the Commission requested that the NASD provide this information as an interpretation of an existing NASD rule under Section 19(b)(3)(A) of the Act.

At any time within sixty (60) days of the filing of a proposed rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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 the file number in the caption above and should be submitted by July 24, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–16923 Filed 7–2–96; 8:45 am]

BILLING CODE 8010–01–M

[1] The classification criteria is set forth in NASD Rule 4613(a)(2) and the footnote to NASD Rule 4710(g).

[2] Notwithstanding the NASD's announcement in *NTM* 96–40 that Microsoft and U.S. Robotics are scheduled to be moved to the 500-share SOES tier size level, the NASD has determined that The Nasdaq Stock Market will keep these stocks in the 1,000-share tier level. Even though these stocks fall within the 500-share tier level, pursuant to the criteria for determining tier levels, the NASD has determined to keep these stocks at the 1,000-share level because of their large market capitalization and high trading volume. *See*, letter to Howard L. Kramer, Associate Director, Office of Market Supervision, Division of Market Regulation, SEC, from Thomas R. Gira, Associate General Counsel, The Nasdaq Stock Market, Inc., dated June 25, 1996.

[3] 17 CFR 200.30–3(a)(12) (1989).

[Release No. 34–37365; File No. SR–PSE–96–17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Joint Accounts

June 25, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 11, 1996, the Pacific Stock Exchange Incorporated (''PSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend its rules to eliminate a provision that prohibits members who are registered to trade for the same joint account from having overlapping primary appointment zones on the Options Floor.

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

PSE Rule 6.35 currently provides that each market maker shall be assigned a Primary Appointment Zone comprising a minimum of one trading post up to a maximum of six contiguous trading posts.[2] Under Commentary .03 to PSE Rule 6.35, at least 75% of the trading activity of a market maker (measured in terms of contract volume per quarter) shall be in classes of option contracts to which his or her primary appointment extends.[3]

With regard to joint accounts, PSE Rule 6.84, Commentary .05 currently provides that the primary appointment of a market maker may not include trading posts which constitute the primary appointment of any market maker with whom he or she has a joint account. The rule further provides that, for the purposes of evaluating market maker performance in accordance with PSE Rule 6.37, Commentary .04, contract volume in the joint account will be assigned to the participants who effected the transactions for the joint account, under the same guidelines as if they effected the transactions for their own account.

The Exchange proposes to eliminate the provision in Commentary .05 to Rule 6.84 that prohibits joint account participants from having overlapping primary appointment zones. The Exchange believes that this rule places an unnecessary burden on member firms with joint accounts that may desire to have overlapping primary zones for their market makers in order to allow for continuous coverage when participant market makers are temporarily absent from the floor due to illness or vacation. The Exchange also believes that the current procedure of requiring substitute market makers to seek an exemption from Rule 6.35 (or alternatively to assure that the volume of their trading outside their primary zone does not exceed 25% of their total volume), is not efficient. Moreover, the Exchange believes that Rule 6.40, Financial Arrangements of Market Makers, which prohibits participants in the same joint account from trading in the same trading crowd at the same time, will address any concerns that joint account participants may attempt to dominate unfairly the market in a particular option issue or option series.[4]

Finally, the Exchange proposes, for purposes of greater clarity, to eliminate the cross-reference to Rule 6.37, Commentary .04 that is contained in Rule 6.84, Commentary .05 and to replace it with a cross reference to Rule 6.35, Commentary .03.

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5), in particular, in that it is designed to facilitate transactions in securities, to remove impediments to a free and open market, and to promote just and equitable principles of trade.

(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

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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Previously, market makers were restricted to Primary Appointment Zones comprising one trading post or two contiguous trading posts. *See* Securities Exchange Act Release No. 36370 (October 13, 1995), 60 FR 54273 (approving increase from two to six in the maximum number of trading posts that may be included in each market maker's Primary Appointment Zone).

[3] PSE Rule 6.35, Commentary .03 provides an exception for unusual circumstances.

[4] *See also* File No. SR–PSE–96–12 (proposal to amend Rule 6.40).

refer to File No. SR–PSE–96–17 and should be submitted by July 24, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–16924 Filed 7–2–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37373; File No. SR–PSE–96–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to the Establishment of a $50 Fee for One-Day Transfers of Membership

June 26, 1996.

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 June 21, 1996, the Pacific Stock Exchange, Inc. (''PSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the PSE. 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

Currently, the PSE's Schedule of Rates for Exchange Services (''Schedule of Rates'') provides a fee of $100 for temporary intrafirm or interfirm transfers of membership.[1] The PSE proposes to amend the Schedule of Rates to: (1) establish a fee of $50 for one-day intrafirm transfers of membership; (2) specify that a ''temporary'' transfer of membership is for a period of less than 30 days; [2] and (3) eliminate a reference to ''interfirm'' temporary transfers of membership, so that the $100 fee for temporary membership transfers will apply solely to temporary intrafirm transfers of membership.[3]

The text of the proposed rule change is available at the Office of the Secretary, PSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the prices specified in Item IV below. The Exchange has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Purpose

The PSE proposes to adopt a $50 fee for members who transfer their membership rights, on a one-day basis, to other members of the same firm. This change is intended to address situations where floor members are unable to be present on the trading floor for one day and need to have substitute coverage on the floor for that day. Under the proposal, members who expect to be away from the floor for one day will notify the Exchange of the proposed transfer and the Exchange will bill them $50.

The Schedule of Rates currently provides for a fee of $100 for ''temporary'' transfers of membership.[4] That fee is intended to cover transfers of membership that last longer than one day (but less than 30 days), such as when a floor member takes a vacation. The Exchange believes that the proposed one-day intrafirm transfer fee will provide an equitable alternative to the $100 temporay transfer fee for members who are away from the floor for just one day. In addition, the PSE notes that the proposal will address more directly situations in which a member transfers his or her membership to another person, one a one-day basis, on more than two separate occasions during a 30-day period. In such situations, the member would be charged $50 for each one-day transfer of membership. In addition, if a member notifies the PSE of a one-day transfer, and that member is later unable to return to the floor for a consecutive period of from two to 30 days, that member would be charged a maximum fee of $100.

The Exchange also proposes to amend its Schedule of Rates with regard to ''temporary'' transfers of membership by specifying that such transfers are for a period of less than 30 days.[5] In addition, the PSE proposes to eliminate a reference in the provision governing temporary transfers to ''interfirm'' transfers of membership, so that the $100 fee will apply solely to temporary ''intrafirm'' transfers of membership.[6]

Statutory Basis

The PSE believes that the proposal is consistent with Section 6(b) of the Act, in general, and with Section 6(b)(4), in particular, in that it provides for the equitable allocation of reasonable charges among its members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears

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[5] 17 CFR 200.30–3(a)(12).

[1] Currently, PSE Rule 1.10(a), ''Initial, Transfer and Processing Fees,'' also provides for interfirm and intrafirm transfer fees. In a separate rule filing, the PSE has proposed to delete the transfer fees from PSE Rule 1.10(a). Under that proposal, PSE Rule 1.23, ''Transfer of Membership,'' will govern membership transfers but will not contain a fee schedule. *See* Securities Exchange Act Release No. 37076 (April 5, 1996), 61 FR 16152 (April 11, 1996) (notice of filing of proposed rule change for File No. SR–PSE–96–07).

[2] The $100 fee for temporary membership transfers applies to transfers lasting for a consecutive period lasting from two days to less than 30 days.

[3] According to the PSE, temporary transfers of membership occur only between members of the same firm, not between firms. Thus, the proposal eliminates an inaccurate reference to temporary ''interfirm'' transfers of membership. Telephone conversation between Michael Pierson, Senior Attorney, Market Regulation, PSE, and Yvonne Fraticelli, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, on June 24, 1996.

[4] In addition, the Schedule of Rates provides a $250 fee for permanent intrafirm or interfirm transfers of membership.

[5] The $100 fee for a temporary transfer of membership was implemented in 1995. *See* Securities Exchange Act Release No. 35817 (September 5, 1995), 60 FR 47417 (September 12, 1995) (Notice of filing and immediate effectiveness for File No. SR–PSE–95–19).

[6] *See* note 3, *supra.*

to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the file number in the caption above and should be submitted by July 24, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–16925 Filed 7–2–96; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2868]

Indiana; Declaration of Disaster Loan Area

St. Joseph County and the contiguous counties of Elkhart, LaPorte, Marshall, and Starke in the State of Indiana, and Berrien and Cass Counties in the State of Michigan constitute a disaster area as a result of damages caused by severe storms and flooding which occurred on June 9 and 10, 1996. Applications for loans for physical damage may be filed until the close of business on August 23, 1996 and for economic injury until the close of business on March 24, 1997 at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, or other locally announced locations.

The interest rates are:

For Physical Damage

Homeowners With Credit Available Elsewhere—*7.625%*.

Homeowners Without Credit Available Elsewhere—*3.875%*.

Businesses With Credit Available Elsewhere—*8.000%*.

Businesses and Non-Profit Organizations Without Credit Available Elsewhere—*4.000%*.

Others (Including Non-Profit Organizations) With Credit Available Elsewhere—*7.125%*.

For Economic Injury

Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere—*4.000%*.

The numbers assigned to this disaster for physical damage are 286806 for Indiana and 286906 for Michigan.

For economic injury the numbers are 894900 for Indiana and 895000 for Michigan.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 24, 1996.

John T. Spotila,

Acting Administrator.

[FR Doc. 96–16981 Filed 7–2–96; 8:45 am]

BILLING CODE 8025–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment to Earlier Directives to Reflect Cancellation of Staged Entry Periods for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products and Silk Apparel Products Produced or Manufactured in the People's Republic of China

June 26, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending earlier directives with respect to textile products from China.

EFFECTIVE DATE: June 26, 1996.

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).

At the request of the Office of the U.S. Trade Representative (USTR), directives from CITA to the Commissioner of Customs, issued on May 15, 1996 (61 FR 24919) and June 12, 1996 (61 FR 30597) amended previous directives from CITA to the Commissioner of Customs, issued November 30, 1995 (60 FR 62413) and December 13, 1995 (60 FR 65292), to facilitate the establishment of staged entry periods for certain goods produced or manufactured in the People's Republic of China and exported from China for the 30-day periods beginning on May 15, 1996 through June 13, 1996 and June 14, 1996 through July 13, 1996.

Based on the measures that China has and will take in the future to implement key elements of the 1995 Agreement on Enforcement of Intellectual Property Rights and Market Access, USTR on June 21, 1996 requested the Commissioner of Customs to terminate the above-referenced staged entry periods in accordance with section 301 of the Trade Act of 1974, as amended (see 61 FR 33147, published on June 26, 1996).

The action taken in the letter below will facilitate implementation of USTR's directive to the Commissioner of Customs dated June 21, 1996.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 26, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directives issued to you on November 30, 1995 and December 13, 1995, by the Chairman, Committee for the Implementation of Textile Agreements (CITA). Those directives concern imports of certain silk apparel and certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the People's Republic of China and exported from China during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996.

The above directives are hereby amended to the extent necessary to facilitate implementation of the directive of the Office of the U.S. Trade Representative to the Commissioner of Customs dated June 21, 1996 regarding textile products from China, issued pursuant to section 301 of the Trade Act of 1974, as amended. For your information, the above directives are amended to reflect that entry of certain textile products, produced or manufactured in the People's Republic of China, shall no longer be subject to limitation for the 30-day

[7] 17 CFR 200.30–3(a)(12) (1995).

periods beginning on May 15, 1996 through June 13, 1996 and June 14, 1996 through July 13, 1996.

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,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–16934 Filed 7–2–96; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 96–031]

Agency Information Collection Activities Under OMB Review

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act the Coast Guard announces seven Information Collection Requests (ICR) coming up for renewal. These ICRs include: 1. Application for Vessel Inspection and Waiver; 2. Bridge Permit Application Guide; 3. Letter of Intent; 4. Application for Tonnage Measurement of Vessels; 5. Oil and Hazardous Material Pollution Prevention and Safety Records, Equivalent/Alternatives and Exemptions; 6. Records Relating to Citizenship of Personnel on Units Engaged in Outer Continental Shelf (OCS) Activities; and 7. Ballast Water Management for Vessels Entering the Great Lakes. Before submitting the renewal packages to the Office of Management and Budget (OMB), the Coast Guard is soliciting comments on specific aspects of the collections as described below.

DATES: Comments must be received on or before September 3, 1996.

ADDRESSES: Comments may be mailed to Commandant (G–SII–2), U.S. Coast Guard Headquarters, Room 6106 (Attn: Barbara Davis), 2100 2nd St, SW, Washington, DC 20593–0001, or may be hand delivered to the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–2326. The comments will become part of this docket and will be available for inspection and copying by appointment at the above address.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, U.S. Coast Guard, Office of Information Management, telephone (202) 267–2326.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify this Notice, the specific ICR to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format no larger than 8½″ by 11″, suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed post card or envelope.

Interested persons can receive copies of the complete ICR by contacting Ms. Davis where indicated under **ADDRESSES.**

Information Collection Requests

1. Title: Application for Vessel Inspection and Waiver.

OMB No. 2115–0007

Summary: The collection of information requires the owner, agent or master of a vessel to apply in writing to the Coast Guard before the commencement of the inspection for certification or when, in the interest of national defense, a waiver is desired from the requirements of navigation and vessel inspection.

Need: The reporting requirements of the Application for Inspection of U.S. Vessels and the Application for Waiver and Waiver Order are part of the Coast Guard's Marine Inspection Program authorized by 46 U.S.C. 3306 and 3309.

Respondents: Vessel owner, operator, agent, masters or interested U.S. Government agency.

Frequency: On occasion, biennially and triennially.

Burden: The estimated burden is 1,707 hours annually.

2. Title: Bridge Permit Application Guide.

OMB No. 2115–0050

Summary: The collection of information is a bridge permit request submitted as application for Coast Guard approval of proposed bridge projects. Applicants will submit to the Coast Guard a letter of application along with letter size drawings (plans) and maps showing the proposed bridge project and its location.

Need: Title 33 U.S.C. 401, 491, 525, and 535, authorize the Coast Guard to approve plans and locations for all bridges or causeways that are to be constructed over navigable waters of the United States.

Respondents: Public and private owners of bridges over navigable waters of the United States.

Frequency: On occasion.

Burden: The estimated burden is 2,600 hours annually.

3. Title: Letter of Intent.

OMB No. 2115–007

Summary: The collection of information is a Letter of Intent which serves as a notice by a facility owner and operator to the Coast Guard that they intend to transfer oil or hazardous materials from their facility.

Need: Under the Federal Water Pollution Control Act and Executive Order 12777, the Coast Guard has the authority to issue regulations to prevent the discharge of oil or hazardous materials from waterfront facilities.

Respondents: Owners and operators of waterfront facilities.

Frequency: On occasion.

Burden: The estimated burden is 460 hours annually.

4. Title: Application for Tonnage Measurement of Vessels.

OMB No. 2115–0086

Summary: The collection of information requires vessel owners to submit application for tonnage measurement to the Coast Guard or an organization delegated by the Coast Guard. Additional information may be required if an owner requests certain tonnage treatment.

Need: 46. U.S.C. 14104 requires that before a vessel is documented or recorded under laws of the United States, or where the application of law of the United States to a vessel is determined by its tonnage, the vessel must be measured for tonnage.

Respondent: Vessel owners.

Frequency: Once per vessel.

Burden Estimate: The estimated burden is 44,000 hours annually

5. Title: Oil and Hazardous Material Pollution Prevention and Safety Records, Equivalent/Alternatives and Exemptions

OMB No. 2115–0096

Summary: The collection of information requires the inspection of discharge removal equipment on vessels and requires monitoring, reporting and recordkeeping regarding discharges of oil or hazardous materials by facilities and vessels. The regulated industry has the option of requesting, in writing, either equivalent or alternative procedures, methods or equipment standards in lieu of any requirement or

a full or partial exemption of any requirement.

Need: Under the Federal Water Pollution Control Act and Executive Order 12777, Coast Guard has the authority to issue regulations to prevent the discharge of oil or hazardous materials from waterfront facilities and vessels.

Respondent: Operators of vessels and owners of waterfront facilities.

Frequency: On occasion.

Burden Estimate: The estimated burden in 1,840 hours annually.

6. Title: Records Relation to Citizenship of Personnel on Units Engaged in Outer Continental Shelf (OCS) Activities.

OMB No. 2115–0143

Summary: The collection of information requires employers of vessels and units engaged in exploration and exploitation of offshore resources on the OCS such as gas and oil to ascertain the citizenship of their employees and to maintain records of same.

Need: 43 U.S.C. 1356 authorizes the Coast Guard to issue regulations to man or crew outer continental shelf (OCS) facilities with U.S. citizens or permanent resident aliens.

Respondent: Employers of persons engaged in Outer Continental Shelf activities.

Frequency: On occasion.

Burden Estimate: The estimated burden is 1,510 hours annually.

7. Title: Ballast Water Management for Vessels Entering the Great Lakes.

OMB No. 2115–0598

Summary: The collection of information requires vessels entering the Great Lakes through the Saint Lawrence Seaway after operating outside the Exclusive Economic Zone of the United States to keep records of their ballast water management.

Need: Under Title 33 U.S.C. 4711 the Coast Guard has the authority to check and monitor vessels entering the Great Lakes regarding their management of ballast water.

Respondent: Owners/operators of vessels who enter the Great Lakes.

Frequency: On occasion.

Burden Estimate: The estimated burden is 228 hours annually.

Dated: June 20, 1996.

D.A. Potter,

Captain, U.S. Coast Guard, Director of Command, Control, Communications and Computers.

[FR Doc. 96–16895 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Notice of Intent To Request Renewal from the Office of Management and Budget (OMB) of Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Renew 13 Currently Approved Public Information Collection Activities.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995, and 5 CFR part 1320, Reporting and Recordkeeping Requirements, the FAA invites public comment on 13 currently approved public information collections being submitted to OMB for renewal.

DATES: Comments must be received on or before September 3, 1996.

ADDRESSES: Comments on any of these collections may be mailed or delivered in duplicate to the FAA at the following address: Ms. Judith Street, Federal Aviation Administration, Corporate Information Division, ABC–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: The FAA solicits comments on any of the current collections of information in order to: Evaluate the necessity of the collection; the accuracy of the agency's estimate of the burden; the quality, utility, and clarity of the information to be collected; and possible ways to minimize the burden of the collection.

Following are short synopses of the 13 currently approved public information collection activities which will be submitted to OMB for review and approval.

1. 2120–0007, Flight Engineers and Flight Navigators—FAR 63. The respondents are 2,881 airmen. The estimated total annual burden is 25,420 hours. Abstract: FAA Act of 1958, Section 602 and 607 authorize issuance of airmen certificates and provide for examination and rating of flying schools. FAR 63 prescribes requirements for flight navigator certification and training course requirements for these airmen. Information collected is used to determine certification eligibility.

2. 2120–0014, Procedures for Non-Federal Navigation Facilities—FAR 171. The respondents are 2,398 facilities sponsors. The estimated total annual burden is 20,792 hours. Abstract: The non-Federal navigation facilities are aids to air navigation which are purchased, installed operated and maintained by a public entity other than the FAA and are available for use by the flying public. Navigation aids may be located at unattended remote enrollee sites or at manned airport terminal locations.

3. 2120–0015, FAA Airport Master Record. The respondents are 14,000 civil airports. The estimated total annual burden is 4,375 hours. Abstract: The FAA Act of 1958 directs the FAA to collect and disseminate information about civil aeronautics. The information is required to carry out FAA missions related to safety, forecasting, and airport engineering. The data is the basic source of data for private, state, Federal and governmental aeronautical charts and publications.

4. 2120–0025, Crewmember Certificate Application. The respondents are aircrew members that need to be cleared to enter foreign countries. There are 1,401 aircrew members in this category. The estimated total annual burden is 165 hours. Abstract: FAA Act of 1958, Section 602 authorizes the issuance of airmen certificates. 14 CFR parts 121 and 135 prescribes requirements for crewmember certification. Information collected is used to determine applicant eligibility.

5. 2120–0026, Flight Plans (Domestic/International). The respondents are 682,959 flight plans. The estimated total annual burden is 268,408 hours. Abstract: Federal Aviation Act of 1958, Section 307 (49 U.S.C. 1348) authorized regulations governing the flight of aircraft. 14 CFR 91 prescribes requirements for filing domestic and international flight plans. Information is collected to provide protection to aircraft in flight and persons/property on the ground.

6. 2120–0039, Air Carriers/Commercial Operators—FAR 135. The respondents are an estimated 3,760 air carriers and commercial operators. The estimated total annual burden is 347,772 hours. Abstract: The FAA Act of 1958, Section 604 (49 U.S.C. 1424), authorizes the issuance of air carriers operating certificates. 14 CFR part 135 prescribes requirement for air carriers/commercial operators. Information collected shows compliance and applicant eligibility.

7. 2120–0044, Rotorcraft External Load Operator Certificate Application—FAR 133. The respondents are an estimated 400 Rotorcraft External Load Operators. The estimated total annual burden is 3,268 hours. Abstract: 14 CFR prescribes certification requirements for rotorcraft external load operations. Information is collected from applicants

for initial and renewal certification as a Rotorcraft External Load Operator, or from currently certified operators adding additional aircraft or equipment.

8. 2120–0060, General Aviation and Air Taxi Activity and Avionics Survey. The respondents are 19,000 commuter air carriers. The estimated total annual burden is 4,750 hours. Abstract: The survey is to collect information on the use and the characteristics of general aviation and air taxi aircraft. The data is used by the FAA in safety study, regulatory changes and formulating long-term programs and policies.

9. 2120–0535, Anti-Drug Program for Personnel Engaged in Specified Aviation Activities. The respondents are 6,076 specified aviation employers. The estimated total annual burden is 100,276 hours. Abstract: Federal Aviation Regulations require specified aviation employers to implement and conduct FAA-Approved anti-drug plans. They monitor program compliance, institute program improvements, and anticipate program problem areas. The FAA receives drug test reports from the aviation industry. More detailed and specific information is necessary to effectively manage the anti-drug program.

10. 2120–0543, Pilots Convicted of Alcohol or Drug Related Motor Vehicle Offenses or Subject to State Motor Vehicle Administrative Procedures. The respondents are 2184 pilots who have been/will be convicted of a drug- or alcohol-related traffic violation. The estimated annual burden is 364 hours. Abstract: The requested information (1) is needed to mitigate potential hazards presented by airmen using alcohol or drugs in flight, (2) is used to identify persons possibly unsuitable for pilot certification, and (3) affects those pilots who will be convicted of a drug- or alcohol related traffic violation.

11. 2120–0575, Airworthiness Standards, Occupant Protection Standards for Commuter Category Airplanes. The respondents are 5 manufacturers of seat cushions. The estimated total annual burden is 3 hours. Abstract: The information collected will be a record of the test results on seat cushion flammability. The tests will be performed by manufacturers of seat cushions and will become a part of the type certification basis for the airplane.

12. 2120–0577, Explosives Detection Systems Certification Testing. The respondent is the manufacturer of explosive detection systems. The estimated total annual burden is 1,502 hours. Abstract: Pub. L. 101–604 requires the Administrator of the Federal Aviation Administration to certify explosives detection systems, pursuant to protocols developed outside the agency, prior to mandating their use. The information required is necessary for the FAA to perform the certification testing on systems submitted by manufacturers.

13. 2120–0578, Training and Checking in Ground Icing Conditions. The respondents are 2175 air carriers. The estimated total annual burden is 87,000 hours. Abstract: The required collection that respondents must prepare and submit to the FAA contains those airplane ground deicing/anti-icing policies and procedures that ensure the highest level of safety during icing conditions. All Part 125 and 135 air carriers are effected.

Issued in Washington, DC., on June 26, 1996.

Steve Hopkins,

Manager, Corporate Information Division, ABC–100.

[FR Doc. 96–17042 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issues—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of a new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: Notice is given of a new task assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARAC.

FOR FURTHER INFORMATION CONTACT: Stewart R. Miller, Manager, Transport Standards Staff, ANM–110, FAA, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Ave. SW., Renton, WA 98055–4056, telephone (206) 227–2190, fax (206) 226–1320.

SUPPLEMENTARY INFORMATION:

Background

The FAA has established an Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize its Federal Aviation Regulations (FAR) and practices with its trading partners in Europe and Canada.

One area ARAC deals with is Transport Airplane and Engine issues. These issues involve the airworthiness standards for transport category airplanes in 14 CFR parts 25, 33, and 35 of the FAR and parallel provisions in 14 CFR parts 121 and 135 of the FAR. The corresponding European airworthiness standards for transport category airplanes are contained in Joint Aviation Requirements (JAR)–25, JAR–E and JAR–P, respectively. The corresponding Canadian Standards are contained in Chapters 525, 533 and 535 respectively.

The Task

This notice is to inform the public that the FAA has asked ARAC to provide advice and recommendation on the following harmonization task:

Engine Windmilling Imbalance Loads. Define criteria for establishing the maximum level of engine imbalance that should be considered, taking into account fan blade failures and other likely causes of engine imbalance. Develop an acceptable methodology for determining the dynamic airframe loads and accelerations resulting from an imbalanced windmilling engine. Validate the proposed methodology with a demonstrative ground or flight test program (as deemed appropriate by ARAC) that has the objective of establishing confidence in the proposed methodology. The validation process should answer the following questions: (1) What are the parameters to consider in determining the minimum degree of dynamic structural modeling needed to properly represent the imbalanced condition; (2) Is the proposed analytical methodology taken in conjunction with the traditional ground vibration tests, flight flutter tests, and tests performed under § 33.94 of 14 CFR sufficient, or are there additional tests and measurements that need to be made to address this condition?

Within 12 months from the date of the published notice of new task in the Federal Register, complete the above tasks and submit a report to the FAA with recommendations detailing the criteria and methodology.

ARAC Acceptance of Task

ARAC has accepted this task and has chosen to assign it to the existing Loads and Dynamics Harmonization Working Group. The working group will serve as staff to ARAC to assist ARAC in the analysis of the assigned task. Working group recommendations must be reviewed and approved by ARAC. If ARAC accepts the working group's recommendations, it forwards them to the FAA as ARAC recommendations.

Working Group Activity

The Loads and Dynamics harmonization Working Group is expected to comply with the procedures adopted by ARAC. As part of the

procedures, the working group is expected to:

1. Recommend a work plan for completion of the tasks, including the rational supporting such a plan, for consideration at the meeting of ARAC to consider Transport Airplane and Engine Issues held following publication of this notice.

2. Give a detailed conceptual presentation of the proposed recommendations, prior to proceeding with the work stated in item 3 below.

3. For each task, draft appropriate documents with supporting analyses, and/or any other related guidance material or collateral documents the working group determines to be appropriate.

4. Provide a status report at each meeting of ARAC held to consider Transport Airplane and Engine Issues.

Participation in the Working Goup

The Loads and Dynamics Harmonization Working Group is composed of experts having an interest in the assigned task. A working group member need not be a representative of a member of the full committee.

An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the tasks, and stating the expertise he or she would bring to the working group. The request will be reviewed by the assistant chair, the assistant executive director, and the working group chair, and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of ARAC are necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of ARAC will be open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Loads and Dynamics harmonization Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on June 26, 1996.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 96–16960 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–13–M

Time for Public Scoping Meeting To Be Held in Lexington, KY on Environmental Impact Statement; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of correction of time.

SUMMARY: This notice corrects the time previously published in the Federal Register June 25, 1996, (FR 96–16109, page 32883 in the third column over to page 32884) for a public scoping meeting to be held in Lexington, Kentucky, on July 31, 1996, to obtain input from the public on the planned Environmental Impact Statement. The corrected ending time for the meeting is 8 p.m.

The date, starting time, and address for the meeting remains unchanged: July 31, 1996, Wednesday, 6 p.m. at Paul Laurence Dunbar High School cafeteria located on the lower level, 1600 Man O' War Blvd., Lexington, Kentucky.

Issued in Memphis, Tennessee, June 26, 1996.

LaVerne F. Reid,

Manager, Memphis Airports District Office.

[FR Doc. 96–17044 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on General Aviation and Business Airplane and Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss harmonization priorities and issues related to certification and validation of foreign products.

DATES: The meeting will be held July 29, 1996 for General Aviation and Business Airplane (GABA) Issues, starting at 9 a.m. and July 31 through August 1, 1996 for Transport Airplane and Engine (TAEI) Issues, starting at 8:30 a.m. Arrange for oral presentations by July 19, 1996.

ADDRESSES: The meeting will be held at The Boeing Company Renton Facility, 10–16 Building, Room 11D5, 535 Garden Avenue North, Renton WA.

FOR FURTHER INFORMATION CONTACT: Brenda Courtney, Office of Rulemaking, FAA, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3327.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on July 29 (GABA) and July 31 through August 1, 1996 (TAEI), at The Boeing Company Renton Facility, 10–16 Building, Room 11D5, 535 Garden Avenue North, Renton WA. The agenda for the meeting will include:

- Opening Remarks
- Review of Action Items
- Discussion of 13th Annual International Harmonization Conference, June 3–7, San Diego, CA
- Discussion of harmonization priorities
- Discussion of certification/validation of foreign products
- Reports of Working Groups (Time permitting)
- Schedule future meetings

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by July 19, 1996, to present oral statements at the meeting. The public may present written statements to the committee, at any time, by providing 40 copies to the Assistance Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on June 26, 1996.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 96–17043 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–13–M

Aviation Security Advisory Committee; Meeting

AGENCY: Federal Aviation Administration, DOT.

SUMMARY: Notice is hereby given of a meeting of the Aviation Security Advisory Committee.

DATES: The meeting will be held July 17, 1996 from 9 a.m. to 12 p.m.

ADDRESS: The meeting will be held in the MacCracken Room, tenth floor, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone 202–267–7451.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 11), notice is hereby given of a meeting of the aviation Security Advisory Committee to be held July 17, 1996, in the MacCracken Room, tenth floor, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. The agenda for the meeting will include reports on the Universal Access System, Rewrites of FAR 107 and 108, the status of RTCA Access Control Standards, and the domestic security baseline.

Attendance at the July 17, 1996, meeting is open to the public but is limited to space available. Members of the public may address the committee only with the written permission of the chair, which should be arranged in advance. The chair may entertain public comment if, in its judgment, doing so will not disrupt the orderly progress of the meeting and will not be unfair to any other person.

Members of the public are welcome to present written material to the committee at anytime. Persons wishing to present statements or obtain information should contact the Office of the Associate Administrator for Civil Aviation Security, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone 202–267–7451.

Issued in Washington, D.C. on June 25, 1996.

Quinten T. Johnson,

Acting Director, Office of Civil Aviation Security Policy and Planning.

[FR Doc. 96–16961 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Howell, MI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for the proposed construction of the East Howell Area I–96 Interchange in Genoa Township, Livingston County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. James Kirschensteiner, Programs and Environmental Engineer, Federal Highway Administration, 315 W. Allegan Street, Lansing, Michigan 48933, Telephone (517) 377–1880 or Mr. Ron Kinney, Manager, Environmental Section, Bureau of Transportation Planning, Michigan Department of Transportation, P.O. Box 30050, Lansing, Michigan 48909, Telephone (517) 335–2621.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Michigan Department of Transportation (MDOT), the Southeast Michigan Council of Governments (SEMCOG), and the Livingston County Road Commission (LCRC), is preparing an Environmental Impact Statement (EIS) for the proposed construction of a new Interchange along I–96 between Chilson Road and Dorr Road in Livingston County. The proposed project would require a new interchange which is needed to improve access to the East Howell Area. Traffic operations at the Lake Chemung/I–96 Interchange, which is a partial interchange, are not able to accommodate current and future traffic volumes.

A Major Investment Study is underway to narrow the range of alternative investment strategies. The alternatives under consideration include (1) No Build, (2) the construction of a new I–96 Interchange at a new location, and (3) the reconstruction of the Lake Chemung/I–96 Interchange.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State, and local agencies, and had a Scoping Document attached. Letters requesting comments have also been sent to organizations and citizens who have previously expressed, or are known to have interest in this proposal. Two public information meetings were held to date under the Major Investment Study on April 17, 1996 and June 19, 1996, to provide the public an opportunity to discuss the proposed action. A public hearing will also be held on the Draft Environmental Impact Statement. Public notice will be given of the time and place of the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing. A Scoping Meeting is scheduled for Thursday, July 25, 1996, and will be held at 9:30 a.m. at the Livingston County Road Commission Building, 3535 Grand Oaks Drive, Howell, Michigan.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: June 24, 1996.

James J. Steele,

Division Administrator, Lansing, Michigan.

[FR Doc. 96–16903 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement, St. Paul, MN

AGENCY: Federal Highway Administration.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for the possible reconstruction of Ayd Mill Road, in St. Paul, Minnesota.

FOR FURTHER INFORMATION CONTACT: William Lohr, Federal Highway Administration, Suite 490 Metro Square Building, 121 East Seventh Place, St. Paul, Minnesota, 55101, Telephone (612) 290–3241; or Michael C. Klassen, Project Manager, St. Paul Department of Public Works, 800 City Hall Annex, 25 West 4th Street, St. Paul, MN 55101, Telephone (612) 266–6209.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department of Transportation and the City of St. Paul, will prepare an EIS on a proposal for the improvement of Ayd Mill Road. Ayd Mill Road is located in the southwestern portion of the City of St. Paul and runs in a northwesterly direction from I–35E near Jefferson Avenue to the intersection of Selby Avenue and Pascal Street. The total length of the project is approximately 1.8 miles.

A direct connection between I–35E and the south end of Ayd Mill Road was postponed in the early 1980's until a connection to I–94 on the north had been studied. An Ayd Mill Road Task Force, comprised of neighborhood representatives and the City Planning Commission, concluded in 1988 that issues in the Ayd Mill Road corridor were serious enough to warrant further study in an EIS.

An EIS Scoping Process was initiated in 1993. Working with the organizations they represent, Task Force members developed and evaluated ten major alternatives, each with sub-alternatives. In May 1996, the St. Paul City Council determined that seven alternatives will be carried forward in the Draft EIS. The alternatives to be studied in the Draft EIS include:

- No Build

- Transportation Systems Management Plan and Travel Demand Management (TSM/TDM)
- Replace Ayd Mill Road with a Linear Park
- Two-lane City Street (35 mph) on the Hybrid alignment with a direct connection to I–35E on the south and a split diamond interchange with I–94
- Four-lane roadway (40 mph) on the Hybrid alignment with a direct connection to I–35E on the south and a split diamond interchange with I–94
- Four-lane expressway (45 mph) on the Railroad Spur alignment with a direct connection to I–35E on the south and a freeway-to-freeway interchange with I–94
- Limited access freeway (45 mph) on the Railroad Spur alignment with a direct connection to I–35E on the south and a freeway-to-freeway interchange with I–94
- High Occupancy Vehicle (HOV) lanes as sub-alternatives for the last four alternatives

The Ayd Mill Road Scoping Document and Draft Scoping Decision Document was published February 6, 1995. A Public Scoping meeting was held March 2, 1995 to receive comments. After a delay due to administrative matters, the Ayd Mill Road Scoping Decision Document was published May 13, 1996. Copies of both documents were distributed to agencies, interested persons, elected and appointed officials and libraries. A press release was published to inform citizens of the documents' availability.

Coordination has been initiated and will continue with appropriate Federal, State and local agencies, and private organizations and citizens who have previously expressed or are known to have an interest in this project. A formal public hearing will be held in the project area following release of the Draft EIS. Public notice will be given for the time and place of the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that all significant issues relating to this proposed action are addressed, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed project and the EIS should be directed to the City of St. Paul at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 10.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: June 13, 1996.

Alan J. Friesen,

Engineering and Operations Engineer, Federal Highway Administration.

[FR Doc. 96–16752 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–22–M

Maritime Administration

Approval of Request for Removal Without Disapproval From the Roster of Approved Trustees

Notice is hereby given, pursuant to Public Law 100–710 and 46 CFR Part 221, that Fifth Third Bank, with offices at Fifth Third Center, Cincinnati, Ohio 45263, has requested removal, without disapproval, from the Roster of Approved Trustees. In its request for removal, Fifth Third Bank, stated it is no longer necessary for the Bank to maintain its status as a Maritime Administration Trustee.

Therefore, pursuant to Public Law 100–710 and 46 CFR Part 221, Fifth Third Bank, Cincinnati, Ohio, is removed from the Roster of Approved Trustees.

This notice shall become effective on date of publication.

Dated: June 27, 1996.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 96–16936 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–81–P

Approval of Request for Removal Without Disapproval From the Roster of Approved Trustees

Notice is hereby given, pursuant to Public Law 100–710 and 46 CFR Part 221, that Seattle-First National Bank, with offices at 701 Fifth Avenue, 11th Floor, Seattle, Washington 98124, has requested removal, without disapproval, from the Roster of Approved Trustees. In its request for removal, Seattle-First National Bank, stated it is no longer necessary for the Bank to maintain its status as a Maritime Administration Trustee.

Therefore, pursuant to Public Law 100–710 and 46 CFR Part 221, Seattle-First National Bank, Seattle, Washington, is removed from the Roster of Approved Trustees.

This notice shall become effective on date of publication.

Dated: June 27, 1996.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 96–16937 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–81–P

Surface Transportation Board [1]

[Docket No. AB–6 (Sub-No. 374)]

Burlington Northern Railroad Company—Adverse Discontinuance—in Denver, CO

[Docket No. AB–33 (Sub-No. 92)]

Union Pacific Railroad Company—Adverse Discontinuance—in Denver, CO

AGENCY: Surface Transportation Board.

ACTION: Notice of findings.

SUMMARY: The Board has found that the public convenience and necessity permit: (1) Burlington Northern Railroad Company to discontinue trackage rights and service over a section of rail line generally running along National Western Drive (in the ''National Western Drive Corridor''), from the intersection of the track, on the south, with the rail line that runs generally along the east bank of the South Platte River (in the ''River Corridor''), to the inactive connection with the line of track of the Denver and Rio Grande Western Railroad Company along Franklin Street, on the north, and to, but not across, the right-of-way for Race Court, on the northeast, in the Denver Stockyards, Denver, CO, a total distance of approximately 0.8 miles; and (2) Union Pacific Railroad Company to discontinue trackage rights and service over two sections of rail line, totaling approximately 1.2 miles in distance, in the Denver Stockyards, Denver, CO, consisting of: (a) in the ''River Corridor,'' the section of line adjacent to the east bank of the South Platte River, from a point 600 feet north of the intersection of the River Corridor track with the northwestern right-of-way line of National Western Drive to the west right-of-way line of Franklin Street; and (b) in the ''National Western Drive Corridor,'' the section of line adjacent to National Western Drive, from the intersection of the line with the south right-of-way line of East 46th Street to the intersection of the line with the east

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This notice relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903 and 10904.

right-of-way line of Franklin Street. The Board's decision will be effective 30 days after publication of this notice and a certificate will be issued unless the Board also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to continue; and (2) it is likely that the assistance would fully compensate the railroad.

DATES: Any financial assistance offer must be filed with the Board and the railroad no later than July 12, 1996. Any offer previously made must be remade by the due date.

ADDRESSES: Send offers referring to Docket No. AB–6 (Sub-No. 374) or Docket No. AB–33 (Sub-No. 92) to: (1) Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) in the former proceeding, Burlington Northern's representative: Peter M. Lee, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102, or, in the latter proceeding, Union Pacific's representative: Joe Anthofer, Union Pacific Railroad Company, 1416 Dodge Street, Omaha, NE 68179. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer mailed to the Board: ''Office of Proceedings, AB-OFA.''

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: These proceedings are consolidated with Docket Nos. AB–452 (Sub-No. 1X), *The Western Stock Show Association—Abandonment Exemption—in Denver, CO;* and AB–446 (Sub-No. 2), *Denver Terminal Railroad Company—Adverse Discontinuance—in Denver, CO.*

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: June 12, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–16991 Filed 7–2–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Elimination of the Bulletin Index-Digest System; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The IRS provides a method for researching tax laws, regulations, and other tax matters published in the Internal Revenue Bulletin called the ''Bulletin Index-Digest System.'' Due to budgetary restraints, the IRS proposes to eliminate the Bulletin Index-Digest System. The IRS invites the general public and other Federal agencies to take this opportunity to comment on the proposed elimination of the Bulletin Index-Digest System.

DATES: Written comments should be received on or before August 3, 1996 to be assured consideration.

ADDRESSES: Direct all written comments to Michael Siegerist, Internal Revenue Service, T:FP:F:CD, Room 5560, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: In accordance with OMB Circular A–130 and Section 2 of the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(d)), the IRS is soliciting comments from the public on the elimination of the Bulletin Index-Digest System.

Bulletin Index-Digest System

The Bulletin Index-Digest System provides a method for researching matters published since 1952 in the Internal Revenue Bulletin (which is the authoritative instrument of the Commissioner for announcing official rulings and procedures of the Internal Revenue Service and for publishing Public Laws, Treasury Decisions, and other items of general interest). It is divided into four Services as follows:

Service No. 1—*Income Tax,* Publication 641

Service No. 2—*Estate and Gift Taxes,* Publication 642

Service No. 3—*Employment Taxes,* Publication 643

Service No. 4—*Excise Taxes,* Publication 644

Each Service consists of a basic volume and the latest cumulative supplement. The cumulative supplements are issued quarterly for the Income Tax Service, and semi-annually for the other three Services.

The major portion of the Bulletin Index-Digest System consists of digests (brief summaries) of revenue rulings and revenue procedures alphabetically arranged under topical headings and subheadings. Also included are digests of Supreme Court decisions, adverse Tax Court decisions on cases involving tax issues in which the Commissioner has announced acquiescence or nonacquiescence, Executive Orders, Treasury Department Orders, Delegation Orders, and other miscellaneous items published in the Bulletin.

The digests are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

The IRS proposes to eliminate the Bulletin Index-Digest System because of the excessive costs incurred to produce this product.

Approved: June 27, 1996.

Garrick R. Shear,

Acting National Director, Tax Forms and Publications Division.

[FR Doc. 96–17005 Filed 7–2–96; 8:45 am]

BILLING CODE 4830–01–M

Corrections

Federal Register
Vol. 61, No. 129
Wednesday, July 3, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Agricultural Telecommunications Program; Fiscal Year 1996; Solicitation of Proposals

Correction

In notice document 96–15851 beginning on page 32282 in the issue of Friday, June 21, 1996, make the following correction:

On page 32283, in the third column, under (B) Proposal Narrative, in the fourth line, ''14'' should read ''15''.

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Distance Learning and Telemedicine Grant Program

Correction

In notice document 96–16321 appearing on page 33639 in the issue of Thursday, June 27, 1996, make the following corrections:

On page 33639, in the third column, in the sixth line, between ''Virginia,'' and ''Puerto Rico'' insert ''West Virginia''.

On the same page, in the same column, in the first full paragraph, in the fourth line, ''(202) 205-3934'' should read ''(202) 205-2924''.

On the same page, in the same column, in the second paragraph, in the fourth line, ''(292(205-2921'' should read ''(202) 205-2921''.

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1770–96; AG Order No. 2032–96]
RIN 1115–AE26

Extension of Designation of Rwanda Under Temporary Protected Status Program

Correction

In notice document 96–14719 beginning on page 29428 in the issue of Monday, June 10, 1996, make the following corrections:

1. On page 29428, in the third column, under **SUPPLEMENTARY INFORMATION:**, in the ninth line, ''designed'' should read ''designated''.

2. On the same page, in the same column, in the last paragraph, in the seventh line, ''registration'' should read ''registrants''.

3. On page 29429, in the first column, in the sixth line from the top, ''required'' should read ''requires''.

4. On the same page, in the same column, in the fourth line from the bottom, ''July 10, 1996'' should read ''June 10, 1996''.

5. On the same page, in the second column, in paragraph (5), in the seventh line, ''povisions'' should read ''provisions''.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 111

Electrical Engineering Requirements for Merchant Vessels

Correction

In rule document 96–16318 appearing on page 33045 in the issue of Wednesday, June 26, 1996, make the following correction:

§ 111.53–1 [Corrected]

On page 33045, in the second column, the section heading ''§ 111.53 [Corrected]'' should read ''§ 111.53–1 [Corrected]''.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 28471; Amendment No. 121-257, 135-64]

RIN 2120-AF08

Training and Qualification Requirements for Check Airmen and Flight Instructors

Correction

In rule document 96–14084 beginning on page 30734 in the issue of Monday, June 17, 1996, make the following corrections:

§121.412 [Corrected]

1. On page 30742, in the second column, in §121.412(a), in the second line, ''§121.412'' should read ''§121.414''.

2. On the same page, in the third column, in §121.412(c), in the second line, ''service'' should read ''serve''.

§135.340 [Corrected]

3. On page 30745, in the third column, in §135.340(a)(2), in the fourth line, ''as'' should read ''an''.

BILLING CODE 1505–01–D

Federal Register

Wednesday
July 3, 1996

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 622, et al.

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Interim Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 622, 638, 641, 642, 645, 646, 647, 653, 658, 659, 669, and 670

[Docket No. 960313071–6169–022; I.D. 050996D]

RIN 0648–AI20

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic

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

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS is consolidating eleven CFR parts into one new CFR part. The new part contains regulations implementing management measures contained in the fishery management plans (FMPs) for the following domestic fisheries in the Caribbean, Gulf of Mexico, and South Atlantic: Caribbean coral, Caribbean reef fish, Caribbean spiny lobster, Gulf red drum, Gulf reef fish, Gulf shrimp, Gulf and South Atlantic coastal migratory pelagics, Gulf and South Atlantic corals, South Atlantic red drum, South Atlantic snapper-grouper, and South Atlantic shrimp. This interim final rule reorganizes management measures into a logical and cohesive order, removes duplicative and outdated provisions, and makes changes to improve readability and clarity and to achieve uniformity in regulatory language. This interim final rule also amends references to Paperwork Reduction Act (PRA) information-collection requirements to reflect the consolidation; revises the existing, approved collections of information related to submissions of permit applications to make them less burdensome; and makes revisions to existing approved collections of information related to reporting requirements to improve uniformity of regulatory language. The intended effect of this interim final rule is to make the regulations more concise, better organized, more uniform among fisheries, and thereby easier for the public to use. This action is part of the President's Regulatory Reinvention Initiative.

DATES: Interim final rule effective July 1, 1996. Written comments on the interim final rule must be received on or before August 2, 1996.

ADDRESSES: Requests for and comments on the interim final rule must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments regarding burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Perry Allen or Rod Dalton, NMFS, 813–570–5326.

SUPPLEMENTARY INFORMATION:

Background

In March 1995, President Clinton issued a directive to Federal agencies regarding their responsibilities under his Regulatory Reinvention Initiative. This initiative is part of the National Performance Review and calls for comprehensive regulatory reform. The President directed all agencies to undertake a review of all their regulations, with an emphasis on eliminating or modifying those that are obsolete, duplicative, or otherwise in need of reform. This interim final rule is intended to carry out the President's directive with respect to those regulations implementing the following FMPs for domestic fisheries in the Caribbean, Gulf of Mexico, and South Atlantic. These FMPs were prepared under the Magnuson Act by the Caribbean, Gulf of Mexico, and/or South Atlantic Fishery Management Councils (CFMC, GMFMC, SAFMC, respectively).

FMP title	Responsible council(s)	Geographical area
Atlantic Coast Red Drum FMP	SAFMC	Mid-Atlantic and South Atlantic.
FMP for Coastal Migratory Pelagic Resources	GMFMC/SAFMC	Gulf,[1] Mid-Atlantic [1 2] and South Atlantic.[1 3]
FMP for Coral and Coral Reefs of the Gulf of Mexico	GMFMC	Gulf.
FMP for Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region.	SAFMC	South Atlantic.
FMP for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands.	CFMC	Caribbean.
FMP for the Red Drum Fishery of the Gulf of Mexico	GMFMC	Gulf.[1]
FMP for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands.	CFMC	Caribbean.
FMP for the Reef Fish Resources of the Gulf of Mexico	GMFMC	Gulf.[1]
FMP for the Shrimp Fishery of the Gulf of Mexico	GMFMC	Gulf.[1]
FMP for the Shrimp Fishery of the South Atlantic Region	SAFMC	South Atlantic.
FMP for the Snapper-Grouper Fishery of the South Atlantic Region..	SAFMC	South Atlantic.[1 4]
FMP for the Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands.	CFMC	Caribbean.

[1] Regulated area includes adjoining state waters for purposes of data collection and quota monitoring.
[2] Only king and Spanish mackerel are managed under the FMP in the Mid-Atlantic.
[3] Bluefish are not managed under the FMP in the South Atlantic.
[4] Bank, rock, and black sea bass and scup are not managed by the FMP north of 35°15.3′ N. lat., the latitude of Cape Hatteras Light, NC.

Consolidation of Regulations Into One CFR Part (50 CFR Part 622)

Currently, regulations implementing the FMPs for Caribbean coral, Caribbean reef fish, Caribbean spiny lobster, Gulf red drum, Gulf reef fish, Gulf shrimp, Gulf and South Atlantic coastal migratory pelagics, Gulf and South Atlantic corals, South Atlantic red drum, South Atlantic snapper-grouper, and South Atlantic shrimp appear in eleven separate parts of title 50 of the CFR. NMFS, through this rulemaking, removes the eleven parts (50 CFR parts 638, 641, 642, 645, 646, 647, 653, 658, 659, 669, and 670) and consolidates the regulations contained therein into one new part (50 CFR part 622). This

consolidated regulation provides the public with a single reference source for the Federal marine fisheries regulations specific to the Caribbean, Gulf of Mexico, and South Atlantic. The restructuring of the eleven parts into a single part results in one set of regulations that is more concise, clearer, and easier to use than the eleven separate parts. General regulations pertaining to all fisheries, formerly at 50 CFR part 620, have also been restructured and consolidated and now appear in 50 CFR part 600. Many provisions in these general fisheries regulations apply to the fisheries in the EEZ in the Caribbean, Gulf of Mexico, and South Atlantic.

Reorganization and Elimination of Regulations

In new part 622, NMFS has reorganized the consolidated management measures in a more logical and cohesive order. Because portions of the existing regulations contain identical or nearly identical provisions, similar measures have been combined and restructured. Sections relating to purpose and scope, definitions, relation to other laws, vessel identification, prohibitions, facilitation of enforcement, penalties, and specifically authorized activities, in each of the eleven existing parts have been combined into single, respective sections in part 622. For example, whereas the existing regulations contain eleven, nearly identical purpose and scope sections, part 622 contains a single purpose and scope section that addresses all applicable fisheries. As a result of this consolidation effort, NMFS removed numerous duplicative provisions from the regulations.

Throughout part 622, types of management measures and provisions common to multiple fisheries are grouped together under a single section heading, e.g., minimum sizes for all fisheries are located in a single section. Within sections, information or requirements of general applicability are stated in an introductory paragraph to minimize duplication; any aspects unique to a particular fishery are addressed in subsequent paragraphs within the section. Paragraph headings have been added for ease in identifying measures, and regulatory language has been revised to improve clarity and consistency. No substantive changes were made to the regulations by this reorganization, or by the removal of duplicative provisions.

Changes To Improve Uniformity Among Regulations

In the Southeast Region, many fishermen and dealers participate in multiple fisheries. Making regulatory requirements among fisheries more consistent simplifies the overall management regime, enhances the ability of all parties, including NMFS personnel, to understand and remember regulations, and improves compliance. As part of this regulatory consolidation process, NMFS has standardized regulatory provisions among fisheries where it was possible to do so without significant change in regulatory impact or adverse impact on effective management. The changes involved and the rationale and expected impacts are discussed below. NMFS invites comment on these changes.

Permits and Fees

A person applying for a permit for a fishery in which a fish trap or sea bass pot will be used is required, under existing regulations, to indicate the desired color code for identifying buoys that are attached to traps/pots. The current regulations for the Gulf reef fish fishery explicitly state that white is not an acceptable color code, and white has not been accepted as a color code in other trap/pot fisheries. White is not acceptable because buoys are white. Therefore, a white color code would be indistinguishable from a buoy that has no color code and would frustrate enforcement. This rule makes the explicit statement in the reef fish regulations applicable to all trap/pot fisheries and merely provides advance notification to the permit applicant, of the existing policy—there is no additional regulatory effect.

Existing regulations require that the Director, Southeast Region, NMFS (Regional Director) be notified within 15 days of any change in pertinent information provided with a permit application. This rule extends the time period to 30 days and is, therefore, less restrictive.

The option for a vessel permit for king or Spanish mackerel to be transferred upon sale of the vessel and for the new owner to fish under the preceding owner's permit for up to 60 days is deleted in this rule. This complies with the intent of the Gulf of Mexico and South Atlantic Fishery Management Councils that only owners who have documented their permit eligibility be allowed to participate in the fishery. The change is necessary to achieve consistent transfer provisions among fisheries. This does not alter the existing requirement that all new owners apply for a permit.

Recordkeeping and Reporting

Changes have been made to achieve consistency regarding deadlines for submission of required reports by commercial vessel owners or operators. This rule requires that all such reports be postmarked not later than 7 days after the end of each trip. Deadlines for submission in the current regulations are couched in various terms, such as ''transmitted'' and ''received,'' and, for Gulf reef fish, in terms of ''on a monthly basis (or more frequently, if requested by the Science and Research Director).'' The Science and Research Director currently requires submission of required reports by commercial vessel owners and operators on a trip basis in all fisheries where such reports are required. Regulations for the snapper-grouper fishery specify a deadline of postmarked not later than the third day after sale of fish, and the king and Spanish mackerel regulations contain no submission deadline. This added deadline clarifies an implied but unspecified deadline for king and Spanish mackerel, but has no immediate impact on fishermen because no vessels are currently selected to submit reports in the king and Spanish mackerel fishery. For snapper-grouper, the new deadline is expected to be less restrictive on average.

This rule standardizes requirements for submission of required reports for charter vessel and headboat owners or operators to achieve consistency with the Gulf reef fish requirements. The reporting deadline for charter vessels established by this rule is not later than 7 days after the end of the reporting period. Current regulations for snapper-grouper charter vessels and headboats require submission on a periodic basis, as specified by the Science and Research Director; for coastal migratory pelagic charter vessels and headboats, weekly submission is required but no deadline is specified. The new deadlines make the requirements consistent among fisheries and provide needed specificity. The new requirements are generally less burdensome than existing requirements.

This rule clarifies that the deadline for submission of Gulf reef fish and snapper-grouper dealer reports is 5 days after the end of the month, unless modified by the Science and Research Director. Current regulations are less specific, requiring submission as specified by the Science and Research Director for Gulf reef fish dealers and at monthly intervals, or more frequently, if requested, for snapper-grouper dealers.

This rule requires submission of negative reports (no fish received) for snapper-grouper and coastal migratory pelagics dealers, if selected to report. This is a minimal reporting burden expected to occur infrequently, but enhances enforceability of reporting requirements. This requirement has been approved by OMB under OMB control number 0648–0016.

This rule adds a provision allowing a dealer reporting South Atlantic snapper-grouper, other than wreckfish, to report via facsimile (fax). This is a less restrictive alternative provided for the convenience of dealers.

The requirement to make fish available for inspection by the Science and Research Director or an authorized officer is applied to participants in the Caribbean reef fish and Caribbean spiny lobster fisheries. This standardizes the requirement among all fisheries regulated by this part and will improve enforceability. Additional burden associated with this change is minimal since access to fish is all that is required.

This rule provides a requirement for a charter vessel owner or operator in the coastal migratory pelagics fishery, who has not been selected to submit logbooks, to provide verbal responses to seven, simple questions, if selected for an interview. This standardizes the requirement among all fisheries regulated by this part that have a charter vessel sector. This is a less burdensome alternative for obtaining information on an as-needed basis compared to selecting the entity to report on a continuing basis under authority in the current regulations.

This rule authorizes the Science and Research Director to select for reporting a snapper-grouper vessel that operates in state waters adjoining the EEZ without a Federal permit. This standardizes the requirement among fisheries and is necessary to ensure comprehensive data collection essential for fisheries management. The purpose and scope section of the existing snapper-grouper regulations states that recordkeeping and reporting requirements apply in the EEZ and adjoining state waters. The existing snapper-grouper regulations require the owner or operator of a permitted vessel, charter vessel, or headboat operating in adjoining state waters to report, if selected. The change imposed by this interim final rule applies that same requirement to an owner or operator of an unpermitted vessel operating in adjoining state waters. This is necessary to ensure that all sources of fishing effort and fishing mortality affecting the managed stock are properly accounted for in the Federal management regime. NMFS is unaware of any snapper-grouper vessels that operate exclusively in state waters, and, therefore, are not permitted. Accordingly, this authorization should have no immediate effect on fishermen and would not impose an additional reporting burden.

Vessel and Gear Identification

This rule standardizes most vessel and gear identification requirements among fisheries; provides less restrictive marking requirements for vessels 25 ft (7.6 m) or less in length in all fisheries; and makes changes in marking requirements to achieve consistency, e.g., simply requires numbers and color codes on buoys to be easily distinguished, located, and identified, versus the current differing requirements regarding size of such markings in various fisheries. These changes: (1) Enhance consistency; (2) address prior complaints from small vessel owners regarding difficulty of complying with marking requirements; (3) relieve restrictions; and (4) will not impair enforcement.

The rule also requires that, in the South Atlantic snapper-grouper fishery, a valid identification tag issued by the Regional Director be attached to each sea bass pot on board a vessel with a Federal permit. Current regulations require this only for pots used or possessed in the EEZ; the revised language requires pots on board a vessel with a Federal permit to have the tag attached while in state waters also. This change makes this aspect of trap marking requirements consistent in the Gulf and South Atlantic and will enhance enforceability. NMFS is not aware of any vessels with Federal snapper-grouper permits that fish exclusively in state waters; therefore, this change is not expected to impose an additional burden. That is, if such vessels fish in Federal waters, the pots would have to be tagged while in Federal waters under current regulations. The change would simply require that tags remain on the trap while in state waters.

Prohibited Gear and Methods

Use of explosives is prohibited currently for most fisheries because of the obvious detrimental impacts on nontarget fishery resources and habitat. To achieve consistency, this rule prohibits the use of explosives in the Gulf shrimp fishery and makes explicit the implied prohibition in the current coral regulations. NMFS is unaware of any use of explosives in these fisheries; therefore, this change is preventative and results in no additional regulatory burden on current fishery participants.

Landing Fish Intact

For all fisheries for which fish must be landed intact, this rule allows such fish to be gilled and scaled, in addition to being eviscerated as allowed under current regulations. Currently only the Gulf reef fish regulations allow such fish to be gilled and scaled. This change would achieve consistency among fisheries, lessen existing restrictions, and not impair the effectiveness of other management measures for which the intact requirement was established.

Limitations on Fish Traps, Sea Bass Pots, and Spiny Lobster Traps

Current regulations require that, in the Caribbean reef fish fishery, a trap owner's written authorization for another person to pull or tend his traps must specify the time period for such authorization. To achieve consistency, provide for effective management and enforcement, and protect the owner's interests, this rule adds the same requirement to the Caribbean spiny lobster fishery.

Specifically Authorized Activities

Current regulations for all fisheries being consolidated by this rule provide for the appropriate authority to authorize, for the acquisition of information and data, activities that are otherwise prohibited. In addition, under the Gulf and South Atlantic coral regulations, the Regional Director may issue a permit for an individual to take or possess prohibited coral when such prohibited coral will be used for a scientific, educational, or restoration purpose. New regulations at 50 CFR 600.745, entitled ''Scientific research activity, exempted fishing, and exempted educational activity,'' cover activities that are otherwise prohibited and the take of prohibited coral for a scientific, educational, or restoration purpose. Accordingly, 50 CFR 600.745 is referred to in the consolidated regulations in lieu of including these provisions.

Delegation of Authority

Under NOAA Administrative Order 205–11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated to the Assistant Administrator for Fisheries, NOAA (AA), the authority to sign material for publication in the Federal Register.

Classification

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

Paperwork Reduction Act

This rule contains collection-of-information requirements subject to the PRA.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirement of the PRA, unless that collection of information displays a currently valid OMB Control Number.

Approved Collection-of-Information Requirements

The following collection-of-information requirements have already been approved by OMB under the following control numbers:

a. *0648–0013*—Dealer reports estimated at 0.085 hours per response. Dealer recordkeeping estimated at 0.667 hours per response. Trip interviews estimated at 0.167 hours per response.

b. *0648–0016*—Vessel reports: (1) Commercial vessel logbook reports estimated at 0.18 hours per response, (2) charter vessel logbook reports estimated at 0.20 hours per response, and (3) headboat logbook reports estimated at 0.20 hours per response. Coral reports: (1) Reports for individuals permitted to harvest prohibited coral, allowable octocoral, or live rock or deposit live rock estimated at 0.25 hours per response, and (2) advance notification of aquacultured live rock harvest estimated at 0.033 hours per response. Negative reports for fishermen and dealers are estimated at 0.033 and 0.050 hours per response, respectively.

c. *0648–0205*—Vessel permits estimated at 0.33 hours per response. Dealer permits estimated at 0.83 hours per response. Coral permits estimated at 0.25 hours per response.

d. *0648–0262*—Wreckfish share transfers estimated at 0.25 hours per response.

e. *0648–0305*—Gear identification requirements estimated at 0.33 hours per response.

f. *0648–0306*—Vessel identification requirements estimated at 0.75 hours per response.

The estimated response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information.

Revision of Approved Collection-of-Information Requirements

This rule revises existing collection-of-information requirements regarding submissions of applications for coral permits, vessel permits, and dealer permits. The collections of information associated with such applications are currently approved under OMB Control No. 0648–0205. In accordance with the President's Reporting Frequency Reduction Project, this rule reduces the frequency with which an applicant must apply for renewal of a coral, vessel, or dealer permit. Specifically, an applicant must apply only every other year in lieu of annually. A permit will continue to be issued for a 1-year period but will be automatically renewed for a second year, provided a vessel owner/operator or dealer has met the specific requirements for the permit, all required reports have been submitted, and the permit is not subject to sanction or denial. An applicant will be given a timely opportunity to correct any deficiency before a permit expires. This revision relieves a restriction regarding the frequency of responses required. The public reporting burdens for the approved collections, in terms of estimated time required per response, are unchanged by this revision. Send comments regarding burden estimates, or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

The changes necessary to achieve more uniform reporting requirements, discussed above under ''Recordkeeping and reporting'', have been approved by OMB under the approved collections of information listed above.

Section 3507(c)(B)(i) of the PRA requires that agencies inventory and display a current control number assigned by the Director, OMB, for each agency information collection. Section 902.1(b) identifies the location of NOAA regulations for which OMB approval numbers have been issued. Because this interim final rule codifies many recordkeeping and reporting requirements, 15 CFR 902.1(b) is revised to reference correctly the new sections resulting from the consolidation.

Administrative Procedure Act

This interim final rule consolidates 11 sets of regulations for the fisheries of the Caribbean, Gulf of Mexico, and South Atlantic into one comprehensive rule; reorganizes management measures in logical order; eliminates language that was duplicated among the various existing rules; and makes minor changes in certain regulatory provisions to provide a regulatory regime that is more consistent among all fisheries and less complex. While some of these minor changes may be of the type for which 5 U.S.C. 553 requires notice and opportunity for comment, to do so in this instance would be impractical and contrary to the public interest. The consolidation for the fisheries of the Caribbean, Gulf of Mexico, and South Atlantic is just one component of a comprehensive consolidation and restructuring of all of NMFS' fisheries regulations. That consolidation will be effective on July 1, 1996, and the Caribbean, Gulf of Mexico, and South Atlantic consolidation must be effective on that date as well or regulatory gaps and public confusion will result. The majority of changes in the Caribbean, Gulf of Mexico, and South Atlantic consolidation, including most of those that change existing rights or obligations, have neutral or less restrictive regulatory effects. Those few changes that result in greater restrictions or obligations are not likely to have any immediate effect for the reasons stated in the preamble. None of the changes are expected to increase regulatory burden significantly. Accordingly, the AA, under 5 U.S.C. 553(b)(3)(B), for good cause finds that providing advance notice and opportunity for public comment is impractical and contrary to the public interest. Public comment is invited for 30 days. If any significant, unforeseen regulatory effects are identified during public comment, appropriate changes will be made in the final rule. For the same reasons, the AA, under 5 U.S.C. 553(d)(3), for good cause waives the requirement to delay for 30 days the effectiveness of this rule.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

50 CFR Parts 638, 641, 642, 645, 646, 653, and 658

Fisheries, Fishing, Reporting and recordkeeping requirements.

50 CFR Parts 647 and 659

Fisheries, Fishing.

50 CFR Parts 669 and 670

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: June 20, 1996.

Henry R. Beasley,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR chapter VI are amended as follows:

15 CFR CHAPTER IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, paragraph (b) table, in the entries for 50 CFR in the left column, in numerical order, the entries ''638.4'', ''638.5'', ''638.6'', ''638.27'', ''641.5'', ''641.6'', ''641.10'', ''642.4'', ''642.5'', ''642.6'', ''645.4'', ''645.6'', ''646.4'', ''646.5'', ''646.6'', ''646.10'', ''653.5'', ''658.5'', ''658.6'', ''669.6'', ''670.6'', and ''670.23'' and their corresponding OMB control numbers in the right column are removed, and new entries ''622.4'', ''622.5'', ''622.6'', 622.15'', ''622.41(a)'', and ''622.45(a)'' and their corresponding OMB control numbers are added in numerical order to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * *	
50 CFR	
* * * * *	
622.4	–0205.
622.5	–0013, and –0016.
622.6	–0305, and –0306.
622.15	–0262.
622.41(a)	–0016 and –0305.
622.45(a)	–0013.
* * * * *	

50 CFR CHAPTER VI

3. Part 622 is added to read as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

Subpart A—General Provisions

Sec.

622.1 Purpose and scope.
622.2 Definitions and acronyms.
622.3 Relation to other laws and regulations.
622.4 Permits and fees.
622.5 Recordkeeping and reporting.
622.6 Vessel and gear identification.
622.7 Prohibitions.

Subpart B—Effort Limitations

622.15 Wreckfish individual transferable quota (ITQ) system.
622.16 Red snapper individual transferable quota (ITQ) system.

Subpart C—Management Measures

622.30 Fishing years.
622.31 Prohibited gear and methods.
622.32 Prohibited and limited-harvest species.
622.33 Caribbean EEZ seasonal and/or area closures.
622.34 Gulf EEZ seasonal and/or area closures.
622.35 South Atlantic EEZ seasonal and/or area closures.
622.36 Seasonal harvest limitations.
622.37 Minimum sizes.
622.38 Landing fish intact.
622.39 Bag and possession limits.
622.40 Limitations on traps and pots.
622.41 Species specific limitations.
622.42 Quotas.
622.43 Closures.
622.44 Commercial trip limits.
622.45 Restrictions on sale/purchase.
622.46 Prevention of gear conflicts.
622.47 Gulf groundfish trawl fishery.
622.48 Adjustment of management measures.
Appendix A to Part 622—Species Tables
Appendix B to Part 622—Gulf Areas
Appendix C to Part 622—Fish Length Measurements

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

Subpart A—General Provisions

§ 622.1 Purpose and scope.

(a) The purpose of this part is to implement the FMPs prepared under the Magnuson Act by the CFMC, GMFMC, and/or SAFMC listed in Table 1 of this section.

(b) This part governs conservation and management of species included in the FMPs in or from the Caribbean, Gulf, Mid-Atlantic, or South Atlantic EEZ, as indicated in Table 1 of this section. For the FMPs noted in the following table, conservation and management extends to adjoining state waters for the purposes of data collection and monitoring:

TABLE 1.—FMPS IMPLEMENTED UNDER PART 622

FMP title	Responsible fishery management council(s)	Geographical area
Atlantic Coast Red Drum FMP	SAFMC	Mid-Atlantic and South Atlantic.
FMP for Coastal Migratory Pelagic Resources	GMFMC/SAFMC	Gulf,[1] Mid-Atlantic [1,2] and South Atlantic.[1, 3]
FMP for Coral and Coral Reefs of the Gulf of Mexico	GMFMC	Gulf.
FMP for Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region.	SAFMC	South Atlantic.
FMP for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands.	CFMC	Caribbean.
FMP for the Red Drum Fishery of the Gulf of Mexico	GMFMC	Gulf.[1]
FMP for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands.	CFMC	Caribbean.
FMP for the Reef Fish Resources of the Gulf of Mexico	GMFMC	Gulf.[1]
FMP for the Shrimp Fishery of the Gulf of Mexico	GMFMC	Gulf.[1]
FMP for the Shrimp Fishery of the South Atlantic Region	SAFMC	South Atlantic.
FMP for the Snapper-Grouper Fishery of the South Atlantic Region.	SAFMC	South Atlantic.[1, 4]
FMP for the Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands.	CFMC	Caribbean.

[1] Regulated area includes adjoining state waters for purposes of data collection and quota monitoring.
[2] Only king and Spanish mackerel are managed under the FMP in the Mid-Atlantic.
[3] Bluefish are not managed under the FMP in the South Atlantic.
[4] Bank, rock, and black sea bass and scup are not managed by the FMP or regulated by this part north of 35°15.3′ N. lat., the latitude of Cape Hatteras Light, NC.

§ 622.2 Definitions and acronyms.

In addition to the definitions in the Magnuson Act and in § 600.10 of this chapter, and the acronyms in § 600.15 of this chapter, the terms and acronyms used in this part have the following meanings:

Allowable chemical means a substance, generally used to immobilize marine life so that it can be captured alive, that, when introduced into the water, does not take Gulf and South Atlantic prohibited coral and is allowed by Florida for the harvest of tropical fish (e.g., quinaldine, quinaldine compounds, or similar substances).

Allowable octocoral means an erect, nonencrusting species of the subclass Octocorallia, except the seafans *Gorgonia flabellum* and *G. ventalina*, plus the attached substrate within 1 inch (2.54 cm) of an allowable octocoral.

Note: An erect, nonencrusting species of the subclass Octocorallia, except the seafans *Gorgonia flabellum* and *G. ventalina*, with attached substrate exceeding 1 inch (2.54 cm) is considered to be live rock and not allowable octocoral.

Aquacultured live rock means live rock that is harvested under a Federal aquacultured live rock permit, as required under § 622.4(a)(3)(iii).

Authorized statistical reporting agent means:

(1) Any person so designated by the SRD; or

(2) Any person so designated by the head of any Federal or State agency that has entered into an agreement with the Assistant Administrator to collect fishery data.

Buoy gear means fishing gear consisting of a float and one or more weighted lines suspended therefrom, generally long enough to reach the bottom. A hook or hooks (usually 6 to 10) are on the lines at or near the end. The float and line(s) drift freely and are retrieved periodically to remove catch and rebait hooks.

Carapace length means the straight-line distance from the orbital notch inside the orbital spine, in a line parallel to the lateral rostral sulcus, to the posterior margin of the cephalothorax. (See Figure 1 in Appendix C of this part.)

Caribbean means the Caribbean Sea around Puerto Rico and the U.S. Virgin Islands.

Caribbean coral reef resource means one or more of the species, or a part thereof, listed in Table 1 in Appendix A of this part, whether living or dead.

Caribbean prohibited coral means, in the Caribbean; a gorgonian, that is, a Caribbean coral reef resource of the Class Anthozoa, Subclass Octocorallia, Order Gorgonacea; a live rock; or a stony coral, that is, a Caribbean coral reef resource of the Class Hydrozoa (fire corals and hydrocorals) or of the Class Anthozoa, Subclass Hexacorallia, Orders Scleractinia (stony corals) and Antipatharia (black corals); or a part thereof.

Caribbean reef fish means one or more of the species, or a part thereof, listed in Table 2 in Appendix A of this part.

Caribbean spiny lobster means the species *Panulirus argus*, or a part thereof.

CFMC means the Caribbean Fishery Management Council.

Charter vessel means a vessel less than 100 gross tons (90.8 mt) that meets the requirements of the USCG to carry six or fewer passengers for hire and that carries a passenger for hire at any time during the calendar year. A charter vessel with a commercial permit, as required under § 622.4(a)(2), is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

Coastal migratory pelagic fish means one or more of the following species, or a part thereof:

(1) Bluefish, *Pomatomus saltatrix* (Gulf of Mexico only).

(2) Cero, *Scomberomorus regalis.*

(3) Cobia, *Rachycentron canadum*.

(4) Dolphin, *Coryphaena hippurus*

(5) King mackerel, *Scomberomorus cavalla.*

(6) Little tunny, *Euthynnus alletteratus.*

(7) Spanish mackerel, *Scomberomorus maculatus.*

Coral area means marine habitat in the Gulf or South Atlantic EEZ where coral growth abounds, including patch reefs, outer bank reefs, deep water banks, and hard bottoms.

Drift gillnet, for the purposes of this part, means a gillnet, other than a run-around gillnet, that is unattached to the ocean bottom, whether or not attached to a vessel.

Fish trap means—

(1) In the Caribbean EEZ, a trap and its component parts (including the lines and buoys), regardless of the construction material, used for or capable of taking finfish.

(2) In the Gulf EEZ, a trap and its component parts (including the lines and buoys), regardless of the construction material, used for or capable of taking finfish, except a trap historically used in the directed fishery for crustaceans (that is, blue crab, stone crab, and spiny lobster).

(3) In the South Atlantic EEZ, a trap and its component parts (including the lines and buoys), regardless of the construction material, used for or capable of taking fish, except a sea bass pot or a crustacean trap (that is, a type of trap historically used in the directed fishery for blue crab, stone crab, or spiny lobster and that contains at any time not more than 25 percent, by number, of fish other than blue crab, stone crab, and spiny lobster).

Fork length means the straight-line distance from the tip of the head (snout) to the rear center edge of the tail (caudal fin). (See Figure 2 in Appendix C of this part.)

GMFMC means the Gulf of Mexico Fishery Management Council.

Gulf means the Gulf of Mexico. The line of demarcation between the Atlantic Ocean and the Gulf of Mexico is specified in § 600.105(c) of this chapter.

Gulf reef fish means one or more of the species, or a part thereof, listed in Table 3 in Appendix A of this part.

Gulf and South Atlantic prohibited coral means, in the Gulf and South Atlantic, one or more of the following, or a part thereof:

(1) Coral belonging to the Class Hydrozoa (fire corals and hydrocorals).

(2) Coral belonging to the Class Anthozoa, Subclass Hexacorallia, Orders Scleractinia (stony corals) and Antipatharia (black corals).

(3) A seafan, *Gorgonia flabellum* or *G. ventalina.*

(4) Coral in a coral reef, except for allowable octocoral.

(5) Coral in an HAPC, including allowable octocoral.

HAPC means habitat area of particular concern.

Headboat means a vessel that holds a valid Certificate of Inspection issued by the USCG to carry passengers for hire. A headboat with a commercial vessel permit, as required under § 622.4(a)(2), is considered to be operating as a headboat when it carries a passenger who pays a fee or—

(1) In the case of persons aboard fishing for or possessing South Atlantic snapper-grouper, when there are more persons aboard than the number of crew specified in the vessel's Certificate of Inspection; or

(2) In the case of persons aboard fishing for or possessing coastal migratory pelagic fish or Gulf reef fish, when there are more than three persons aboard, including operator and crew.

Live rock means living marine organisms, or an assemblage thereof, attached to a hard substrate, including dead coral or rock (excluding individual mollusk shells).

MAFMC means the Mid-Atlantic Fishery Management Council.

Mid-Atlantic means the Atlantic Ocean off the Atlantic coastal states from the boundary between the New England Fishery Management Council and the MAFMC, as specified in § 600.105(a) of this chapter, to the boundary between the MAFMC and the SAFMC, as specified in § 600.105(b) of this chapter.

Migratory group, for king and Spanish mackerel, means a group of fish that may or may not be a separate genetic stock, but that is treated as a separate stock for management purposes. King and Spanish mackerel are divided into migratory groups—the Atlantic migratory group and the Gulf migratory group. The boundaries between these groups are as follows:

(1) *King mackerel*—(i) *Summer separation.* From April 1 through October 31, the boundary separating the Gulf and Atlantic migratory groups of king mackerel is 25°48′ N. lat., which is a line directly west from the Monroe/Collier County, FL, boundary to the outer limit of the EEZ.

(ii) *Winter separation.* From November 1 through March 31, the boundary separating the Gulf and Atlantic migratory groups of king mackerel is 29°25′ N. lat., which is a line directly east from the Volusia/Flagler County, FL boundary to the outer limit of the EEZ.

(2) *Spanish mackerel.* The boundary separating the Gulf and Atlantic migratory groups of Spanish mackerel is 25°20.4′ N. lat., which is a line directly east from the Dade/Monroe County, FL, boundary to the outer limit of the EEZ.

Off Florida means the waters in the Gulf and South Atlantic from 30°42′45.6″ N. lat., which is a line directly east from the seaward terminus of the Georgia/Florida boundary, to 87°31′06″ W. long., which is a line directly south from the Alabama/Florida boundary.

Off Georgia means the waters in the South Atlantic from a line extending in a direction of 104° from true north from the seaward terminus of the South Carolina/Georgia boundary to 30°42′45.6″ N. lat., which is a line directly east from the seaward terminus of the Georgia/Florida boundary.

Off Louisiana, Mississippi, and Alabama means the waters in the Gulf other than off Florida and off Texas.

Off North Carolina means the waters in the South Atlantic from 36°34′55″ N. lat., which is a line directly east from the Virginia/North Carolina boundary, to a line extending in a direction of 135°34′55″ from true north from the North Carolina/South Carolina boundary, as marked by the border station on Bird Island at 33° 51′07.9″ N. lat., 78°32′32.6″ W. long.

Off South Carolina means the waters in the South Atlantic from a line extending in a direction of 135°34′55″ from true north from the North Carolina/South Carolina boundary, as marked by the border station on Bird Island at 33°51′07.9″ N. lat., 78′32′32.6″ W. long., to a line extending in a direction of 104° from true north from the seaward terminus of the South Carolina/Georgia boundary.

Off Texas means the waters in the Gulf west of a rhumb line from 29°32.1′ N. lat., 93°47.7′ W. long. to 26°11.4′ N. lat., 92°53′ W. long., which line is an extension of the boundary between Louisiana and Texas.

Powerhead means any device with an explosive charge, usually attached to a speargun, spear, pole, or stick, that fires a projectile upon contact.

Processor means a person who processes fish or fish products, or parts thereof, for commercial use or consumption.

Purchase means the act or activity of buying, trading, or bartering, or attempting to buy, trade, or barter.

Red drum, also called redfish, means *Sciaenops ocellatus,* or a part thereof.

Red snapper means *Lutjanus campechanus,* or a part thereof, one of the Gulf reef fish species.

Regional Director (RD), for the purposes of this part, means the Director, Southeast Region, NMFS (see Table 1 of § 600.502 of this chapter).

Run-around gillnet means a gillnet with a float line 1,000 yd (914 m) or less in length that, when used, encloses an area of water.

SAFMC means the South Atlantic Fishery Management Council.

Sale or *sell* means the act or activity of transferring property for money or credit, trading, or bartering, or attempting to so transfer, trade, or barter.

Science and Research Director (SRD), for the purposes of this part, means the Science and Research Director, Southeast Fisheries Science Center, NMFS (see Table 1 of § 600.502 of this chapter).

Sea bass pot means a trap has six rectangular sides and does not exceed 25 inches (63.5 cm) in height, width, or depth.

Shrimp means one or more of the following species, or a part thereof:

(1) Brown shrimp, *Penaeus aztecus.*

(2) Pink shrimp, *Penaeus duorarum.*

(3) Rock shrimp, *Sicyonia brevirostris.*

(4) Royal red shrimp, *Pleoticus robustus.*

(5) Seabob shrimp, *Xiphopenaeus kroyeri.*

(6) White shrimp, *Penaeus setiferus.*

SMZ means special management zone.

South Atlantic means the Atlantic Ocean off the Atlantic coastal states from the boundary between the MAFMC and the SAFMC, as specified in § 600.105(b) of this chapter, to the line of demarcation between the Atlantic Ocean and the Gulf of Mexico, as specified in § 600.105(c) of this chapter.

South Atlantic snapper-grouper means one or more of the species, or a part thereof, listed in Table 4 in Appendix A of this part.

Total length (TL), for the purposes of this part, means the straight-line distance from the tip of the snout to the tip of the tail (caudal fin), excluding any caudal filament, while the fish is lying on its side. The mouth of the fish may be closed and/or the tail may be squeezed together to give the greatest overall measurement. (See Figure 2 in Appendix C of this part.)

Toxic chemical means any substance, other than an allowable chemical, that, when introduced into the water, can stun, immobilize, or take marine life.

Trip means a fishing trip, regardless of number of days duration, that begins with departure from a dock, berth, beach, seawall, or ramp and that terminates with return to a dock, berth, beach, seawall, or ramp.

Wild live rock means live rock other than aquacultured live rock.

Wreckfish means the species *Polyprion americanus,* or a part thereof, one of the South Atlantic snapper-grouper species.

§ 622.3 Relation to other laws and regulations.

(a) The relation of this part to other laws is set forth in § 600.705 of this chapter and paragraphs (b) and (c) of this section.

(b) Except for regulations on allowable octocoral, Gulf and South Atlantic prohibited coral, and live rock, this part is intended to apply within the EEZ portions of applicable National Marine Sanctuaries and National Parks, unless the regulations governing such Sanctuaries or Parks prohibit their application. Regulations on allowable octocoral, Gulf and South Atlantic prohibited coral, and live rock do not apply within the EEZ portions of the following National Marine Sanctuaries and National Parks:

(1) Everglades National Park (36 CFR 7.45).

(2) Looe Key National Marine Sanctuary (15 CFR part 937).

(3) Fort Jefferson National Monument (36 CFR 7.27).

(4) Key Largo Coral Reef National Marine Sanctuary (15 CFR part 929).

(5) Biscayne National Park (16 U.S.C. 410gg).

(6) Gray's Reef National Marine Sanctuary (15 CFR Part 938).

(7) Monitor Marine Sanctuary (15 CFR part 924).

(c) For allowable octocoral, if a state has a catch, landing, or gear regulation that is more restrictive than a catch, landing, or gear regulation in this part, a person landing in such state allowable octocoral taken from the Gulf or South Atlantic EEZ must comply with the more restrictive state regulation.

(d) General provisions on facilitation of enforcement, penalties, and enforcement policy applicable to all domestic fisheries are set forth in §§ 600.730, 600.735, and 600.740 of this chapter, respectively.

(e) An activity that is otherwise prohibited by this part may be conducted if authorized as scientific research activity, exempted fishing, or exempted educational activity, as specified in § 600.745 of this chapter.

§ 622.4 Permits and fees.

(a) *Permits required.* To conduct activities in fisheries governed in this part, valid Federal permits are required as follows:

(1) *Charter vessel/headboat permits.* For a person aboard a vessel that is operating as a charter vessel or headboat to fish for or possess coastal migratory pelagic fish, Gulf reef fish, or South Atlantic snapper-grouper in or from the EEZ, a charter vessel/headboat permit for coastal migratory pelagic fish, Gulf reef fish, or South Atlantic snapper-grouper, respectively, must have been issued to the vessel and must be on board. A charter vessel or headboat may have both a charter vessel/headboat permit and a commercial vessel permit. However, when a vessel is operating as a charter vessel or headboat, a person aboard must adhere to the bag limits.

(2) *Commercial vessel permits and endorsements*—(i) *Fish traps in the Gulf.* For a person to possess or use a fish trap in the EEZ in the Gulf of Mexico, a commercial vessel permit for Gulf reef fish with a fish trap endorsement must have been issued to the vessel and must be on board. See paragraph (n) of this section regarding a moratorium on fish trap endorsements.

(ii) *Gillnets for king mackerel in the Florida west coast subzone.* For a person aboard a vessel to use a run-around gillnet for king mackerel in the Florida west coast subzone (see § 622.42(c)(1)(i)(A)(*3*)), a commercial vessel permit for king and Spanish mackerel with a gillnet endorsement must have been issued to the vessel and must be on board. See paragraph (o) of this section for restrictions on addition or deletion of a gillnet endorsement.

(iii) [Reserved]

(iv) *King and Spanish mackerel.* For a person aboard a vessel to be eligible for exemption from the bag limits and to fish under a quota for king or Spanish mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, a commercial vessel permit for king and Spanish mackerel must have been issued to the vessel and must be on board. To obtain or renew a commercial vessel permit for king and Spanish mackerel, at least 10 percent of the applicant's earned income must have been derived from commercial fishing, that is, sale of fish harvested from the applicant's vessels, during one of the 3 calendar years preceding the application.

(v) *Gulf reef fish.* For a person aboard a vessel to be eligible for exemption from the bag limits, to fish under a quota, or to sell Gulf reef fish in or from the Gulf EEZ, a commercial vessel permit for Gulf reef fish must have been issued to the vessel and must be on board. To obtain or renew a commercial vessel permit for Gulf reef fish, more than 50 percent of the applicant's earned income must have been derived from commercial fishing, that is, sale of fish harvested from the applicant's vessels, or from charter or headboat operations during either of the 2 calendar years preceding the application. See paragraph (m) of this section regarding a moratorium on commercial vessel permits for Gulf reef fish and paragraph (m)(3) of this section for a limited exception to the earned income requirement for a permit.

(vi) *South Atlantic snapper-grouper.* For a person aboard a vessel to be eligible for exemption from the bag limits for South Atlantic snapper-grouper in or from the South Atlantic EEZ, to engage in the directed fishery for tilefish in the South Atlantic EEZ, to use a longline to fish for South Atlantic snapper-grouper in the South Atlantic EEZ, or to use a sea bass pot in the South Atlantic EEZ north of 28°35.1′ N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL), a commercial vessel permit for South Atlantic snapper-grouper must have been issued to the vessel and must be on board. A vessel with longline gear and more than 200 lb (90.7 kilograms) of tilefish aboard is considered to be in the directed fishery for tilefish. It is a rebuttable presumption that a fishing vessel with more than 200 lb of tilefish aboard harvested such tilefish in the EEZ. To obtain or renew a commercial vessel permit for South Atlantic snapper-grouper, more than 50 percent of the applicant's earned income must have been derived from commercial fishing, that is, sale of fish harvested from the applicant's vessels, or from charter or headboat operations; or gross sales of fish harvested from the owner's, operator's, corporation's, or partnership's vessels must have been greater than $20,000, during one of the 3 calendar years preceding the application.

(vii) *Wreckfish.* For a person aboard a vessel to fish for wreckfish in the South Atlantic EEZ, possess wreckfish in or from the South Atlantic EEZ, offload wreckfish from the South Atlantic EEZ, or sell wreckfish in or from the South Atlantic EEZ, a commercial vessel permit for wreckfish must have been issued to the vessel and must be on board. To obtain a commercial vessel permit for wreckfish, the applicant must be a wreckfish shareholder; and either the shareholder must be the vessel owner or the owner or operator must be an employee, contractor, or agent of the shareholder. (See § 622.15 for information on wreckfish shareholders.)

(3) *Coral permits*—(i) *Allowable chemical.* For an individual to take or possess fish or other marine organisms with an allowable chemical in a coral area, other than fish or other marine organisms that are landed in Florida, a Federal allowable chemical permit must have been issued to the individual. Such permit must be available when the permitted activity is being conducted and when such fish or other marine organisms are possessed, through landing ashore.

(ii) *Allowable octocoral.* For an individual to take or possess allowable octocoral in the Gulf or South Atlantic EEZ, other than allowable octocoral that is landed in Florida, a Federal allowable octocoral permit must have been issued to the individual. Such permit must be available for inspection when the permitted activity is being conducted and when allowable octocoral is possessed, through landing ashore.

(iii) *Aquacultured live rock.* For a person to take or possess aquacultured live rock in the Gulf or South Atlantic EEZ, a Federal aquacultured live rock permit must have been issued for the specific harvest site. Such permit, or a copy, must be on board a vessel depositing or possessing material on an aquacultured live rock site or harvesting or possessing live rock from an aquacultured live rock site.

(iv) *Prohibited coral.* A Federal permit may be issued to take or possess Gulf and South Atlantic prohibited coral or Caribbean prohibited coral only as scientific research activity, exempted fishing, or exempted educational

activity. See § 600.745 of this chapter for the procedures and limitations for such activities and fishing.

(v) *Florida permits.* Appropriate Florida permits and endorsements are required for the following activities, without regard to whether they involve activities in the EEZ or Florida's waters:

(A) Landing in Florida fish or other marine organisms taken with an allowable chemical in a coral area.

(B) Landing allowable octocoral in Florida.

(C) Landing live rock in Florida.

(vi) *Wild live rock permits.* A Federal permit is required for a vessel to take or possess wild live rock in or from the Gulf EEZ. To be eligible for a wild live rock vessel permit, the current owner of the vessel for which the permit is requested must have had the required Florida permit and endorsements for live rock on or before February 3, 1994, and a record of landings of live rock on or before February 3, 1994, as documented on trip tickets received by the Florida Department of Environmental Protection before March 15, 1994. For landings other than in Florida, equivalent state permits/endorsements, if required, and landing records may be substituted for the Florida permits/endorsements and trip tickets. An owner will not be issued permits in numbers exceeding the number of vessels for which the owning entity had the requisite reported landings. An owner of a permitted vessel may transfer the vessel permit to another vessel owned by the same person by returning the existing permit with an application for a vessel permit for the replacement vessel. No wild live rock vessel permits will be issued after the quota for wild live rock in the Gulf, as specified in § 622.42(b)(2), is reached or after December 31, 1996.

(4) *Dealer permits.* For a dealer to receive Gulf reef fish, South Atlantic snapper-grouper, or wreckfish harvested from the Gulf or South Atlantic EEZ, a dealer permit for Gulf reef fish, South Atlantic snapper-grouper, or wreckfish, respectively, must have been issued to the dealer. To obtain a dealer permit, the applicant must have a valid state wholesaler's license in the state(s) where the dealer operates, if required by such state(s), and must have a physical facility at a fixed location in such state(s).

(b) *Applications for permits.* Application forms for all permits are available from the RD. Completed application forms and all required supporting documents must be submitted to the RD at least 30 days prior to the date on which the applicant desires to have the permit made effective. All vessel permits are mailed to owners, whether the applicant is an owner or an operator.

(1) *Coral permits.* (i) The applicant for a coral permit must be the individual who will be conducting the activity that requires the permit. In the case of a corporation or partnership that will be conducting live rock aquaculture activity, the applicant must be the principal shareholder or a general partner.

(ii) An applicant must provide the following:

(A) Name, address, telephone number, and other identifying information of the applicant.

(B) Name and address of any affiliated company, institution, or organization.

(C) Information concerning vessels, harvesting gear/methods, or fishing areas, as specified on the application form.

(D) Any other information that may be necessary for the issuance or administration of the permit.

(E) If applying for an aquacultured live rock permit, identification of each vessel that will be depositing material on or harvesting aquacultured live rock from the proposed aquacultured live rock site, specification of the port of landing of aquacultured live rock, and a site evaluation report prepared pursuant to generally accepted industry standards that—

(*1*) Provides accurate coordinates of the proposed harvesting site so that it can be located using LORAN or Global Positioning System equipment;

(*2*) Shows the site on a chart in sufficient detail to determine its size and allow for site inspection;

(*3*) Discusses possible hazards to safe navigation or hindrance to vessel traffic, traditional fishing operations, or other public access that may result from aquacultured live rock at the site;

(*4*) Describes the naturally occurring bottom habitat at the site; and

(*5*) Specifies the type and origin of material to be deposited on the site and how it will be distinguishable from the naturally occurring substrate.

(2) *Dealer permits.* (i) The application for a dealer permit must be submitted by the owner (in the case of a corporation, an officer or shareholder; in the case of a partnership, a general partner).

(ii) An applicant must provide the following:

(A) A copy of each state wholesaler's license held by the dealer.

(B) Name, address, telephone number, date the business was formed, and other identifying information of the business.

(C) The address of each physical facility at a fixed location where the business receives fish.

(D) Name, address, telephone number, other identifying information, and official capacity in the business of the applicant.

(E) Any other information that may be necessary for the issuance or administration of the permit, as specified on the application form.

(3) *Vessel permits.* (i) The application for a commercial vessel permit, other than for wreckfish, or for a charter vessel/headboat permit must be submitted by the owner (in the case of a corporation, an officer or shareholder; in the case of a partnership, a general partner) or operator of the vessel. A commercial vessel permit that is issued based on the earned income qualification of an operator is valid only when that person is the operator of the vessel. The applicant for a commercial vessel permit for wreckfish must be a wreckfish shareholder.

(ii) An applicant must provide the following:

(A) A copy of the vessel's valid USCG certificate of documentation or, if not documented, a copy of its valid state registration certificate.

(B) Vessel name and official number.

(C) Name, address, telephone number, and other identifying information of the vessel owner and of the applicant, if other than the owner.

(D) Any other information concerning the vessel, gear characteristics, principal fisheries engaged in, or fishing areas, as specified on the application form.

(E) Any other information that may be necessary for the issuance or administration of the permit, as specified on the application form.

(F) If applying for a commercial vessel permit, documentation, as specified in the instructions accompanying each application form, showing that applicable eligibility requirements of paragraph (a)(2) of this section have been met.

(G) If a fish trap or sea bass pot will be used, the number, dimensions, and estimated cubic volume of the traps/pots that will be used and the applicant's desired color code for use in identifying his or her vessel and buoys (white is not an acceptable color code).

(c) *Change in application information.* The owner or operator of a vessel with a permit or a dealer with a permit must notify the RD within 30 days after any change in the application information specified in paragraph (b) of this section. The permit is void if any change in the information is not reported within 30 days.

(d) *Fees.* A fee is charged for each permit application submitted under paragraph (b) of this section and for each fish trap or sea bass pot

identification tag required under § 622.6(b)(1)(i). The amount of each fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from the RD, for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application or request for fish trap/sea bass pot identification tags.

(e) *Initial issuance.* (1) The RD will issue an initial permit at any time to an applicant if the application is complete and the specific requirements for the requested permit have been met. An application is complete when all requested forms, information, and documentation have been received.

(2) Upon receipt of an incomplete application, the RD will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the RD's letter of notification, the application will be considered abandoned.

(f) *Duration.* A permit remains valid for the period specified on it unless it is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904 or the vessel or dealership is sold.

(g) *Transfer.* A vessel permit or endorsement or dealer permit issued under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a commercial vessel permit for Gulf reef fish or as provided in paragraph (n) of this section for a fish trap endorsement. A person who acquires a vessel or dealership who desires to conduct activities for which a permit or endorsement is required must apply for a permit or endorsement in accordance with the provisions of this section. If the acquired vessel or dealership is currently permitted, the application must be accompanied by the original permit and a copy of a signed bill of sale or equivalent acquisition papers.

(h) *Renewal.* Although a permit required by this section is issued on an annual basis, an application for permit renewal is required only every 2 years. In the interim years, a permit is renewed automatically (without application) for a vessel owner or dealer who has met the specific requirements for the requested permit, who has submitted all reports required under the Magnuson Act, and who is not subject to a permit sanction or denial under paragraph (j) of this section. An owner or dealer whose permit is expiring will be mailed a notification by the RD approximately 2 months prior to expiration of the current permit. That notification will advise the status of the renewal of the permit. That is, the notification will advise that the renewed permit will be issued without further action by the owner or dealer, that the permit is not eligible for automatic renewal, or that a new application is required. A notification that a permit is not eligible for automatic renewal will specify the reasons and will provide an opportunity for correction of any deficiencies. A notification that a new application is required will include a preprinted renewal application. An automatically renewed permit will be mailed by the RD approximately 1 month prior to expiration of the old permit. A vessel owner or dealer who does not receive a notification of status of renewal of a permit by 45 days prior to expiration of the current permit must contact the RD.

(i) *Display.* A vessel permit or endorsement issued under this section must be carried on board the vessel. A dealer permit issued under this section, or a copy thereof, must be available on the dealer's premises. In addition, a copy of the dealer's permit must accompany each vehicle that is used to pick up from a fishing vessel reef fish harvested from the Gulf EEZ. The operator of a vessel must present the permit or endorsement for inspection upon the request of an authorized officer. A dealer or a vehicle operator must present the permit or a copy for inspection upon the request of an authorized officer.

(j) *Sanctions and denials.* A permit or endorsement issued pursuant to this section may be revoked, suspended, or modified, and a permit or endorsement application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(k) *Alteration.* A permit that is altered, erased, or mutilated is invalid.

(l) *Replacement.* A replacement permit or endorsement may be issued. An application for a replacement permit or endorsement will not be considered a new application. A fee, the amount of which is stated with the application form, must accompany each request for a replacement.

(m) *Moratorium on commercial vessel permits for Gulf reef fish.* This paragraph (m) is effective through December 31, 2000.

(1) Except for an application for renewal of an existing commercial vessel permit for Gulf reef fish, or as provided in paragraphs (m)(2) and (3) of this section, no applications for such commercial vessel permits will be accepted.

(2) An owner of a permitted vessel may transfer the commercial vessel permit for Gulf reef fish to another vessel owned by the same entity by returning the existing permit to the RD with an application for a commercial vessel permit for the replacement vessel.

(3) An owner whose earned income qualified for the commercial vessel permit for Gulf reef fish may transfer that permit to the owner of another vessel or to the new owner when he or she sells the permitted vessel. The owner of a vessel that is to receive the transferred permit must return the existing permit to the RD with an application for a commercial vessel permit for Gulf reef fish for his or her vessel. Such new owner may receive a commercial vessel permit for Gulf reef fish for that vessel, and renew it for the first calendar year after obtaining it, without meeting the earned income requirement of paragraph (a)(2)(v) of this section. However, to renew the commercial vessel permit for the second calendar year after the transfer, the new owner must meet that earned income requirement not later than the first calendar year after the permit transfer takes place.

(4) A commercial vessel permit for Gulf reef fish that is not renewed or that is revoked will not be reissued. A permit is considered to be not renewed when an application for renewal is not received by the RD within 1 year of the expiration date of the permit.

(n) *Moratorium on endorsements for fish traps in the Gulf.* The provisions of this paragraph (n) are effective through February 7, 1997.

(1) A fish trap endorsement will not be issued or renewed unless the current owner of the commercially permitted vessel for which the endorsement is requested has a record of landings of Gulf reef fish from fish traps in the Gulf EEZ during 1991 or 1992, as reported on fishing vessel logbooks received by the SRD on or before November 19, 1992. An owner will not be issued fish trap endorsements for vessels in numbers exceeding the number of vessels for which the owning entity had the requisite reported landings in 1991 or 1992.

(2) An owner of a vessel with a fish trap endorsement may transfer the endorsement to another vessel owned by the same entity by returning the existing endorsement with an application for an endorsement for the replacement vessel.

(3) A fish trap endorsement is not transferable upon change of ownership of a vessel with such endorsement, except as follows:

(i) Such endorsement is transferable when the change of ownership of the permitted vessel is from one to another

of the following: Husband, wife, son, daughter, brother, sister, mother, or father.

(ii) In the event that a vessel with a fish trap endorsement has a change of ownership that is directly related to the disability or death of the owner, the RD may issue such endorsement, temporarily or permanently, with the commercial vessel permit for Gulf reef fish that is issued for the vessel under the new owner. Such new owner will be the person specified by the owner or his/her legal guardian, in the case of a disabled owner, or by the will or executor/administrator of the estate, in the case of a deceased owner. (Change of ownership of a vessel with a commercial vessel permit for Gulf reef fish upon disability or death of an owner is considered a purchase of a permitted vessel and paragraph (m)(3) of this section applies regarding a commercial vessel permit for Gulf reef fish for the vessel under the new owner.)

(4) A fish trap endorsement in effect on September 12, 1995, may be transferred to a vessel with a commercial vessel permit for Gulf reef fish whose owner has a record of landings of reef fish from fish traps in the Gulf EEZ, as reported on fishing vessel logbooks received by the SRD from November 20, 1992, through February 6, 1994, and who was unable to obtain a fish trap endorsement for such vessel under paragraph (n)(1) of this section. The owner of a vessel that is to receive the transferred endorsement must return the currently endorsed commercial vessel permit for Gulf reef fish and the unendorsed permit to the RD with an application for a fish trap endorsement for his or her vessel. Revised commercial vessel permits will be returned to each owner.

(5) If a fish trap endorsement is transferred under paragraph (n)(3) or (4) of this section, the owner of the vessel to which the endorsement is transferred may renew the endorsement without regard to the requirement of paragraph (n)(1) of this section regarding a record of landing of Gulf reef fish from fish traps.

(6) A fish trap endorsement that is not renewed or that is revoked will not be reissued. Such endorsement is considered to be not renewed when an application for renewal is not received by the RD within 1 year of the expiration date of the permit.

(o) *Endorsements for the use of gillnets for king and Spanish mackerel in the Florida west coast subzone.* Other paragraphs of this section notwithstanding—

(1) An owner of a vessel that has a commercial vessel permit for king and Spanish mackerel may add or delete a gillnet endorsement on a permit by returning to the RD the vessel's existing permit with a written request for addition or deletion of the gillnet endorsement. Such request must be postmarked or hand delivered during June, each year.

(2) A gillnet endorsement may not be added or deleted from July 1 through May 31 each year, any renewal of the permit during that period notwithstanding. From July 1 through May 31, a permitted vessel that is sold, if permitted by the new owner for king and Spanish mackerel, will receive a permit with or without the gillnet endorsement as was the case for the vessel under the previous owner. From July 1 through May 31, the initial commercial vessel permit for king and Spanish mackerel issued for a vessel new to the fishery will be issued without a gillnet endorsement.

§ 622.5 Recordkeeping and reporting.

Participants in fisheries governed in this part are required to keep records and report as follows.

(a) *Commercial vessel owners and operators*—(1) *Requirements by species*—(i) *Coastal migratory pelagic fish.* The owner or operator of a vessel that fishes for or lands coastal migratory pelagic fish for sale in or from the Gulf or South Atlantic EEZ or adjoining state waters, or whose vessel is issued a commercial permit for king and Spanish mackerel, as required under § 622.4(a)(2)(iv), who is selected to report by the SRD must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(ii) *Gulf reef fish.* The owner or operator of a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.4(a)(2)(v), or whose vessel fishes for or lands reef fish in or from state waters adjoining the Gulf EEZ, who is selected to report by the SRD must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(iii) *Gulf shrimp.* The owner or operator of a vessel that fishes for shrimp in the Gulf EEZ or in adjoining state waters, or that lands shrimp in an adjoining state, must provide information for any fishing trip, as requested by the SRD, including, but not limited to, vessel identification, gear, effort, amount of shrimp caught by species, shrimp condition (heads on/heads off), fishing areas and depths, and person to whom sold.

(iv) *South Atlantic snapper-grouper.* (A) The owner or operator of a vessel for which a commercial permit for South Atlantic snapper-grouper has been issued, as required under § 622.4(a)(2)(vi), or whose vessel fishes for or lands South Atlantic snapper-grouper in or from state waters adjoining the South Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(B) The wreckfish shareholder under § 622.15, or operator of a vessel for which a commercial permit for wreckfish has been issued, as required under § 622.4(a)(2)(vii), must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(C) The wreckfish shareholder under § 622.15, or operator of a vessel for which a commercial permit for wreckfish has been issued, as required under § 622.4(a)(2)(vii), must make available to an authorized officer upon request all records of offloadings, purchases, or sales of wreckfish.

(2) *Reporting deadline.* Completed fishing records required by paragraphs (a)(1)(i), (ii), and (iv) of this section must be submitted to the SRD postmarked not later than 7 days after the end of each fishing trip. If no fishing occurred during a calendar month, a report so stating must be submitted on one of the forms postmarked not later than 7 days after the end of that month. Information to be reported is indicated on the form and its accompanying instructions.

(b) *Charter vessel/headboat owners and operators*—(1) *Coastal migratory pelagic fish, reef fish, and snapper-grouper.* The owner or operator of a vessel for which a charter vessel/headboat permit for coastal migratory pelagic fish, Gulf reef fish, or South Atlantic snapper-grouper has been issued, as required under § 622.4(a)(1), or whose vessel fishes for or lands such coastal migratory pelagic fish, reef fish, or snapper-grouper in or from state waters adjoining the Gulf or South Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record for each trip, or a portion of such trips as specified by the SRD, on forms provided by the SRD and must submit such record as specified in paragraph (b)(2) of this section.

(2) *Reporting deadlines*—(i) *Charter vessels.* Completed fishing records required by paragraph (b)(1) of this section for charter vessels must be

submitted to the SRD weekly, postmarked not later than 7 days after the end of each week (Sunday). Information to be reported is indicated on the form and its accompanying instructions.

(ii) *Headboats.* Completed fishing records required by paragraph (b)(1) of this section for headboats must be submitted to the SRD monthly and must either be made available to an authorized statistical reporting agent or be postmarked not later than 7 days after the end of each month. Information to be reported is indicated on the form and its accompanying instructions.

(c) *Dealers*—(1) *Coastal migratory pelagic fish.* (i) A person who purchases coastal migratory pelagic fish from a fishing vessel, or person, that fishes for or lands such fish in or from the EEZ or adjoining state waters who is selected to report by the SRD must submit information on forms provided by the SRD. This information must be submitted to the SRD at monthly intervals, postmarked not later than 5 days after the end of each month. Reporting frequency and reporting deadlines may be modified upon notification by the SRD. If no coastal migratory pelagic fish were received during a calendar month, a report so stating must be submitted on one of the forms, in accordance with the instructions on the form, and must be postmarked not later than 5 days after the end of the month. The information to be reported is as follows:

(A) Dealer's or processor's name and address.

(B) County where fish were landed.

(C) Total poundage of each species received during that month, or other requested interval.

(D) Average monthly price paid for each species.

(E) Proportion of total poundage landed by each gear type.

(ii) *Alternate SRD.* For the purposes of paragraph (c)(1)(i) of this section, in the states from New York through Virginia, or in the waters off those states, ''SRD'' means the Science and Research Director, Northeast Fisheries Science Center, NMFS (see Table 1 of § 600.502 of this chapter), or a designee.

(2) *Gulf red drum.* A dealers or processor who purchases red drum harvested from the Gulf who is selected to report by the SRD must report to the SRD such information as the SRD may request and in the form and manner as the SRD may require. The information required to be submitted must include, but is not limited to, the following:

(i) Dealer's or processor's name and address.

(ii) State and county where red drum were landed.

(iii) Total poundage of red drum received during the reporting period, by each type of gear used for harvest.

(3) *Gulf reef fish.* A person who purchases Gulf reef fish from a fishing vessel, or person, that fishes for or lands such fish in or from the EEZ or adjoining state waters must maintain records and submit information as follows:

(i) A dealer must maintain at his/her principal place of business a record of Gulf reef fish that he/she receives. The record must contain the name of each fishing vessel from which reef fish were received and the date, species, and quantity of each receipt. A dealer must retain such record for at least 1 year after receipt date and must provide such record for inspection upon the request of an authorized officer or the SRD.

(ii) When requested by the SRD, a dealer must provide information from his/her record of Gulf reef fish received the total poundage of each species received during the month, average monthly price paid for each species by market size, and proportion of total poundage landed by each gear type. This information must be provided on forms available from the SRD and must be submitted to the SRD at monthly intervals, postmarked not later than 5 days after the end of the month. Reporting frequency and reporting deadlines may be modified upon notification by the SRD. If no reef fish were received during a calendar month, a report so stating must be submitted on one of the forms, postmarked not later than 5 days after the end of the month.

(iii) The operator of a car or truck that is used to pick up from a fishing vessel reef fish harvested from the Gulf must maintain a record containing the name of each fishing vessel from which reef fish on the car or truck have been received. The vehicle operator must provide such record for inspection upon the request of an authorized officer.

(4) *Gulf shrimp.* A person who purchases shrimp from a vessel, or person, that fishes for shrimp in the Gulf EEZ or in adjoining state waters, or that lands shrimp in an adjoining state, must provide the following information when requested by the SRD:

(i) Name and official number of the vessel from which shrimp were received or the name of the person from whom shrimp were received, if received from other than a vessel.

(ii) Amount of shrimp received by species and size category for each receipt.

(iii) Exvessel value, by species and size category, for each receipt.

(5) *South Atlantic snapper-grouper.* (i) A person who purchases South Atlantic snapper-grouper that were harvested from the EEZ or from adjoining state waters and who is selected to report by the SRD and a dealer who has been issued a dealer permit for wreckfish, as required under § 622.4(a)(4), must provide information on receipts of South Atlantic snapper-grouper and prices paid, by species, on forms available from the SRD. The required information must be submitted to the SRD at monthly intervals, postmarked not later than 5 days after the end of the month. Reporting frequency and reporting deadlines may be modified upon notification by the SRD. If no South Atlantic snapper-grouper were received during a calendar month, a report so stating must be submitted on one of the forms, postmarked not later than 5 days after the end of the month. However, during complete months encompassed by the wreckfish spawning-season closure (that is, February and March), a wreckfish dealer is not required to submit a report stating that no wreckfish were received.

(ii) A dealer reporting South Atlantic snapper-grouper other than wreckfish may submit the information required in paragraph (c)(5)(i) of this section via facsimile (fax).

(iii) A dealer who has been issued a dealer permit for wreckfish, as required under § 622.4(a)(4), must make available to an authorized officer upon request all records of offloadings, purchases, or sales of wreckfish.

(d) *Individuals with coral or live rock permits.* (1) An individual with a Federal allowable octocoral permit must submit a report of harvest to the SRD. Specific reporting requirements will be provided with the permit.

(2) A person with a Federal aquacultured live rock permit must report to the RD each deposition of material on a site. Such reports must be postmarked not later than 7 days after deposition and must contain the following information:

(i) Permit number of site and date of deposit.

(ii) Geological origin of material deposited.

(iii) Amount of material deposited.

(iv) Source of material deposited, that is, where obtained, if removed from another habitat, or from whom purchased.

(3) A person who takes aquacultured live rock must submit a report of harvest to the RD. Specific reporting requirements will be provided with the permit. This reporting requirement is waived for aquacultured live rock that is landed in Florida.

(e) *Additional data and inspection.* Additional data will be collected by authorized statistical reporting agents and by authorized officers. A person who fishes for or possesses species in or from the EEZ governed in this part is required to make the applicable fish or parts thereof available for inspection by the SRD or an authorized officer upon request.

(f) *Commercial vessel, charter vessel, and headboat inventory.* The owner or operator of a commercial vessel, charter vessel, or headboat operating in a fishery governed in this part who is not selected to report by the SRD under paragraph (a) or (b) of this section must provide the following information when interviewed by the SRD:

(1) Name and official number of vessel and permit number, if applicable.

(2) Length and tonnage.

(3) Current home port.

(4) Fishing areas.

(5) Ports where fish were offloaded during the last year.

(6) Type and quantity of gear.

(7) Number of full- and part-time fishermen or crew members.

§ 622.6 Vessel and gear identification.

(a) *Vessel identification*—(1) *Applicability*—(i) *Official number.* A vessel for which a permit has been issued under § 622.4, and a vessel that fishes for or possesses shrimp in the Gulf EEZ, must display its official number—

(A) On the port and starboard sides of the deckhouse or hull and, for vessels over 25 ft (7.6 m) long, on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft.

(B) In block arabic numerals permanently affixed to or painted on the vessel in contrasting color to the background.

(C) At least 18 inches (45.7 cm) in height for vessels over 65 ft (19.8 m) long; at least 10 inches (25.4 cm) in height for vessels over 25 ft (7.6 m) long; and at least 3 inches (7.6 cm) in height for vessels 25 ft (7.6 m) long or less.

(ii) *Official number and color code.* The following vessels must display their official number as specified in paragraph (a)(1)(i) of this section and, in addition, must display their assigned color code: A vessel for which a fish trap endorsement has been issued, as required under § 622.4(a)(2)(i); a vessel for which a permit has been issued to fish with a sea bass pot, as required under § 622.4(a)(2)(vi); a vessel in the commercial Caribbean reef fish fishery fishing with traps; and a vessel in the Caribbean spiny lobster fishery. Color codes required for the Caribbean reef fish fishery and Caribbean spiny lobster fishery are assigned by Puerto Rico or the U.S. Virgin Islands, whichever is applicable; color codes required in all other fisheries are assigned by the RD. The color code must be displayed—

(A) On the port and starboard sides of the deckhouse or hull and, for vessels over 25 ft (7.6 m) long, on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft.

(B) In the form of a circle permanently affixed to or painted on the vessel.

(C) At least 18 inches (45.7 cm) in diameter for vessels over 65 ft (19.8 m) long; at least 10 inches (25.4 cm) in diameter for vessels over 25 ft (7.6 m) long; and at least 3 inches (7.6 cm) in diameter for vessels 25 ft (7.6 m) long or less.

(2) *Duties of operator.* The operator of a vessel specified in paragraph (a)(1) of this section must keep the official number and the color code, if applicable, clearly legible and in good repair and must ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material on board obstructs the view of the official number or the color code, if applicable, from an enforcement vessel or aircraft.

(b) *Gear identification*—(1) *Traps or pots*—(i) *Caribbean EEZ.* A fish trap or spiny lobster trap used or possessed in the Caribbean EEZ must display the official number specified for the vessel by Puerto Rico or the U.S. Virgin Islands so as to be easily identified.

(ii) *Gulf and South Atlantic EEZ.* A fish trap used or possessed in the Gulf EEZ and a sea bass pot used or possessed in the South Atlantic EEZ, or a fish trap or sea bass pot on board a vessel with a commercial permit for Gulf reef fish or South Atlantic snapper-grouper, must have a valid identification tag issued by the RD attached.

(2) *Buoys.* A buoy must display the assigned number and color code so as to be easily distinguished, located, and identified as follows—

(i) *Caribbean EEZ.* Each buoy must display the official number and color code specified for the vessel by Puerto Rico or the U.S. Virgin Islands, whichever is applicable.

(ii) *Gulf and South Atlantic EEZ.* Each buoy must display the number and color code assigned by the RD. In the Gulf EEZ, a buoy must be attached to each trap, or each end trap if traps are connected by a line. In the South Atlantic EEZ, buoys are not required to be used, but, if used, each buoy must display the number and color code.

(c) *Presumption of ownership.* A Caribbean spiny lobster trap, a fish trap, or a sea bass pot in the EEZ will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to such traps and pots that are lost or sold if the owner reports the loss or sale within 15 days to the RD.

(d) *Unmarked traps, pots, or buoys.* An unmarked Caribbean spiny lobster trap, a fish trap, a sea bass pot, or a buoy deployed in the EEZ is illegal and may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

§ 622.7 Prohibitions.

In addition to the general prohibitions in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(a) Engage in an activity for which a valid Federal permit is required under § 622.4 without such permit.

(b) Falsify information on a permit application or submitted with such application, as specified in § 622.4(b).

(c) Fail to display a permit or endorsement, as specified in § 622.4(i).

(d) Falsify or fail to maintain, submit, or provide information required to be maintained, submitted, or provided, as specified in § 622.5 (a) through (f).

(e) Fail to make a fish, or parts thereof, available for inspection, as specified in § 622.5(e).

(f) Falsify or fail to display and maintain vessel and gear identification, as specified in § 622.6 (a) and (b).

(g) Fail to comply with any requirement or restriction regarding ITQ coupons, as specified in § 622.15(c)(3), (c)(5), (c)(6), or (c)(7).

(h) Possess wreckfish as specified in § 622.15(c)(4), receive wreckfish except as specified in § 622.15(c)(7), or offload a wreckfish except as specified in § 622.15 (d)(3) and (d)(4).

(i) Transfer—

(1) A wreckfish, as specified in § 622.15(d)(1);

(2) A limited-harvest species, as specified in § 622.32(c) introductory text;

(3) A species/species group subject to a bag limit, as specified § 622.39(a)(1);

(4) South Atlantic snapper-grouper from a vessel with unauthorized gear on board, as specified in § 622.41(d)(2)(iii); or

(5) A species subject to a commercial trip limit, as specified in § 622.44 introductory text.

(j) Use or possess prohibited gear or methods or possess fish in association with possession or use of prohibited gear, as specified in § 622.31.

(k) Fish for, harvest, or possess a prohibited species, or a limited-harvest species in excess of its limitation, sell or

purchase such species, fail to comply with release requirements, or molest or strip eggs from a Caribbean spiny lobster, as specified in § 622.32.

(l) Fish in violation of the prohibitions, restrictions, and requirements applicable to seasonal and/or area closures, including but not limited to: Prohibition of all fishing, gear restrictions, restrictions on take or retention of fish, fish release requirements, and restrictions on use of an anchor or grapple, as specified in § 622.33, § 622.34, or § 622.35, or as may be specified under § 622.46 (b) or (c).

(m) Harvest, possess, offload, sell, or purchase fish in excess of the seasonal harvest limitations, as specified in § 622.36.

(n) Except as allowed under § 622.37(c) (2) and (3) for king and Spanish mackerel, possess undersized fish, fail to release undersized fish, or sell or purchase undersized fish, as specified in § 622.37.

(o) Fail to maintain a fish intact through offloading ashore, as specified in § 622.38.

(p) Exceed a bag or possession limit, as specified in § 622.39.

(q) Fail to comply with the limitations on traps and pots, including but not limited to: Tending requirements, constructions requirements, and area specific restrictions, as specified in § 622.40.

(r) Fail to comply with the species-specific limitations, as specified in § 622.41.

(s) Fail to comply with the restrictions that apply after closure of a fishery, as specified in § 622.43.

(t) Possess on board a vessel or land, purchase, or sell fish in excess of the commercial trip limits, as specified in § 622.44.

(u) Fail to comply with the restrictions on sale/purchase, as specified in § 622.45.

(v) Interfere with fishing or obstruct or damage fishing gear or the fishing vessel of another, as specified in § 622.46(a).

Subpart B—Effort Limitations

§ 622.15 Wreckfish individual transferable quota (ITQ) system.

The provisions of this section apply to wreckfish in or from the South Atlantic EEZ.

(a) *Percentage shares.* (1) In accordance with the procedure specified in the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region, percentage shares of the quota for wreckfish have been assigned. Each person has been notified by the RD of his or her percentage share and shareholder certificate number.

(2) All or a portion of a person's percentage shares may be transferred to another person. Transfer of shares must be reported on a form available from the RD. The RD will confirm, in writing, each transfer of shares. The effective date of each transfer is the confirmation date provided by the RD. The confirmation date will normally be not later than 3 working days after receipt of a properly completed transfer form. A fee is charged for each transfer of shares. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from the RD, for determining the administrative costs of each special product or service provided by NOAA to non-Federal recipients. The fee may not exceed such costs and is specified with each transfer form. The appropriate fee must accompany each transfer form.

(b) *Lists of wreckfish shareholders and permitted vessels.* Annually, on or about March 1, the RD will provide each wreckfish shareholder with a list of all wreckfish shareholders and their percentage shares, reflecting share transactions on forms received through February 15. Annually by April 15, the RD will provide each dealer who holds a dealer permit for wreckfish, as required under § 622.4(a)(4), with a list of vessels for which wreckfish permits have been issued, as required under § 622.4(a)(2)(vii). Annually, by April 15, the RD will provide each wreckfish shareholder with a list of dealers who have been issued dealer permits for wreckfish. From April 16 through January 14, updated lists will be provided when required. Updated lists may be obtained at other times or by a person who is not a wreckfish shareholder or wreckfish dealer permit holder by written request to the RD.

(c) *ITQs.* (1) Annually, as soon after March 1 as the TAC for wreckfish for the fishing year that commences April 16 is known, the RD will calculate each wreckfish shareholder's ITQ. Each ITQ is the product of the wreckfish TAC, in round weight, for the ensuing fishing year, the factor for converting round weight to eviscerated weight, and each wreckfish shareholder's percentage share, reflecting share transactions reported on forms received by the RD through February 15. Thus, the ITQs will be in terms of eviscerated weight of wreckfish.

(2) The RD will provide each wreckfish shareholder with ITQ coupons in various denominations, the total of which equals his or her ITQ, and a copy of the calculations used in determining his or her ITQ. Each coupon will be coded to indicate the initial recipient.

(3) An ITQ coupon may be transferred from one wreckfish shareholder to another by completing the sale endorsement thereon (that is, the signature and shareholder certificate number of the buyer). An ITQ coupon may be possessed only by the shareholder to whom it has been issued, or by the shareholder's employee, contractor, or agent, unless the ITQ coupon has been transferred to another shareholder. An ITQ coupon that has been transferred to another shareholder may be possessed only by the shareholder whose signature appears on the coupon as the buyer, or by the shareholder's employee, contractor, or agent, and with all required sale endorsements properly completed.

(4) Wreckfish may not be possessed on board a fishing vessel—

(i) In an amount exceeding the total of the ITQ coupons on board the vessel;

(ii) That does not have on board a commercial vessel permit for wreckfish, as required under § 622.4(a)(2)(vii); or

(iii) That does not have on board logbook forms for that fishing trip, as required under § 622.5(a)(1)(iv)(B).

(5) Prior to termination of a trip, a signature and date signed must be affixed in ink to the ''Fisherman'' part of ITQ coupons in denominations equal to the eviscerated weight of the wreckfish on board. The ''Fisherman'' part of each such coupon must be separated from the coupon and submitted with the logbook forms required by § 622.5(a)(1)(iv)(B) for that fishing trip.

(6) The ''Fish House'' part of each such coupon must be given to the dealer to whom the wreckfish are transferred in amounts totaling the eviscerated weight of the wreckfish transferred to that dealer. A wreckfish may be transferred only to a dealer who holds a dealer permit for wreckfish, as required under § 622.4(a)(4).

(7) A dealer may receive a wreckfish only from a vessel for which a commercial permit for wreckfish has been issued, as required under § 622.4(a)(2)(vii). A dealer must receive the ''Fish House'' part of ITQ coupons in amounts totaling the eviscerated weight of the wreckfish received; enter the permit number of the vessel from which the wreckfish were received, enter the date the wreckfish were received, enter the dealer's permit number, and sign each such ''Fish House'' part; and submit all such parts with the dealer reports required by § 622.5(c)(5)(i).

(8) An owner or operator of a vessel and a dealer must make available to an authorized officer all ITQ coupons in his or her possession upon request.

(d) *Wreckfish limitations.* (1) A wreckfish taken in the South Atlantic EEZ may not be transferred at sea, regardless of where the transfer takes place; and a wreckfish may not be transferred in the South Atlantic EEZ.

(2) A wreckfish possessed by a fisherman or dealer shoreward of the outer boundary of the South Atlantic EEZ or in a South Atlantic coastal state will be presumed to have been harvested from the South Atlantic EEZ unless accompanied by documentation that it was harvested from other than the South Atlantic EEZ.

(3) A wreckfish may be offloaded from a fishing vessel only between 8 a.m. and 5 p.m., local time.

(4) If a wreckfish is to be offloaded at a location other than a fixed facility of a dealer who holds a dealer permit for wreckfish, as required under § 622.4(a)(4), the wreckfish shareholder or the vessel operator must advise the NMFS, Office of Enforcement, Southeast Region, St. Petersburg, FL, by telephone (1–800–853–1964), of the location not less than 24 hours prior to offloading.

§ 622.16 Red snapper individual transferable quota (ITQ) system.

The ITQ system established by this section will remain in effect through March 31, 2000, during which time NMFS and the GMFMC will evaluate the effectiveness of the system. Based on the evaluation, the system may be modified, extended, or terminated.

(a) *Percentage shares.* (1) Initial percentage shares of the annual quota of red snapper are assigned to persons in accordance with the procedure specified in Amendment 8 to the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico (FMP) and in paragraphs (c)(1) through (c)(4) of this section. Each person is notified by the RD of his or her initial percentage shares. If additional shares become available to NMFS, such as by forfeiture pursuant to subpart F of 15 CFR part 904 for rule violations, such shares will be proportionately reissued to shareholders based on their shares as of November 1, after the additional shares become available. If NMFS is required to issue additional shares, such as may be required in the resolution of disputes, existing shares will be proportionately reduced. This reduction of shares will be based on shares as of November 1 after the required addition of shares.

(2) All or a portion of a person's percentage shares may be transferred to another person who is a U.S. citizen or permanent resident alien. (See paragraph (c)(5) of this section for restrictions on the transfer of shares in the initial months under the ITQ system.) Transfer of shares must be reported on a form available from the RD. The RD will confirm, in writing, the registration of each transfer. The effective date of each transfer is the confirmation date provided by the RD. The confirmation of registration date will normally be not later than 3 working days after receipt of a properly completed transfer form. However, reports of share transfers received by the RD from November 1 through December 31 will not be recorded or confirmed until after January 1. A fee is charged for each transfer of percentage shares. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service provided by NOAA to non-Federal recipients. The fee may not exceed such costs and is specified with each transfer form. The appropriate fee must accompany each transfer form.

(3) On or about January 1 each year, the RD will provide each red snapper shareholder with a list of all red snapper shareholders and their percentage shares, reflecting share transfers as indicated on properly completed transfer forms received through October 31. Updated lists may be obtained at other times, and by persons who are not red snapper shareholders, by written request to the RD.

(b) *ITQs.* (1) Annually, as soon after November 15 as the following year's red snapper quota is established, the RD will calculate each red snapper shareholder's ITQ in terms of eviscerated weight. Each ITQ is the product of the red snapper quota, in round weight, for the ensuing fishing year, the factor for converting round weight to eviscerated weight, and each red snapper shareholder's percentage share, reflecting share transfers reported on forms received by the RD through October 31.

(2) The RD will provide each red snapper shareholder with ITQ coupons in various denominations, the total of which equals his or her ITQ, and a copy of the calculations used in determining his or her ITQ. Each coupon will be coded to indicate the initial recipient.

(3) An ITQ coupon may be transferred. If the transfer is by sale, the seller must enter the sale price on the coupon.

(4) Except when the red snapper bag limit applies, red snapper in or from the EEZ or on board a vessel that has been issued a commercial permit for Gulf reef fish, as required under § 622.4(a)(2)(v), may not be possessed in an amount, in eviscerated weight, exceeding the total of ITQ coupons on board. (See § 622.39(a) for applicability of the bag limit.)

(5) Prior to termination of a trip, the operator's signature and the date signed must be written in ink on the ''Vessel'' part of ITQ coupons totaling at least the eviscerated weight of the red snapper on board. An owner or operator of a vessel must separate the ''Vessel'' part of each such coupon, enter thereon the permit number of the dealer to whom the red snapper are transferred, and submit the ''Vessel'' parts with the logbook forms for that fishing trip. An owner or operator of a vessel must make available to an authorized officer all ITQ coupons in his or her possession upon request.

(6) Red snapper harvested from the EEZ or possessed by a vessel with a commercial permit for Gulf reef fish, as required under § 622.4(a)(2)(v), may be transferred only to a dealer with a Gulf reef fish permit, as required under § 622.4(a)(4). The ''Fish House'' part of each ITQ coupon must be given to such dealer, or the agent or employee of such dealer, in amounts totaling at least the eviscerated weight of the red snapper transferred to that dealer.

(7) A dealer with a Gulf reef fish permit may receive red snapper only from a vessel that has on board a commercial permit for Gulf reef fish. A dealer, or the agent or employee of a dealer, must receive the ''Fish House'' part of ITQ coupons totaling at least the eviscerated weight of the red snapper received. Immediately upon receipt of red snapper, the dealer, or the agent or employee of the dealer, must enter the permit number of the vessel received from and date and sign each such ''Fish House'' part. The dealer must submit all such parts as required by paragraph (d)(6) of this section. A dealer, agent, or employee must make available to an authorized officer all ITQ coupons in his or her possession upon request.

(c) *Procedures for implementation*— (1) *Initial shareholders.* The following persons are initial shareholders in the red snapper ITQ system:

(i) Either the owner or operator of a vessel with a valid permit on August 29, 1995, provided such owner or operator had a landing of red snapper during the period 1990 through 1992. If the earned income of an operator was used to qualify for the permit that is valid on August 29, 1995, such operator is the initial shareholder rather than the owner. In the case of an owner, the term ''person'' includes a corporation or other legal entity; and

(ii) A historical captain. A historical captain means an operator who meets all of the following qualifications:

(A) From November 6, 1989, through 1993, fished solely under verbal or written share agreements with an owner, and such agreements provided for the operator to be responsible for hiring the crew, who was paid from the share under his or her control.

(B) Landed from that vessel at least 5,000 lb (2,268 kg) of red snapper per year in 2 of the 3 years 1990, 1991, and 1992.

(C) Derived more than 50 percent of his or her earned income from commercial fishing, that is, sale of the catch, in each of the years 1989 through 1993.

(D) Landed red snapper prior to November 7, 1989.

(2) *Initial shares.* (i) Initial shares are apportioned to initial shareholders based on each shareholder's average of the top 2 years' landings in 1990, 1991, and 1992. However, no person who is an initial shareholder under paragraph (c)(1) of this section will receive an initial percentage share that will amount to less than 100 lb (45.36 kg), round weight, of red snapper (90 lb (41 kg), eviscerated weight).

(ii) The percentage shares remaining after the minimum shares have been calculated under paragraph (c)(2)(i) of this section are apportioned based on each remaining shareholder's average of the top 2 years' landings in 1990, 1991, and 1992. In a case where a landing is associated with an owner and a historical captain, such landing is apportioned between the owner and historical captain in accordance with the share agreement in effect at the time of the landing.

(iii) The determinations of landings of red snapper during the period 1990 through 1992 and historical captain status are made in accordance with the data collected under Amendment 9 to the FMP. Those data identify each red snapper landing during the period 1990 through 1992. Each landing is associated with an owner and, when an operator's earned income was used to qualify for the vessel permit at the time of the landing, with such operator. Where appropriate, a landing is also associated with a historical captain. However, a red snapper landings record during that period that is associated solely with an owner may be retained by that owner or transferred as follows:

(A) An owner of a vessel with a valid commercial permit for Gulf reef fish on August 29, 1995, who transferred a vessel permit to another vessel owned by him or her will retain the red snapper landings record for the previous vessel.

(B) An owner of a vessel with a valid commercial permit for Gulf reef fish on August 29, 1995, will retain the landings record of a permitted vessel if the vessel had a change of ownership to another entity without a substantive change in control of the vessel. It will be presumed that there was no substantive change in control of a vessel if a successor in interest received at least a 50 percent interest in the vessel as a result of the change of ownership whether the change of ownership was—

(*1*) From a closely held corporation to its majority shareholder;

(*2*) From an individual who became the majority shareholder of a closely held corporation receiving the vessel;

(*3*) Between closely held corporations with a common majority shareholder; or

(*4*) From one to another of the following: Husband, wife, son, daughter, brother, sister, mother, or father.

(C) In other cases of transfer of a permit through change of ownership of a vessel, an owner of a vessel with a valid commercial permit for Gulf reef fish on August 29, 1995, will receive credit for the landings record of the vessel before his or her ownership only if there is a legally binding agreement for transfer of the landings record.

(iv) Requests for transfers of landings records must be submitted to the RD and must be postmarked not later than December 14, 1995. The RD may require documentation supporting such request. After considering requests for transfers of landings records, the RD will advise each initial shareholder or applicant of his or her tentative allocation of shares.

(3) *Notification of status.* The RD will advise each owner, operator, and historical captain for whom NMFS has a record of a red snapper landing during the period 1990 through 1992, including those who submitted such record under Amendment 9 to the FMP, of his or her tentative status as an initial shareholder and the tentative landings record that will be used to calculate his or her initial share.

(4) *Appeals.* (i) A special advisory panel, appointed by the GMFMC to function as an appeals board, will consider written requests from persons who contest their tentative status as an initial shareholder, including historical captain status, or tentative landings record. In addition to considering written requests, the board may allow personal appearances by such persons before the board.

(ii) The panel is only empowered to consider disputed calculations or determinations based on documentation submitted under Amendment 9 to the FMP regarding landings of red snapper during the period 1990 through 1992, including transfers of such landings records, or regarding historical captain status. In addition, the panel may consider applications and documentation of landings not submitted under Amendment 9 if, in the board's opinion, there is justification for the late application and documentation. The board is not empowered to consider an application from a person who believes he or she should be eligible because of hardship or other factors.

(iii) A written request for consideration by the board must be submitted to the RD, postmarked not later than December 27, 1995, and must contain documentation supporting the allegations that form the basis for the request.

(iv) The board will meet as necessary to consider each request that is submitted in a timely manner. Members of the appeals board will provide their individual recommendations for each appeal to the GMFMC, which will in turn submit its recommendation to the RD. The board and the GMFMC will recommend whether the eligibility criteria, specified in Amendment 8 to the FMP and paragraphs (c)(1) and (c)(2) of this section, were correctly applied in each case, based solely on the available record including documentation submitted by the applicant. The GMFMC will also base its recommendation on the recommendations of the board. The RD will decide the appeal based on the above criteria and the available record, including documentation submitted by the applicant and the recommendation of the GMFMC. The RD will notify the appellant of his decision and the reason therefor, in writing, normally within 45 days of receiving the GMFMC's recommendation. The RD's decision will constitute the final administrative action by NMFS on an appeal.

(v) Upon completion of the appeal process, the RD will issue share certificates to initial shareholders.

(5) *Transfers of shares.* The following restrictions apply to the transfer of shares:

(i) The transfer of shares is prohibited through September 30, 1996.

(ii) From October 1, 1996, through September 30, 1997, shares may be transferred only to other persons who are initial shareholders and are U.S. citizens or permanent resident aliens.

(d) *Exceptions/additions to general measures.* Other provisions of this part notwithstanding—

(1) Management of the red snapper ITQ system extends to adjoining state waters in the manner stated in paragraphs (d)(2) and (d)(3) of this section.

(2) For a dealer to receive red snapper harvested from state waters adjoining

the Gulf EEZ by or possessed on board a vessel with a commercial permit for Gulf reef fish, the dealer permit for Gulf reef fish specified in § 622.4(a)(4) must have been issued to the dealer.

(3) A copy of the dealer's permit must accompany each vehicle that is used to pick up from a fishing vessel red snapper from adjoining state waters harvested by or possessed on board a vessel with a commercial permit for Gulf reef fish.

(4) As a condition of a commercial vessel permit for Gulf reef fish, without regard to where red snapper are harvested or possessed, a vessel with such permit must comply with the red snapper ITQ requirements of paragraph (b) of this section; may not transfer or receive red snapper at sea; and must maintain red snapper with head and fins intact through landing, and the exceptions to that requirement contained in § 622.38(d) do not apply to red snapper. Red snapper may be eviscerated, gilled, and scaled but must otherwise be maintained in a whole condition.

(5) As a condition of a dealer permit for Gulf reef fish, as required under § 622.4(a)(4) or under paragraph (d)(2) of this section, without regard to where red snapper are harvested or possessed, a permitted dealer must comply with the red snapper ITQ requirements of paragraph (b) of this section.

(6) In any month that a red snapper is received, a dealer must submit the report required under § 622.5(c)(3)(ii). The ''Fish House'' parts of red snapper individual transferable coupons, received during the month in accordance with paragraph (b) of this section, must be submitted to the SRD with the report.

(7) It is unlawful for a person to do any of the following:

(i) Receive red snapper from a fishing vessel without a dealer permit for Gulf reef fish.

(ii) Fail to carry a copy of the dealer's permit, as specified in paragraph (d)(3) of this section.

(iii) Fail to comply with a condition of a permit, as specified in paragraph (d)(4) or (d)(5) of this section.

(iv) Fail to report red snapper received, as specified in paragraph (d)(6) of this section.

Subpart C—Management Measures

§ 622.30 Fishing years.

The fishing year for species or species groups governed in this part is January 1 through December 31 except for the following:

(a) *Allowable octocoral*—October 1 through September 30.

(b) *King and Spanish mackerel.* The fishing year for the king and Spanish mackerel bag limits specified in § 622.39(c)(1) is January 1 through December 31. The following fishing years apply only for the king and Spanish mackerel quotas specified in § 622.42(c):

(1) *Gulf migratory group king mackerel*—July 1 through June 30.

(2) *All other migratory groups of king and Spanish mackerel*—April 1 through March 31.

(c) *Wreckfish*—April 16 through April 15.

§ 622.31 Prohibited gear and methods.

In addition to the prohibited gear/methods specified in this section, see §§ 622.33, 622.34, and 622.35 for seasonal/area prohibited gear/methods and § 622.41 for species specific authorized and unauthorized gear/methods.

(a) *Explosives.* An explosive (except an explosive in a powerhead) may not be used to fish in the Caribbean, Gulf, or South Atlantic EEZ. A vessel fishing in the EEZ for a species governed in this part, or a vessel for which a permit has been issued under § 622.4, may not have on board any dynamite or similar explosive substance.

(b) *Chemicals and plants.* A toxic chemical may not be used or possessed in a coral area, and a chemical, plant, or plant-derived toxin may not be used to harvest a Caribbean coral reef resource in the Caribbean EEZ.

(c) *Fish traps.* A fish trap may not be used in the South Atlantic EEZ. A fish trap deployed in the South Atlantic EEZ may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

(d) *Gillnets.* A gillnet that has a float line that is more than 1,000 yd (914 m) in length or a drift gillnet may not be used in the Gulf, Mid-Atlantic, or South Atlantic EEZ to fish for king or Spanish mackerel; in the Gulf or South Atlantic EEZ to fish for coastal migratory pelagic fish, other than bluefish; or in the Gulf EEZ to fish for bluefish. A vessel in, or having fished on a trip in, the Gulf, Mid-Atlantic, or South Atlantic EEZ with such a gillnet or a drift gillnet on board may not have on board on that trip any of the indicated fish.

(e) *Longlines for wreckfish.* A bottom longline may not be used to fish for wreckfish in the South Atlantic EEZ. A person aboard a vessel that has a longline on board may not retain a wreckfish in or from the South Atlantic EEZ. For the purposes of this paragraph, a vessel is considered to have a longline on board when a power-operated longline hauler, a cable of diameter suitable for use in the longline fishery longer than 1.5 mi (2.4 km) on any reel, and gangions are on board. Removal of any one of these three elements constitutes removal of a longline.

(f) *Poisons.* (1) A poison, drug, or other chemical may not be used to fish for Caribbean reef fish in the Caribbean EEZ.

(2) A poison may not be used to take Gulf reef fish in the Gulf EEZ.

(3) A poison may not be used to fish for South Atlantic snapper-grouper in the South Atlantic EEZ.

(g) *Power-assisted tools.* A power-assisted tool may not be used in the Caribbean EEZ to take a Caribbean coral reef resource or in the Gulf or South Atlantic EEZ to take allowable octocoral, prohibited coral, or live rock.

(h) *Powerheads.* A powerhead may not be used in the Caribbean EEZ to harvest Caribbean reef fish or in the EEZ off South Carolina to harvest South Atlantic snapper-grouper. The possession of a mutilated Caribbean reef fish in or from the Caribbean EEZ, or a mutilated South Atlantic snapper-grouper in or from the EEZ off South Carolina, and a powerhead is *prima facie* evidence that such fish was harvested by a powerhead.

(i) *Rebreathers and spearfishing gear.* In the South Atlantic EEZ, a person using a rebreather may not harvest South Atlantic snapper-grouper with spearfishing gear. The possession of such snapper-grouper while in the water with a rebreather is *prima facie* evidence that such fish was harvested with spearfishing gear while using a rebreather.

(j) *Sea bass pots.* A sea bass pot may not be used in the South Atlantic EEZ south of 28°35.1′ N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL). A sea bass pot deployed in the EEZ south of 28°35.1′ N. lat. may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

(k) *Spears and hooks.* A spear, hook, or similar device may not be used in the Caribbean EEZ to harvest a Caribbean spiny lobster. The possession of a speared, pierced, or punctured Caribbean spiny lobster in or from the Caribbean EEZ is *prima facie* evidence of violation of this section.

§ 622.32 Prohibited and limited-harvest species.

(a) *General.* The harvest and possession restrictions of this section apply without regard to whether the species is harvested by a vessel operating under a commercial vessel permit. The operator of a vessel that

fishes in the EEZ is responsible for the limit applicable to that vessel.

(b) *Prohibited species.* Prohibited species, by geographical area, are as follows:

(1) *Caribbean.* (i) Caribbean prohibited coral may not be fished for or possessed in or from the Caribbean EEZ. The taking of Caribbean prohibited coral in the Caribbean EEZ is not considered unlawful possession provided it is returned immediately to the sea in the general area of fishing.

(ii) Foureye, banded, and longsnout butterflyfish; jewfish; Nassau grouper; and seahorses may not be harvested or possessed in or from the Caribbean EEZ. Such fish caught in the Caribbean EEZ must be released immediately with a minimum of harm.

(iii) Egg-bearing spiny lobster in the Caribbean EEZ must be returned to the water unharmed. An egg-bearing spiny lobster may be retained in a trap, provided the trap is returned immediately to the water. An egg-bearing spiny lobster may not be stripped, scraped, shaved, clipped, or in any other manner molested, in order to remove the eggs.

(2) *Gulf.* (i) Gulf and South Atlantic prohibited coral taken as incidental catch in the Gulf EEZ must be returned immediately to the sea in the general area of fishing. In fisheries where the entire catch is landed unsorted, such as the scallop and groundfish fisheries, unsorted prohibited coral may be landed ashore; however, no person may sell or purchase such prohibited coral.

(ii) Jewfish may not be harvested or possessed in or from the Gulf EEZ.

(iii) Red drum may not be harvested or possessed in or from the Gulf EEZ. Red drum caught in the Gulf EEZ must be released immediately with a minimum of harm.

(3) *Mid-Atlantic.* Red drum may not be harvested or possessed in or from the Mid-Atlantic EEZ south of a line extending in a direction of 115° from true north commencing at a point at 40°29.6′ N. lat., 73°54.1′ W. long., such point being the intersection of the New Jersey/New York boundary with the 3-nm line denoting the seaward limit of state waters. Red drum caught in such portion of the Mid-Atlantic EEZ must be released immediately with a minimum of harm.

(4) *South Atlantic.* (i) Gulf and South Atlantic prohibited coral taken as incidental catch in the South Atlantic EEZ must be returned immediately to the sea in the general area of fishing. In fisheries where the entire catch is landed unsorted, such as the scallop and groundfish fisheries, unsorted prohibited coral may be landed ashore; however, no person may sell or purchase such prohibited coral.

(ii) Jewfish and Nassau grouper may not be harvested or possessed in or from the South Atlantic EEZ. Jewfish and Nassau grouper taken in the South Atlantic EEZ incidentally by hook-and-line must be released immediately by cutting the line without removing the fish from the water.

(iii) Red drum may not be harvested or possessed in or from the South Atlantic EEZ. Red drum caught in the South Atlantic EEZ must be released immediately with a minimum of harm.

(iv) Wild live rock may not be harvested or possessed in the South Atlantic EEZ.

(c) *Limited-harvest species.* A person who fishes in the EEZ may not combine a harvest limitation specified in this paragraph (c) with a harvest limitation applicable to state waters. A species subject to a harvest limitation specified in this paragraph (c) taken in the EEZ may not be transferred at sea, regardless of where such transfer takes place, and such species may not be transferred in the EEZ.

(1) *Cobia.* No person may possess more than two cobia per day in or from the Gulf or South Atlantic EEZ, regardless of the number of trips or duration of a trip.

(2) *Cubera snapper.* No person may harvest more than two cubera snapper measuring 30 inches (76.2 cm), TL, or larger, per day in the South Atlantic EEZ off Florida and no more than two such cubera snapper in or from the South Atlantic EEZ off Florida may be possessed on board a vessel at any time.

(3) *Speckled hind and warsaw grouper.* The possession of speckled hind and warsaw grouper in or from the South Atlantic EEZ is limited to one of each per vessel per trip.

§ 622.33 Caribbean EEZ seasonal and/or area closures.

(a) *Mutton snapper spawning aggregation area.* From March 1 through June 30, each year, fishing is prohibited in the area bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	17°37.9′	64°52.6′
B	17°38.2′	64°52.1′
C	17°38.3′	64°51.8′
D	17°38.1′	64°51.4′
A	17°37.9′	64°52.6′

(b) *Red hind spawning aggregation areas.* From December 1 through February 28, each year, fishing is prohibited in the following three areas. Each area is bounded by rhumb lines connecting, in order, the points listed.

(1) *East of St. Croix.*

Point	North lat.	West long.
A	17°50.2′	64°27.9′
B	17°50.1′	64°26.1′
C	17°49.2′	64°25.8′
D	17°48.6′	64°25.8′
E	17°48.1′	64°26.1′
F	17°47.5′	64°26.9′
A	17°50.2′	64°27.9′

(2) *South of St. Thomas.*

Point	North lat.	West long.
A	18°13.2′	65°06.0′
B	18°13.2′	64°59.0′
C	18°11.8′	64°59.0′
D	18°10.7′	65°06.0′
A	18°13.2′	65°06.0′

(3) *West of Puerto Rico.*

Point	North lat.	West long.
A	18°11.0′	67°25.5′
B	18°11.0′	67°20.4′
C	18°08.0′	67°20.4′
D	18°08.0′	67°25.5′
A	18°11.0′	67°25.5′

§ 622.34 Gulf EEZ seasonal and/or area closures.

(a) *Alabama SMZ.* The Alabama SMZ consists of artificial reefs and surrounding areas. In the Alabama SMZ, fishing by a vessel that is operating as a charter vessel or headboat, a vessel that does not have a commercial permit for Gulf reef fish, as required under § 622.4(a)(2), or a vessel with such a permit fishing for Gulf reef fish is limited to hook-and-line gear with three or fewer hooks per line and spearfishing gear. A person aboard a vessel that uses on any trip gear other than hook-and-line gear with three or fewer hooks per line and spearfishing gear in the Alabama SMZ is limited on that trip to the bag limits for Gulf reef fish specified in § 622.39(b) and, for Gulf reef fish for which no bag limit is specified in § 622.39(b), the vessel is limited to 5 percent, by weight, of all fish on board or landed. The Alabama SMZ is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	30°02.5′	88°07.7′
B	30°02.6′	87°59.3′
C	29°55.0′	87°55.5′
D	29°54.5′	88°07.5′
A	30°02.5′	88°07.7′

(b) *Florida middle grounds HAPC.* Fishing with a bottom longline, bottom trawl, dredge, pot, or trap is prohibited

year round in the area bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	28°42.5′	84°24.8′
B	28°42.5′	84°16.3′
C	28°11.0′	84°00.0′
D	28°11.0′	84°07.0′
E	28°26.6′	84°24.8′
A	28°42.5′	84°24.8′

(c) *Reef fish longline and buoy gear restricted area.* A person aboard a vessel that uses, on any trip, longline or buoy gear in the longline and buoy gear restricted area is limited on that trip to the bag limits for Gulf reef fish specified in § 622.39(b)(1) and, for Gulf reef fish for which no bag limit is specified in § 622.39(b)(1), the vessel is limited to 5 percent, by weight, of all fish on board or landed. The longline and buoy gear restricted area is that part of the Gulf EEZ shoreward of rhumb lines connecting, in order, the points listed in Table 1, and shown in Figures 1 and 2, in Appendix B of this part.

(d) *Riley's Hump seasonal closure.* From May 1 through June 30, each year, fishing is prohibited in the following area bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	24°32.2′	83°08.7′
B	24°32.2′	83°05.2′
C	24°28.7′	83°05.2′
D	24°28.7′	83°08.7′
A	24°32.2′	83°08.7′

(e) *Shrimp/stone crab separation zones.* Five zones are established in the Gulf EEZ and Florida's waters off Citrus and Hernando Counties for the separation of shrimp trawling and stone crab trapping. Although Zone II is entirely within Florida's waters, it is included in this paragraph (e) for the convenience of fishermen. Restrictions that apply to Zone II and those parts of the other zones that are in Florida's waters are contained in Rule 46–38.001, Florida Administrative Code. Geographical coordinates of the points referred to in this paragraph (e) are as follows:

Point	North lat.	West long.
A	28°59′30″	82°45′36″
B	28°59′30″	83°00′10″
C	28°26′01″	82°59′47″
D	28°26′01″	82°56′54″
E	28°41′39″	82°55′25″
F	28°41′39″	82°56′09″
G	28°48′56″	82°56′19″
H	28°53′51″	82°51′19″
I[1]	28°54′43″	82°44′52″
J[2]	28°51′09″	82°44′00″
K	28°50′59″	82°54′16″
L	28°41′39″	82°53′56″
M[3]	28°41′39″	82°38′46″
N	28°41′39″	82°53′12″
O	28°30′51″	82°55′11″
P	28°40′00″	82°53′08″
Q	28°40′00″	82°47′58″
R	28°35′14″	82°47′47″
S	28°30′51″	82°52′55″
T	28°27′46″	82°55′09″
U	28°30′51″	82°52′09″

[1] Crystal River Entrance Light 1A.
[2] Long Pt. (southwest tip).
[3] Shoreline.

(1) *Zone I* is enclosed by rhumb lines connecting, in order, points A, B, C, D, T, E, F, G, H, I, and J, plus the shoreline between points A and J. It is unlawful to trawl in that part of Zone I that is in the EEZ from October 5 through May 20, each year.

(2) *Zone II* is enclosed by rhumb lines connecting, in order, points J, I, H, K, L, and M, plus the shoreline between points J and M.

(3) *Zone III* is enclosed by rhumb lines connecting, in order, points P, Q, R, U, S, and P. It is unlawful to trawl in that part of Zone III that is in the EEZ from October 5 through May 20, each year.

(4) *Zone IV* is enclosed by rhumb lines connecting, in order, points E, N, S, O, and E.

(i) It is unlawful to place a stone crab trap in that part of Zone IV that is in the EEZ from October 5 through December 1 and from April 2 through May 20, each year.

(ii) It is unlawful to trawl in that part of Zone IV that is in the EEZ from December 2 through April 1, each year.

(5) *Zone V* is enclosed by rhumb lines connecting, in order, points F, G, K, L, and F.

(i) It is unlawful to place a stone crab trap in that part of Zone V that is in the EEZ from October 5 through November 30 and from March 16 through May 20, each year.

(ii) It is unlawful to trawl in that part of Zone V that is in the EEZ from December 1 through March 15, each year.

(f) *Southwest Florida seasonal trawl closure.* From January 1 to 1 hour after sunset on May 20, each year, trawling, including trawling for live bait, is prohibited in that part of the Gulf EEZ shoreward of rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
B[1]	26°16.0′	81°58.5′
C	26°00.0′	82°04.0′
D	25°09.0′	81°47.6′
E	24°54.5′	81°50.5′
M[1]	24°49.3′	81°46.4′

[1] On the seaward limit of Florida's waters.

(g) *Reef fish stressed area.* The stressed area is that part of the Gulf EEZ shoreward of rhumb lines connecting, in order, the points listed in Table 2, and shown in Figures 3 and 4, in Appendix B of this part.

(1) A powerhead may not be used in the stressed area to take Gulf reef fish. Possession of a powerhead and a mutilated Gulf reef fish in the stressed area or after having fished in the stressed area constitutes *prima facie* evidence that such reef fish was taken with a powerhead in the stressed area.

(2) A roller trawl may not be used in the stressed area. Roller trawl means a trawl net equipped with a series of large, solid rollers separated by several smaller spacer rollers on a separate cable or line (sweep) connected to the footrope, which makes it possible to fish the gear over rough bottom, that is, in areas unsuitable for fishing conventional shrimp trawls. Rigid framed trawls adapted for shrimping over uneven bottom, in wide use along the west coast of Florida, and shrimp trawls with hollow plastic rollers for fishing on soft bottoms, are not considered roller trawls.

(3) A fish trap may not be used in the stressed area. A fish trap used in the stressed area will be considered unclaimed or abandoned property and may be disposed of in any appropriate manner by the Assistant Administrator (including an authorized officer).

(h) *Texas closure.* (1) From 30 minutes after sunset on May 15 to 30 minutes after sunset on July 15, trawling, except trawling for royal red shrimp beyond the 100-fathom (183-m) depth contour, is prohibited in the Gulf EEZ off Texas.

(2) In accordance with the procedures and restrictions of the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, the RD may adjust the closing and/or opening date of the Texas closure to provide an earlier, later, shorter, or longer closure, but the duration of the closure may not exceed 90 days or be less than 45 days. Notification of the adjustment of the closing or opening date will be published in the Federal Register.

(i) *Tortugas shrimp sanctuary.* (1) The Tortugas shrimp sanctuary is closed to trawling. The Tortugas shrimp sanctuary is that part of the EEZ off Florida shoreward of rhumb lines

connecting, in order, the following points:

Point	North lat.	West long.
N[1]	25°52.9′	81°37.9′
F	25°50.7′	81°51.3′
G[2]	24°40.1′	82°26.7′
H[3]	24°34.7′	82°35.2′
P[4]	24°35.0′	81°08.0′

[1] Coon Key Light.
[2] New Ground Rocks Light.
[3] Rebecca Shoal Light.
[4] Marquessas Keys.

(2) The provisions of paragraph (i)(1) of this section notwithstanding—

(i) Effective from April 11 through September 30, each year, that part of the Tortugas shrimp sanctuary seaward of rhumb lines connecting the following points is open to trawling: From point T at 24°47.8′ N. lat., 82°01.0′ W. long. to point U at 24°43.83′ N. lat., 82°01.0′ W. long. (on the line denoting the seaward limit of Florida's waters); thence along the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11439, to point V at 24°42.55′ N. lat., 82°15.0′ W. long.; thence north to point W at 24°43.6′ N. lat., 82°15.0′ W. long.

(ii) Effective from April 11 through July 31, each year, that part of the Tortugas shrimp sanctuary seaward of rhumb lines connecting the following points is open to trawling: From point W to point V, both points as specified in paragraph (i)(2)(i) of this section, to point G, as specified in paragraph (i)(1) of this section.

(3) Effective from May 26 through July 31, each year, that part of the Tortugas shrimp sanctuary seaward of rhumb lines connecting the following points is open to trawling: From point F, as specified in paragraph (i)(1) of this section, to point Q at 24°46.7′ N. lat., 81°52.2′ W. long. (on the line denoting the seaward limit of Florida's waters); thence along the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11439, to point U and north to point T, both points as specified in paragraph (i)(2)(i) of this section.

(j) *West and East Flower Garden Banks HAPC.* Fishing with a bottom longline, bottom trawl, dredge, pot, or trap is prohibited year-round in the HAPC. The West and East Flower Garden Banks are geographically centered at 27°52′14.21″ N. lat., 93°48′54.79″ W. long. and 27°55′07.44″ N. lat., 93°36′08.49″ W. long., respectively. The HAPC extends from these centers to the 50-fathom (300-ft) (91.4-m) isobath.

(k) *Wild live rock area closures.* No person may harvest or possess wild live rock in the Gulf EEZ—

(1) North and west of a line extending in a direction of 235° from true north from a point at the mouth of the Suwannee River at 29°17.25′ N. lat., 83°09.9′ W. long. (the Levy/Dixie County, FL boundary); or

(2) South of 25°20.4′ N. lat. (due west from the Monroe/Collier County, FL boundary).

§ 622.35 South Atlantic EEZ seasonal and/or area closures.

(a) *Allowable octocoral closed area.* No person may harvest or possess allowable octocoral in the South Atlantic EEZ north of 28°35.1′ N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL).

(b) *Longline closed areas.* A longline may not be used to fish in the EEZ for South Atlantic snapper-grouper south of 27°10′ N. lat. (due east of the entrance to St. Lucie Inlet, FL); or north of 27°10′ N. lat. where the charted depth is less than 50 fathoms (91.4 m), as shown on the latest edition of the largest scale NOAA chart of the location. A person aboard a vessel with a longline on board that fishes on a trip in the South Atlantic EEZ south of 27°10′ N. lat., or north of 27°10′ N. lat. where the charted depth is less than 50 fathoms (91.4 m), is limited on that trip to the bag limit for South Atlantic snapper-grouper for which a bag limit is specified in § 622.39(d)(1), and to zero for all other South Atlantic snapper-grouper. For the purpose of this paragraph, a vessel is considered to have a longline on board when a power-operated longline hauler, a cable or monofilament of diameter and length suitable for use in the longline fishery, and gangions are on board. Removal of any one of these three elements constitutes removal of a longline.

(c) *Oculina Bank HAPC.* The Oculina Bank HAPC is bounded on the north by 27°53′ N. lat., on the south by 27°30′ N. lat., on the east by 79°56′ W. long., and on the west by 80°00′ W. long. In the Oculina Bank HAPC:

(1) Fishing with a bottom longline, bottom trawl, dredge, pot, or trap is prohibited.

(2) A fishing vessel may not anchor, use an anchor and chain, or use a grapple and chain.

(3) No fishing for South Atlantic snapper-grouper is allowed, and South Atlantic snapper-grouper may not be retained, in or from the HAPC. South Atlantic snapper-grouper taken incidentally in the HAPC by hook-and-line gear must be released immediately by cutting the line without removing the fish from the water.

(d) *South Atlantic shrimp cold weather closure.* (1) Pursuant to the procedures and criteria established in the FMP for the Shrimp Fishery of the South Atlantic Region, when Florida, Georgia, North Carolina, or South Carolina closes all or a portion of its waters of the South Atlantic to the harvest of brown, pink, and white shrimp, the Assistant Administrator may concurrently close the South Atlantic EEZ adjacent to the closed state waters by filing a notification of closure with the Office of the Federal Register. Closure of the adjacent EEZ will be effective until the ending date of the closure in state waters, but may be ended earlier based on the state's request. In the latter case, the Assistant Administrator will terminate a closure of the EEZ by filing a notification to that effect with the Office of the Federal Register.

(2) During a closure, as specified in paragraph (d)(1) of this section—

(i) No person may trawl for brown shrimp, pink shrimp, or white shrimp in the closed portion of the EEZ (closed area); and no person may possess on board a fishing vessel brown shrimp, pink shrimp, or white shrimp in or from a closed area, except as authorized in paragraph (d)(2)(iii) of this section.

(ii) No person aboard a vessel trawling in that part of a closed area that is within 25 nm of the baseline from which the territorial sea is measured may use or have on board a trawl net with a mesh size less than 4 inches (10.2 cm), as measured between the centers of opposite knots when pulled taut.

(iii) Brown shrimp, pink shrimp, or white shrimp may be possessed on board a fishing vessel in a closed area, provided the vessel is in transit and all trawl nets with a mesh size less than 4 inches (10.2 cm), as measured between the centers of opposite knots when pulled taut, are stowed below deck while transiting the closed area. For the purpose of this paragraph, a vessel is in transit when it is on a direct and continuous course through a closed area.

(e) *SMZs.* (1) The SMZs consist of artificial reefs and surrounding areas as follows:

(i) *Paradise Reef* is bounded on the north by 33°31.59′ N. lat.; on the south by 33°30.51′ N. lat.; on the east by 78°57.55′ W. long.; and on the west by 78°58.85′ W. long.

(ii) *Ten Mile Reef* is bounded on the north by 33°26.65′ N. lat.; on the south by 33°24.80′ N. lat.; on the east by 78°51.08′ W. long.; and on the west by 78°52.97′ W. long.

(iii) *Pawleys Island Reef* is bounded on the north by 33°26.58′ N. lat.; on the south by 33°25.76′ N. lat.; on the east by 79°00.29′ W. long.; and on the west by 79°01.24′ W. long.

(iv) *Georgetown Reef* is bounded on the north by 33°14.90′ N. lat.; on the south by 33°13.85′ N. lat.; on the east by 78°59.45′ W. long.; and on the west by 79°00.65′ W. long.

(v) *Capers Reef* is bounded on the north by 32°45.45′ N. lat.; on the south by 32°43.91′ N. lat.; on the east by 79°33.81′ W. long.; and on the west by 79°35.10′ W. long.

(vi) *Kiawah Reef* is bounded on the north by 32°29.78′ N. lat.; on the south by 32°28.25′ N. lat.; on the east by 79°59.00′ W. long.; and on the west by 80°00.95′ W. long.

(vii) *Edisto Offshore Reef* is bounded on the north by 32°15.30′ N. lat.; on the south by 32°13.90′ N. lat.; on the east by 79°50.25′ W. long.; and on the west by 79°51.45′ W. long.

(viii) *Hunting Island Reef* is bounded on the north by 32°13.72′ N. lat.; on the south by 32°12.30′ N. lat.; on the east by 80°19.23′ W. long.; and on the west by 80°21.00′ W. long.

(ix) *Fripp Island Reef* is bounded on the north by 32°15.92′ N. lat.; on the south by 32°14.75′ N. lat.; on the east by 80°21.62′ W. long.; and on the west by 80°22.90′ W. long.

(x) *Betsy Ross Reef* is bounded on the north by 32°03.60′ N. lat.; on the south by 32°02.88′ N. lat.; on the east by 80°24.57′ W. long.; and on the west by 80°25.50′ W. long.

(xi) *Hilton Head Reef/Artificial Reef—T* is bounded on the north by 32°00.71′ N. lat.; on the south by 31°59.42′ N. lat.; on the east by 80°35.23′ W. long.; and on the west by 80°36.37′ W. long.

(xii) *Artificial Reef—A* is bounded on the north by 30°56.4′ N. lat.; on the south by 30°55.2′ N. lat.; on the east by 81°15.4′ W. long.; and on the west by 81°16.5′ W. long.

(xiii) *Artificial Reef—C* is bounded on the north by 30°51.4′ N. lat.; on the south by 30°50.1′ N. lat.; on the east by 81°09.1′ W. long.; and on the west by 81°10.4′ W. long.

(xiv) *Artificial Reef—G* is bounded on the north by 30°59.1′ N. lat.; on the south by 30°57.8′ N. lat.; on the east by 80°57.7′ W. long.; and on the west by 80°59.2′ W. long.

(xv) *Artificial Reef—F* is bounded on the north by 31°06.6′ N. lat.; on the south by 31°05.6′ N. lat.; on the east by 81°11.4′ W. long.; and on the west by 81°13.3′ W. long.

(xvi) *Artificial Reef—J* is bounded on the north by 31°36.7′ N. lat.; on the south by 31°35.7′ N. lat.; on the east by 80°47.0′ W. long.; and on the west by 80°48.1′ W. long.

(xvii) *Artificial Reef—L* is bounded on the north by 31°46.2′ N. lat.; on the south by 31°45.1′ N. lat.; on the east by 80°35.8′ W. long.; and on the west by 80°37.1′ W. long.

(xviii) *Artificial Reef—KC* is bounded on the north by 31°51.2′ N. lat.; on the south by 31°50.3′ N. lat.; on the east by 80°46.0′ W. long.; and on the west by 80°47.2′ W. long.

(xix) *Ft. Pierce Inshore Reef* is bounded on the north by 27°26.8' N. lat.; on the south by 27°25.8' N. lat.; on the east by 80°09.24' W. long.; and on the west by 80°10.36' W. long.

(xx) *Ft. Pierce Offshore Reef* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	27°23.68′	80°03.95′
B	27°22.80′	80°03.60′
C	27°23.94′	80°00.02′
D	27°24.85′	80°00.33′
A	27°23.68′	80°03.95′

(xxi) *Key Biscayne/Artificial Reef—H* is bounded on the north by 25°42.82′ N. lat.; on the south by 25°41.32′ N. lat.; on the east by 80°04.22′ W. long.; and on the west by 80°05.53′ W. long.

(xxii) *Little River Offshore Reef* is bounded on the north by 33°42.10′ N. lat.; on the south by 33°41.10′ N. lat.; on the east by 78°26.40′ W. long.; and on the west by 78°27.10′ W. long.

(xxiii) *BP–25 Reef* is bounded on the north by 33°21.70′ N. lat.; on the south by 33°20.70′ N. lat.; on the east by 78°24.80′ W. long.; and on the west by 78°25.60′ W. long.

(xxiv) *Vermilion Reef* is bounded on the north by 32°57.80′ N. lat.; on the south by 32°57.30′ N. lat.; on the east by 78°39.30′ W. long.; and on the west by 78°40.10′ W. long.

(xxv) *Cape Romaine Reef* is bounded on the north by 33°00.00′ N. lat.; on the south by 32°59.50′ N. lat.; on the east by 79°02.01′ W. long.; and on the west by 79°02.62′ W. long.

(xxvi) *Y–73 Reef* is bounded on the north by 32°33.20′ N. lat.; on the south by 32°32.70′ N. lat.; on the east by 79°19.10′ W. long.; and on the west by 79°19.70′ W. long.

(xxvii) *Eagles Nest Reef* is bounded on the north by 32°01.48′ N. lat.; on the south by 32°00.98′ N. lat.; on the east by 80°30.00′ W. long.; and on the west by 80°30.65′ W. long.

(xxviii) *Bill Perry Jr. Reef* is bounded on the north by 33°26.20′ N. lat.; on the south by 33°25.20′ N. lat.; on the east by 78°32.70′ W. long.; and on the west by 78°33.80′ W. long.

(xxix) *Comanche Reef* is bounded on the north by 32°27.40′ N. lat.; on the south by 32°26.90′ N. lat.; on the east by 79°18.80′ W. long.; and on the west by 79°19.60′ W. long.

(2) The use of a sea bass pot or a bottom longline is prohibited in each of the SMZs. The following additional restrictions apply in the indicated SMZs:

(i) In SMZs specified in paragraphs (e)(1) (i) through (xviii) and (e)(1) (xxii) through (xxix) of this section, the use of a gillnet or a trawl is prohibited; and fishing may be conducted only with hand-held hook-and-line gear (including a manual, electric, or hydraulic rod and reel) and spearfishing gear.

(ii) In SMZs specified in paragraphs (e)(1) (xix) and (xx) of this section, a hydraulic or electric reel that is permanently affixed to the vessel is prohibited when fishing for South Atlantic snapper-grouper.

(iii) In the SMZs specified in paragraphs (e)(1) (xix) and (xxi) of this section, the use of spearfishing gear is prohibited.

(iv) In the SMZs specified in paragraphs (e)(1)(i) through (x) and (e)(1) (xxii) through (xxix) of this section, a powerhead may not be used to take South Atlantic snapper-grouper. Possession of a powerhead and a mutilated South Atlantic snapper-grouper in one of the specified SMZs, or after having fished in one of the SMZs, constitutes *prima facie* evidence that such fish was taken with a powerhead in the SMZ.

§ 622.36 Seasonal harvest limitations.

The following limitations apply in the South Atlantic EEZ:

(a) *Greater amberjack spawning season.* During April, each year, south of 28°35.1′ N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL), the possession of greater amberjack in or from the EEZ on board a vessel that has a commercial permit for South Atlantic snapper-grouper is limited to three per person during a single day, regardless of the number of trips or the duration of a trip.

(b) *Mutton snapper spawning season.* During May and June, each year, the possession of mutton snapper in or from the EEZ on board a vessel that has a commercial permit for South Atlantic snapper-grouper is limited to 10 per person during a single day, regardless of the number of trips or the duration of a trip.

(c) *Wreckfish spawning-season closure.* From January 15 through April 15, each year, no person may harvest or possess on a fishing vessel wreckfish in or from the EEZ; offload wreckfish from

the EEZ; or sell or purchase wreckfish in or from the EEZ. The prohibition on sale or purchase of wreckfish does not apply to trade in wreckfish that were harvested, offloaded, and sold or purchased prior to January 15 and were held in cold storage by a dealer or processor.

§ 622.37 Minimum sizes.

Except for undersized king and Spanish mackerel allowed in paragraphs (c)(2) and (3) of this section, a fish smaller than its minimum size, as specified in this section, in or from the Caribbean, Gulf, South Atlantic, and/or Mid-Atlantic EEZ, as appropriate, may not be possessed, sold, or purchased. An undersized fish must be released immediately with a minimum of harm. The operator of a vessel that fishes in the EEZ is responsible for ensuring that fish on board are no smaller than the minimum size limits specified in this section.

(a) *Caribbean reef fish:* Yellowtail snapper—12 inches (30.5 cm), TL.

(b) *Caribbean spiny lobster*—3.5 inches (8.9 cm), carapace length.

(c) *Coastal migratory pelagic fish.* (1) Cobia in the Gulf or South Atlantic—33 inches (83.8 cm), fork length.

(2) King mackerel in the Gulf, South Atlantic, or Mid-Atlantic—20 inches (30.5 cm), fork length, except that a vessel fishing under a quota for king mackerel specified in § 622.42(c)(1) may possess undersized king mackerel in quantities not exceeding 5 percent, by weight, of the king mackerel on board.

(3) Spanish mackerel in the Gulf, South Atlantic, or Mid-Atlantic—12 inches (30.5 cm), fork length, except that a vessel fishing under a quota for Spanish mackerel specified in § 622.42(c)(2) may possess undersized Spanish mackerel in quantities not exceeding 5 percent, by weight, of the Spanish mackerel on board.

(d) *Gulf reef fish.* (1) Black sea bass and lane and vermilion snappers—8 inches (20.3 cm), TL.

(2) Gray, mutton, and yellowtail snappers—12 inches (30.5 cm), TL.

(3) Red snapper—

(i) Effective through December 31, 1997—15 inches (38.1 cm), TL;

(ii) Effective January 1, 1998—16 inches (40.6 cm), TL.

(4) Black, red, Nassau, and yellowfin groupers and gag—20 inches, (50.8 cm), TL.

(5) Greater amberjack—28 inches (71.1 cm), fork length, for a fish taken by a person subject to the bag limit specified in § 622.39(b)(1)(i) and 36 inches (91.4 cm), fork length, for a fish taken by a person not subject to the bag limit.

(e) *South Atlantic snapper-grouper.* (1) Black sea bass and lane snapper—8 inches (20.3 cm), TL.

(2) Vermilion snapper—10 inches (25.4 cm), TL, for a fish taken by a person subject to the bag limit specified in § 622.39(d)(1)(v) and 12 inches (30.5 cm), TL, for a fish taken by a person not subject to the bag limit.

(3) Blackfin, cubera, dog, gray, mahogany, queen, silk, and yellowtail snappers; schoolmaster; and red porgy—12 inches (30.5 cm), TL.

(4) Gray triggerfish in the South Atlantic EEZ off Florida—12 inches (30.5 cm), TL.

(5) Hogfish—12 inches (30.5 cm), fork length.

(6) Mutton snapper—16 inches (40.6 cm), TL.

(7) Black, red, yellowfin, and yellowmouth grouper; scamp; gag; and red snapper—20 inches (50.8 cm), TL.

(8) Greater amberjack—28 inches (71.1 cm), fork length, for a fish taken by a person subject to the bag limit specified in § 622.39(d)(1)(i) and 36 inches (91.4 cm), fork length, or, if the head is removed, 28 inches (71.1 cm), measured from the center edge at the deheaded end to the fork of the tail, for a fish taken by a person not subject to the bag limit. (See Figure 2 in Appendix C of this part for deheaded fish length measurement.)

(f) *Gulf shrimp.* White shrimp harvested in the EEZ are subject to the minimum-size landing and possession limits of Louisiana when possessed within the jurisdiction of that State.

§ 622.38 Landing fish intact.

The operator of a vessel that fishes in the EEZ is responsible for ensuring that fish on that vessel in the EEZ are maintained intact and, if taken from the EEZ, are maintained intact through offloading ashore, as specified in this section.

(a) The following must be maintained with head and fins intact: A cobia in or from the Gulf or South Atlantic EEZ; a king mackerel or Spanish mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ; a South Atlantic snapper-grouper in or from the South Atlantic EEZ; a yellowtail snapper in or from the Caribbean EEZ; and, except as specified in paragraphs (c), (d), and (e) of this section, a finfish in or from the Gulf EEZ. Such fish may be eviscerated, gilled, and scaled, but must otherwise be maintained in a whole condition.

(b) A Caribbean spiny lobster in or from the Caribbean EEZ must be maintained with head and carapace intact.

(c) Shark, swordfish, and tuna species are exempt from the requirements of paragraph (a) of this section.

(d) In the Gulf EEZ:

(1) Bait is exempt from the requirement to be maintained with head and fins intact.

(i) For the purpose of this paragraph (d)(1), bait means—

(A) Packaged, headless fish fillets that have the skin attached and are frozen or refrigerated;

(B) Headless fish fillets that have the skin attached and are held in brine; or

(C) Small pieces no larger than 3 in^3 (7.6 cm^3) or strips no larger than 3 inches by 9 inches (7.6 cm by 22.9 cm) that have the skin attached and are frozen, refrigerated, or held in brine.

(ii) Paragraph (d)(1)(i) of this section notwithstanding, a finfish or part thereof possessed in or landed from the Gulf EEZ that is subsequently sold or purchased as a finfish species, rather than as bait, is not bait.

(2) Legal-sized finfish possessed for consumption at sea on the harvesting vessel are exempt from the requirement to have head and fins intact, provided—

(i) Such finfish do not exceed any applicable bag limit;

(ii) Such finfish do not exceed 1.5 lb (680 g) of finfish parts per person aboard; and

(iii) The vessel is equipped to cook such finfish on board.

(e) In the South Atlantic EEZ, a greater amberjack on or offloaded ashore from a vessel that has a permit specified in § 622.4(a)(2)(vi) may be deheaded and eviscerated, but must otherwise be maintained in a whole condition through offloading ashore.

§ 622.39 Bag and possession limits.

(a) *Applicability.* (1) The bag and possession limits apply for species/species groups listed in this section in or from the EEZ. Bag limits apply to a person on a daily basis, regardless of the number of trips in a day. Possession limits apply to a person on a trip after the first 24 hours of that trip. The bag and possession limits apply to a person who fishes in the EEZ in any manner, except a person aboard a vessel in the EEZ that has on board the commercial vessel permit required under § 622.4(a)(2) for the appropriate species/species group. However, see § 622.32 for limitations on taking prohibited and limited-harvest species. The limitations in § 622.32 apply without regard to whether the species is harvested by a vessel operating under a commercial vessel permit or by a person subject to the bag limits. The possession of a commercial vessel permit notwithstanding, the bag and possession

limits apply when the vessel is operating as a charter vessel or headboat. A person who fishes in the EEZ may not combine a bag limit specified in this section with a bag or possession limit applicable to state waters. A species/species group subject to a bag limit specified in this section taken in the EEZ by a person subject to the bag limits may not be transferred at sea, regardless of where such transfer takes place, and such fish may not be transferred in the EEZ.

(2) Paragraph (a)(1) of this section notwithstanding, bag and possession limits also apply for Gulf reef fish in or from the EEZ to a person aboard a vessel that has on board a commercial permit for Gulf reef fish—

(i) When trawl gear or entangling net gear is on board. A vessel is considered to have trawl gear on board when trawl doors and a net are on board. Removal from the vessel of all trawl doors or all nets constitutes removal of trawl gear.

(ii) When a longline or buoy gear is on board and the vessel is fishing or has fished on a trip in the reef fish longline and buoy gear restricted area specified in § 622.34(c). A vessel is considered to have a longline on board when a power-operated longline hauler, a cable of diameter and length suitable for use in the longline fishery, and gangions are on board. Removal of any one of these three elements, in its entirety, constitutes removal of a longline.

(iii) For a species/species group when its quota has been reached and closure has been effected.

(b) *Gulf reef fish*—(1) *Bag limits.* (i) Greater amberjack—3.

(ii) Groupers, combined, excluding jewfish—5.

(iii) Red snapper—5.

(iv) Snappers, combined, excluding red, lane, and vermilion snapper—10.

(2) *Possession limits.* A person who is on a trip that spans more than 24 hours may possess no more than two daily bag limits, provided such trip is on a vessel that is operating as a charter vessel or headboat, the vessel has two licensed operators aboard, and each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the length of the trip.

(c) *King and Spanish mackerel*—(1) *Bag limits.* (i) Atlantic migratory group king mackerel—

(A) Mid-Atlantic and South Atlantic, other than off Florida—3.

(B) Off Florida—2, which is the daily bag limit specified by Florida for its waters (Rule 46–12.004(1), Florida Administrative Code). If Florida changes its limit, the bag limit specified in this paragraph (c)(1)(i)(B) will be changed to conform to Florida's limit, provided such limit does not exceed 5.

(ii) Gulf migratory group king mackerel—2.

(iii) Atlantic migratory group Spanish mackerel—10.

(iv) Gulf migratory group Spanish mackerel—

(A) Off Louisiana, Mississippi, and Alabama—10.

(B) Off Florida—10, which is the daily bag limit specified by Florida for its waters (Rule 46–23.005(1), Florida Administrative Code). If Florida changes its limit, the bag limit specified in this paragraph (c)(1)(iv)(B) will be changed to conform to Florida's limit, provided such limit does not exceed 10.

(C) Off Texas—7, which is the daily bag limit specified by Texas for its waters (Rule 31–65.72(c)(4)(A), Texas Administrative Code). If Texas changes its limit, the bag limit specified in this paragraph (c)(1)(iv)(C) will be changed to conform to Texas' limit, provided such limit does not exceed 10.

(2) *Possession limits.* A person who is on a trip that spans more than 24 hours may possess no more than two daily bag limits, provided such trip is on a vessel that is operating as a charter vessel or headboat, the vessel has two licensed operators aboard, and each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the length of the trip.

(d) *South Atlantic snapper-grouper*—(1) *Bag limits.* (i) Greater amberjack—3.

(ii) Groupers, combined, excluding jewfish and Nassau grouper, and tilefishes—5.

(iii) Hogfish in the South Atlantic off Florida—5.

(iv) Snappers, combined, excluding cubera snapper measuring 30 inches (76.2 cm), TL, or larger, in the South Atlantic off Florida, and excluding vermilion snapper—10, of which no more than 2 may be red snapper. (See § 622.32(c)(2) for limitations on cubera snapper measuring 30 inches (76.2 cm), TL, or larger, in or from the South Atlantic EEZ off Florida.)

(v) Vermilion snapper—10.

(2) *Possession limits.* Provided each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the duration of the trip—

(i) A person aboard a charter vessel or headboat on a trip that spans more than 24 hours may possess no more than two daily bag limits.

(ii) A person aboard a headboat on a trip that spans more than 48 hours and who can document that fishing was conducted on at least 3 days may possess no more than three daily bag limits.

(3) *Longline bag limits.* Other provisions of this paragraph (d) notwithstanding, a person on a trip aboard a vessel for which the bag limits apply that has a longline on board is limited on that trip to the bag limit for South Atlantic snapper-grouper for which a bag limit is specified in paragraph (d)(1) of this section, and to zero for all other South Atlantic snapper-grouper. For the purpose of this paragraph (d)(3), a vessel is considered to have a longline on board when a power-operated longline hauler, a cable or monofilament of diameter and length suitable for use in the longline fishery, and gangions are on board. Removal of any one of these three elements constitutes removal of a longline.

§ 622.40 Limitations on traps and pots.

(a) *Tending*—(1) *Caribbean EEZ.* A fish trap or Caribbean spiny lobster trap in the Caribbean EEZ may be pulled or tended only by a person (other than an authorized officer) aboard the fish trap or spiny lobster trap owner's vessel, or aboard another vessel if such vessel has on board written consent of the trap owner, or if the trap owner is aboard and has documentation verifying his identification number and color code. An owner's written consent must specify the time period such consent is effective and the trap owner's gear identification number and color code.

(2) *Gulf EEZ.* A fish trap in the Gulf EEZ may be pulled or tended only by a person (other than an authorized officer) aboard the vessel with the fish trap endorsement to fish such trap or aboard another vessel if such vessel has on board written consent of the owner or operator of the vessel so endorsed. Such written consent is valid solely for the removal of fish traps from the EEZ, and harvest of fish incidental to such removal, when vessel or equipment breakdown prevents the vessel with the fish trap endorsement from retrieving its traps.

(3) *South Atlantic EEZ.* A sea bass pot in the South Atlantic EEZ may be pulled or tended only by a person (other than an authorized officer) aboard the vessel permitted to fish such pot or aboard another vessel if such vessel has on board written consent of the owner or operator of the vessel so permitted.

(b) *Escape mechanisms*—(1) *Caribbean EEZ.* (i) A fish trap used or possessed in the Caribbean EEZ must have a panel located on each of two sides of the trap, excluding the top, bottom, and side containing the trap entrance. The opening covered by a panel must measure not less than 8 by 8 inches (20.3 by 20.3 cm). The mesh size of a panel may not be smaller than

the mesh size of the trap. A panel must be attached to the trap with untreated jute twine with a diameter not exceeding 1/8 inch (3.2 mm). An access door may serve as one of the panels, provided it is on an appropriate side, it is hinged only at its bottom, its only other fastening is untreated jute twine with a diameter not exceeding 1/8 inch (3.2 mm), and such fastening is at the top of the door so that the door will fall open when such twine degrades. Jute twine used to secure a panel may not be wrapped or overlapped.

(ii) A spiny lobster trap used or possessed in the Caribbean EEZ must contain on any vertical side or on the top a panel no smaller in diameter than the throat or entrance of the trap. The panel must be made of or attached to the trap by one of the following degradable materials:

(A) Untreated fiber of biological origin with a diameter not exceeding 1/8 inch (3.2 mm). This includes, but is not limited to tyre, palm, hemp, jute, cotton, wool, or silk.

(B) Ungalvanized or uncoated iron wire with a diameter not exceeding 1/16 inch (1.6 mm), that is, 16 gauge wire.

(2) *Gulf EEZ.* A fish trap used or possessed in the Gulf EEZ must have at least two escape windows on each of two sides, excluding the bottom (a total of four escape windows), that are 2 by 2 inches (5.1 by 5.1 cm) or larger. In addition, a fish trap must have a panel or access door located opposite each side of the trap that has a funnel. The opening covered by each panel or access door must be 144 in^2 (929 cm^2) or larger, with one dimension of the area equal to or larger than the largest interior axis of the trap's throat (funnel) with no other dimension less than 6 inches (15.2 cm). The hinges and fasteners of each panel or access door must be constructed of one of the following degradable materials:

(i) Untreated jute string with a diameter not exceeding 3/16 inch (4.8 mm) that is not wrapped or overlapped.

(ii) Magnesium alloy, time float releases (pop-up devices) or similar magnesium alloy fasteners.

(3) *South Atlantic EEZ.* (i) A sea bass pot that is used or possessed in the South Atlantic EEZ north of 28°35.1′ N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL) is required to have on at least one side, excluding top and bottom, a panel or door with an opening equal to or larger than the interior end of the trap's throat (funnel). The hinges and fasteners of each panel or door must be made of one of the following degradable materials:

(A) Untreated hemp, jute, or cotton string with a diameter not exceeding 3/16 inch (4.8 mm).

(B) Magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners.

(C) Ungalvanized or uncoated iron wire with a diameter not exceeding 1/16 inch (1.6 mm), that is, 16 gauge wire.

(ii) [Reserved]

(c) *Construction requirements and mesh sizes*—(1) *Caribbean EEZ.* A bare-wire fish trap used or possessed in the EEZ that has hexagonal mesh openings must have a minimum mesh size of 1.5 inches (3.8 cm) in the smallest dimension measured between centers of opposite strands. A bare-wire fish trap used or possessed in the EEZ that has other than hexagonal mesh openings or a fish trap of other than bare wire, such as coated wire or plastic, used or possessed in the EEZ, must have a minimum mesh size of 2.0 inches (5.1 cm) in the smallest dimension measured between centers of opposite strands.

(2) *Gulf EEZ.* A fish trap used or possessed in the Gulf EEZ must meet all of the following mesh size requirements (based on centerline measurements between opposite wires or netting strands):

(i) A minimum of 2 in^2 (12.9 cm^2) opening for each mesh.

(ii) One-inch (2.5-cm) minimum length for the shortest side.

(iii) Minimum distance of 1 inch (2.5 cm) between parallel sides of rectangular openings, and 1.5 inches (3.8 cm) between parallel sides of square openings and of mesh openings with more than four sides.

(iv) One and nine-tenths inches (4.8 cm) minimum distance for diagonal measures of mesh.

(3) *South Atlantic EEZ.* (i) A sea bass pot used or possessed in the South Atlantic EEZ must have mesh sizes as follows (based on centerline measurements between opposite, parallel wires or netting strands):

(A) Hexagonal mesh (chicken wire)—at least 1.5 inches (3.8 cm) between the wrapped sides;

(B) Square mesh—at least 1.5 inches (3.8 cm) between sides; or

(C) Rectangular mesh—at least 1 inch (2.5 cm) between the longer sides and 2 inches (5.1 cm) between the shorter sides.

(ii) [Reserved]

(d) *Area-specific restrictions*—(1) *Gulf EEZ.* In the Gulf EEZ, a fish trap may be pulled or tended only from official sunrise to official sunset. The operator of a vessel from which a fish trap is deployed in the Gulf EEZ must retrieve all the vessel's fish traps and return them to port on each trip. A fish trap that is not returned to port on a trip, and its attached line and buoy, may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer. The owner of such trap and/or the operator of the responsible vessel is subject to appropriate civil penalties. A buoy that floats on the surface must be attached to each fish trap, or to each end trap of traps that are connected by a line, used in the Gulf EEZ. The maximum allowable size for a fish trap fished in the Gulf EEZ shoreward of the 50-fathom (91.4-m) isobath is 33 ft^3 (0.9 m^3) in volume. Fish trap volume is determined by measuring the external dimensions of the trap, and includes both the enclosed holding capacity of the trap and the volume of the funnel(s) within those dimensions. There is no size limitation for fish traps fished seaward of the 50-fathom (91.4-m) isobath. The maximum number of traps that may be assigned to, possessed, or fished in the Gulf EEZ by a vessel is 100.

(2) *South Atlantic EEZ.* In the South Atlantic EEZ, sea bass pots may not be used or possessed in multiple configurations, that is, two or more pots may not be attached one to another so that their overall dimensions exceed those allowed for an individual sea bass pot. This does not preclude connecting individual pots to a line, such as a ''trawl'' or trot line.

§ 622.41 Species specific limitations.

(a) *Aquacultured live rock.* In the Gulf or South Atlantic EEZ:

(1) Aquacultured live rock may be harvested only under a permit, as required under § 622.4(a)(3)(iii), and aquacultured live rock on a site may be harvested only by the person, or his or her employee, contractor, or agent, who has been issued the aquacultured live rock permit for the site. A person harvesting aquacultured live rock is exempt from the prohibition on taking prohibited coral for such prohibited coral as attaches to aquacultured live rock.

(2) The following restrictions apply to individual aquaculture activities:

(i) No aquaculture site may exceed 1 acre (0.4 ha) in size.

(ii) Material deposited on the aquaculture site—

(A) May not be placed over naturally occurring reef outcrops, limestone ledges, coral reefs, or vegetated areas.

(B) Must be free of contaminants.

(C) Must be nontoxic.

(D) Must be placed on the site by hand or lowered completely to the bottom under restraint, that is, not allowed to fall freely.

(E) Must be placed from a vessel that is anchored.

(F) In the Gulf EEZ, must be distinguishable, geologically or otherwise (for example, be indelibly marked or tagged), from the naturally occurring substrate.

(G) In the South Atlantic EEZ, must be geologically distinguishable from the naturally occurring substrate and, in addition, may be indelibly marked or tagged.

(iii) A minimum setback of at least 50 ft (15.2 m) must be maintained from natural vegetated or hard bottom habitats.

(3) Mechanically dredging or drilling, or otherwise disturbing, aquacultured live rock is prohibited, and aquacultured live rock may be harvested only by hand. In addition, the following activities are prohibited in the South Atlantic: Chipping of aquacultured live rock in the EEZ, possession of chipped aquacultured live rock in or from the EEZ, removal of allowable octocoral or prohibited coral from aquacultured live rock in or from the EEZ, and possession of prohibited coral not attached to aquacultured live rock or allowable octocoral, while aquacultured live rock is in possession. See the definition of ''Allowable octocoral'' for clarification of the distinction between allowable octocoral and live rock. For the purposes of this paragraph (a)(3), chipping means breaking up reefs, ledges, or rocks into fragments, usually by means of a chisel and hammer.

(4) Not less than 24 hours prior to harvest of aquacultured live rock, the owner or operator of the harvesting vessel must provide the following information to the NMFS Law Enforcement Office, Southeast Area, St. Petersburg, FL, telephone (813) 570–5344:

(i) Permit number of site to be harvested and date of harvest.

(ii) Name and official number of the vessel to be used in harvesting.

(iii) Date, port, and facility at which aquacultured live rock will be landed.

(b) *Caribbean reef fish.* A marine aquarium fish may be harvested in the Caribbean EEZ only by a hand-held dip net or by a hand-held slurp gun. For the purposes of this paragraph, a hand-held slurp gun is a device that rapidly draws seawater containing fish into a self-contained chamber, and a marine aquarium fish is a Caribbean reef fish that is smaller than 5.5 inches (14.0 cm), TL.

(c) *King and Spanish mackerel*—(1) *Prohibited gear.* (i) In addition to the gear restrictions specified in § 622.31, fishing gear is prohibited for use in the Gulf, Mid-Atlantic, and South Atlantic EEZ for migratory groups of king and Spanish mackerel as follows:

(A) King mackerel, Gulf migratory group—all gear other than hook and line and run-around gillnet.

(B) Spanish mackerel, Gulf and Atlantic migratory groups—purse seines.

(ii) Except for the purse seine incidental catch allowance specified in paragraph (c)(3) of this section, a vessel in the EEZ in the area of a migratory group or having fished in the EEZ in such area with prohibited gear on board may not possess any of the species for which that gear is prohibited.

(2) *Gillnets*—(i) *King mackerel.* The minimum allowable mesh size for a gillnet used to fish in the Gulf, Mid-Atlantic, or South Atlantic EEZ for king mackerel is 4.75 inches (12.1 cm), stretched mesh. A vessel in the EEZ, or having fished on a trip in the EEZ, with a gillnet on board that has a mesh size less than 4.75 inches (12.1 cm), stretched mesh, may possess on that trip an incidental catch of king mackerel that does not exceed 10 percent, by number, of the total lawfully possessed Spanish mackerel on board.

(ii) *Spanish mackerel.* The minimum allowable mesh size for a gillnet used to fish in the Gulf, Mid-Atlantic, or South Atlantic EEZ for Spanish mackerel is 3.5 inches (8.9 cm), stretched mesh. A vessel in the EEZ, or having fished on a trip in the EEZ, with a gillnet on board that has a mesh size less than 3.5 inches (8.9 cm), stretched mesh, may not possess on that trip any Spanish mackerel.

(3) *Purse seine incidental catch allowance.* A vessel in the EEZ, or having fished in the EEZ, with a purse seine on board will not be considered as fishing, or having fished, for king or Spanish mackerel in violation of a prohibition of purse seines under paragraph (c)(1)(i)(B) of this section, or, in the case of king mackerel from the Atlantic migratory group, in violation of a closure effected in accordance with § 622.43(a), provided the king mackerel on board does not exceed 1 percent, or the Spanish mackerel on board does not exceed 10 percent, of all fish on board the vessel. Incidental catch will be calculated by number and/or weight of fish. Neither calculation may exceed the allowable percentage. Incidentally caught king or Spanish mackerel are counted toward the quotas provided for under § 622.42(c) and are subject to the prohibition of sale under § 622.43(a)(3)(iii).

(d) *South Atlantic snapper-grouper*—(1) *Authorized gear.* Subject to the gear restrictions specified in § 622.31, the following are the only gear types authorized in directed fishing for snapper-grouper in the South Atlantic EEZ:

(i) Vertical hook-and-line gear, including a hand-held rod or a rod attached to a vessel (''bandit'' gear), in either case, with a manual, electric, or hydraulic reel.

(ii) Spearfishing gear.

(iii) Bottom longline.

(iv) Sea bass pot.

(2) *Unauthorized gear.* All gear types other than those specified in paragraph (d)(1) of this section are unauthorized gear and the following possession and transfer limitations apply.

(i) A vessel with trawl gear on board that fishes in the EEZ on a trip may possess no more than 200 lb (90.7 kg) of South Atlantic snapper-grouper, excluding wreckfish, in or from the EEZ on that trip. It is a rebuttable presumption that a vessel with more than 200 lb (90.7 kg) of South Atlantic snapper-grouper, excluding wreckfish, on board harvested such fish in the EEZ.

(ii) Except as specified in paragraph (d)(3) of this section, a person aboard a vessel with unauthorized gear on board, other than trawl gear, that fishes in the EEZ on a trip is limited on that trip to:

(A) South Atlantic snapper-grouper species for which a bag limit is specified in § 622.39(d)(1)—the bag limit.

(B) All other South Atlantic snapper-grouper—zero.

(iii) South Atlantic snapper-grouper on board a vessel with unauthorized gear on board may not be transferred at sea, regardless of where such transfer takes place, and such snapper-grouper may not be transferred in the EEZ.

(iv) No vessel may receive at sea any South Atlantic snapper-grouper from a vessel with unauthorized gear on board, as specified in paragraph (d)(2)(iii) of this section.

(3) *Use of sink nets off North Carolina.* A vessel that has on board a commercial permit for South Atlantic snapper-grouper, excluding wreckfish, that fishes in the EEZ off North Carolina on a trip with a sink net on board, may retain otherwise legal South Atlantic snapper-grouper taken on that trip with vertical hook-and-line gear or a sea bass pot. For the purpose of this paragraph (d)(3), a sink net is a gillnet with stretched mesh measurements of 3 to 4.75 inches (7.6 to 12.1 cm) that is attached to the vessel when deployed.

§ 622.42 Quotas.

Quotas apply for the fishing year for each species or species group. Except for the quotas for Gulf and South Atlantic coral, the quotas include species harvested from state waters adjoining the EEZ. Quotas for species

managed under this part are as follows. (See § 622.32 for limitations on taking prohibited and limited-harvest species. The limitations in § 622.32 apply without regard to whether the species is harvested by a vessel operating under a commercial vessel permit or by a person subject to the bag limits.)

(a) *Gulf reef fish.* Quotas apply to persons who fish under commercial vessel permits for Gulf reef fish, as required under § 622.4(a)(2)(v).

(1) Red snapper—3.06 million lb (1.39 million kg), round weight.

(2) Deep-water groupers, that is, yellowedge grouper, misty grouper, warsaw grouper, snowy grouper, speckled hind, and, after the quota for shallow-water grouper is reached, scamp, combined—1.6 million lb (0.7 million kg), round weight.

(3) Shallow-water groupers, that is, all groupers other than deep-water groupers and jewfish, including scamp before the quota for shallow-water groupers is reached, combined—9.8 million lb (4.4 million kg), round weight.

(b) *Gulf and South Atlantic coral*—(1) *Allowable octocoral.* The quota for all persons who harvest allowable octocoral in the Gulf and South Atlantic EEZ is 50,000 colonies. A colony is a continuous group of coral polyps forming a single unit.

(2) *Wild live rock in the Gulf.* The quota for all persons who harvest wild live rock in the Gulf EEZ is 500,000 lb (226,796 kg). Commencing with the fishing year that begins January 1, 1997, the quota is zero.

(c) *King and Spanish mackerel.* King and Spanish mackerel quotas apply to persons who fish under commercial vessel permits for king and Spanish mackerel, as required under § 622.4(a)(2)(iv). A fish is counted against the quota for the area where it is caught when it is first sold.

(1) *Migratory groups of king mackerel*—(i) *Gulf migratory group.* The quota for the Gulf migratory group of king mackerel is 2.50 million lb (1.13 million kg). The Gulf migratory group is divided into eastern and western zones separated by 87°31′06″ W. long., which is a line directly south from the Alabama/Florida boundary. Quotas for the eastern and western zones are as follows:

(A) *Eastern zone*—1.73 million lb (0.78 million kg), which is further divided into quotas as follows:

(*1*) *Florida east coast subzone*—865,000 lb (392,357 kg).

(*2*) *Florida west coast subzone*—865,000 lb (392,357 kg), which is further divided into quotas by gear types as follows:

(*i*) 432,500 lb (196,179 kg) for vessels fishing with hook-and-line gear.

(*ii*) 432,500 lb (196,179 kg) for vessels fishing with run-around gillnets.

(*3*) The Florida east coast subzone is that part of the eastern zone north of 25°20.4′ N. lat., which is a line directly east from the Dade/Monroe County, FL, boundary, and the Florida west coast subzone is that part of the eastern zone south and west of 25°20.4′ N. lat.

(B) *Western zone*—0.77 million lb (0.35 million kg).

(ii) *Atlantic migratory group.* The quota for the Atlantic migratory group of king mackerel is 2.70 million lb (1.22 million kg). No more than 0.4 million lb (0.18 million kg) may be harvested by purse seines.

(2) *Migratory groups of Spanish mackerel*—(i) *Gulf migratory group.* The quota for the Gulf migratory group of Spanish mackerel is 4.90 million lb (2.22 million kg).

(ii) *Atlantic migratory group.* The quota for the Atlantic migratory group of Spanish mackerel is 4.70 million lb (2.13 million kg).

(d) *Royal red shrimp in the Gulf.* The quota for all persons who harvest royal red shrimp in the Gulf is 392,000 lb (177.8 mt), tail weight.

(e) *South Atlantic snapper-grouper, excluding wreckfish.* The quotas apply to persons who are not subject to the bag limits. (See § 622.39(a)(1) for applicability of the bag limits.)

(1) *Snowy grouper*—344,508 lb (156,266 kg), gutted weight, that is, eviscerated but otherwise whole.

(2) *Golden tilefish*—1,001,663 lb (454,347 kg), gutted weight, that is, eviscerated but otherwise whole.

(f) *Wreckfish.* The quota for wreckfish applies to wreckfish shareholders, or their employees, contractors, or agents, and is 2 million lb (907,185 kg), round weight. See § 622.15 for information on the wreckfish shareholder under the ITQ system.

§ 622.43 Closures.

(a) *General.* When a quota specified in § 622.42 is reached, or is projected to be reached, the Assistant Administrator will file a notification to that effect with the Office of the Federal Register. On and after the effective date of such notification, for the remainder of the fishing year, the following closure restrictions apply:

(1) *Gulf reef fish.* The bag and possession limits specified in § 622.39(b) apply to all harvest in the Gulf EEZ of the indicated species, and the sale or purchase of the indicated species taken from the Gulf EEZ is prohibited.

(2) *Gulf and South Atlantic coral*—(i) *Allowable octocoral.* Allowable octocoral may not be harvested or possessed in the Gulf or South Atlantic EEZ and the sale or purchase of allowable octocoral in or from the Gulf or South Atlantic EEZ is prohibited.

(ii) *Wild live rock in the Gulf.* Wild live rock may not be harvested or possessed in the Gulf EEZ and the sale or purchase of wild live rock in or from the Gulf EEZ is prohibited.

(3) *King and Spanish mackerel.* The closure provisions of this paragraph (a)(3) do not apply to Atlantic migratory group Spanish mackerel, which are managed under the commercial trip limits specified in § 622.44(b) in lieu of the closure provisions of this section.

(i) A person aboard a vessel for which a commercial permit for king and Spanish mackerel has been issued, as required under § 622.4(a)(2)(iv), may not fish for king or Spanish mackerel in the EEZ or retain fish in or from the EEZ under a bag or possession limit specified in § 622.39(c) for the closed species, migratory group, zone, subzone, or gear type, except as provided for under paragraph (a)(3)(ii) of this section.

(ii) A person aboard a vessel for which the permit indicates both commercial king and Spanish mackerel and charter vessel/headboat for coastal migratory pelagic fish may continue to retain fish under a bag and possession limit specified in § 622.39(c), provided the vessel is operating as a charter vessel or headboat.

(iii) The sale or purchase of king or Spanish mackerel of the closed species, migratory group, zone, subzone, or gear type is prohibited, including such king or Spanish mackerel taken under the bag limits.

(4) *Royal red shrimp in the Gulf.* Royal red shrimp in or from the Gulf EEZ may not be retained, and the sale or purchase of royal red shrimp taken from the Gulf EEZ is prohibited.

(5) *South Atlantic snapper-grouper, excluding wreckfish.* There are no closure provisions for South Atlantic snapper grouper, other than for wreckfish. Golden tilefish and snowy grouper, for which there are quotas, are managed under the commercial trip limits specified in § 622.44(a) in lieu of the closure provisions of this section.

(6) *Wreckfish.* Wreckfish in or from the South Atlantic EEZ may not be retained, and the sale or purchase of wreckfish taken from the South Atlantic EEZ is prohibited.

(b) *Exception to prohibition on sale/purchase.* (1) The prohibition on sale/purchase during a closure for Gulf reef fish, king and Spanish mackerel, royal red shrimp, or wreckfish in paragraph (a)(1), (a)(3)(iii), (a)(4), or (a)(6) of this section does not apply to the indicated

species that were harvested, landed ashore, and bartered, traded, or sold prior to the effective date of the closure and were held in cold storage by a dealer or processor.

(2) The prohibition on sale/purchase during a closure for allowable octocoral or wild live rock in paragraph (a)(2)(i) or (a)(2)(ii) of this section does not apply to allowable octocoral or wild live rock that was harvested and landed ashore prior to the effective date of the closure.

§ 622.44 Commercial trip limits.

Commercial trip limits are limits on the amount of the applicable species that may be possessed on board or landed, purchased, or sold from a vessel per day. A person who fishes in the EEZ may not combine a trip limit specified in this section with any trip or possession limit applicable to state waters. A species subject to a trip limit specified in this section taken in the EEZ may not be transferred at sea, regardless of where such transfer takes place, and such species may not be transferred in the EEZ. For fisheries governed by this part, commercial trip limits apply as follows:

(a) *King mackerel.* Commercial trip limits are established for Gulf migratory group king mackerel in the eastern zone as follows. (See § 622.42(c)(1)(i) for specification of the eastern zone and § 622.42(c)(1)(i)(A)(*3*) for specifications of the subzones in the eastern zone.)

(1) *Florida east coast subzone.* In the Florida east coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial permit for king and Spanish mackerel has been issued, as required under § 622.4(a)(2)(iv)—

(i) From November 1, each fishing year, until 75 percent of the subzone's fishing year quota of king mackerel has been harvested—in amounts not exceeding 50 king mackerel per day.

(ii) From the date that 75 percent of the subzone's fishing year quota of king mackerel has been harvested until a closure of the Florida east coast subzone has been effected under § 622.43(a)—in amounts not exceeding 25 king mackerel per day. However, if 75 percent of the subzone's quota has not been harvested by March 1, the vessel limit remains at 50 king mackerel per day until the subzone's quota is filled or until March 31, whichever occurs first.

(2) *Florida west coast subzone*—(i) *Gillnet gear.* (A) In the Florida west coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial permit with a gillnet endorsement has been issued, as required under § 622.4(a)(2)(ii), from July 1, each fishing year, until a closure of the Florida west coast subzone's fishery for vessels fishing with run-around gillnets has been effected under § 622.43(a)—in amounts not exceeding 25,000 lb (11,340 kg) per day.

(B) In the Florida west coast subzone:

(*1*) King mackerel in or from the EEZ may be possessed on board or landed from a vessel that uses or has on board a run-around gillnet on a trip only when such vessel has on board a commercial permit for king and Spanish mackerel with a gillnet endorsement.

(*2*) King mackerel from the west coast subzone landed by a vessel for which such commercial permit with endorsement has been issued will be counted against the run-around gillnet quota of § 622.42(c)(1)(i)(A)(*2*)(*ii*).

(*3*) King mackerel in or from the EEZ harvested with gear other than run-around gillnet may not be retained on board a vessel for which such commercial permit with endorsement has been issued.

(ii) *Hook-and-line gear.* In the Florida west coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel with a commercial permit for king and Spanish mackerel, as required by § 622.4(a)(2)(iv), and operating under the hook-and-line gear quota in § 622.42(c)(1)(i)(A)(*2*)(*i*):

(A) From July 1, each fishing year, until 75 percent of the subzone's hook-and-line gear quota has been harvested—in amounts not exceeding 125 king mackerel per day.

(B) From the date that 75 percent of the subzone's hook-and-line gear quota has been harvested until a closure of the west coast subzone's hook-and-line fishery has been effected under § 622.43(a)—in amounts not exceeding 50 king mackerel per day.

(3) *Notice of trip limit changes.* The Assistant Administrator, by filing a notification of trip limit change with the Office of the Federal Register, will effect the trip limit changes specified in paragraphs (a)(1) and (a)(2)(ii) of this section when the requisite harvest level has been reached or is projected to be reached.

(b) *Spanish mackerel.* (1) Commercial trip limits are established for Atlantic migratory group Spanish mackerel as follows:

(i) North of 30°42′45.6″ N. lat., which is a line directly east from the Georgia/Florida boundary, Spanish mackerel in or from the EEZ may not be possessed on board or landed in a day from a vessel for which a permit for king and Spanish mackerel has been issued, as required under § 622.4(a)(2)(iv), in amounts exceeding 3,500 lb (1,588 kg).

(ii) South of 30°42′45.6″ N. lat., Spanish mackerel in or from the EEZ may not be possessed on board or landed in a day from a vessel for which a permit for king and Spanish mackerel has been issued, as required under § 622.4(a)(2)(iv)—

(A) From April 1 through November 30, in amounts exceeding 1,500 lb (680 kg).

(B) From December 1 until 75 percent of the adjusted quota is taken, in amounts as follows:

(*1*) Mondays, Wednesdays, and Fridays—unlimited.

(*2*) Tuesdays and Thursdays—not exceeding 1,500 lb (680 kg).

(*3*) Saturdays and Sundays—not exceeding 500 lb (227 kg).

(C) After 75 percent of the adjusted quota is taken until 100 percent of the adjusted quota is taken, in amounts not exceeding 1,000 lb (454 kg).

(D) After 100 percent of the adjusted quota is taken through the end of the fishing year, in amounts not exceeding 500 lb (227 kg).

(2) For the purpose of paragraph (b)(1)(ii) of this section, the adjusted quota is 4.45 million lb (2.02 million kg). The adjusted quota is the quota for Atlantic migratory group Spanish mackerel reduced by an amount calculated to allow continued harvests of Atlantic migratory group Spanish mackerel at the rate of 500 lb (227 kg) per vessel per day for the remainder of the fishing year after the adjusted quota is reached. By filing a notification with the Office of the Federal Register, the Assistant Administrator will announce when 75 percent and 100 percent of the adjusted quota is reached or is projected to be reached.

(3) For the purpose of paragraph (b)(1)(ii) of this section, a day starts at 6 a.m., local time, and extends for 24 hours. If a vessel terminates a trip prior to 6 a.m., but retains Spanish mackerel on board after that time, the Spanish mackerel retained on board will not be considered in possession during the succeeding day, provided the vessel is not underway between 6 a.m. and the time such Spanish mackerel are unloaded, and provided such Spanish mackerel are unloaded prior to 6 p.m.

(c) *Golden tilefish and snowy grouper.* A person who fishes in the South Atlantic EEZ on a trip and who is not subject to the bag limits may not exceed the following trip limits. (See § 622.39(a) for applicability of the bag limits.)

(1) Golden tilefish (round weight or gutted weight, that is, eviscerated but otherwise whole):

(i) Until the fishing year quota specified in § 622.42(e)(2) is reached, 5,000 lb (2,268 kg).

(ii) After the fishing year quota specified in § 622.42(e)(2) is reached, 300 lb (136 kg).

(2) Snowy grouper (round weight or gutted weight, that is, eviscerated but otherwise whole):

(i) Until the fishing year quota specified in § 622.42(e)(1) is reached, 2,500 lb (1,134 kg).

(ii) After the fishing year quota specified in § 622.42(e)(1) is reached, 300 lb (136 kg).

(d) *Gulf wild live rock.* Until the quota for wild live rock from the Gulf EEZ is reached in 1996, a daily vessel limit of twenty-five 5-gallon (19–L) buckets, or volume equivalent (16.88 ft^3 (478.0 L)), applies to the harvest or possession of wild live rock in or from the Gulf EEZ, regardless of the number or duration of trips.

§ 622.45 Restrictions on sale/purchase.

In addition to restrictions on sale/purchase related to closures, as specified in § 622.43 (a) and (b), restrictions on sale and/or purchase apply as follows.

(a) *Caribbean coral reef resource.* (1) No person may sell or purchase a Caribbean prohibited coral harvested in the Caribbean EEZ.

(2) A Caribbean prohibited coral that is sold in Puerto Rico or the U.S. Virgin Islands will be presumed to have been harvested in the Caribbean EEZ, unless it is accompanied by documentation showing that it was harvested elsewhere. Such documentation must contain:

(i) The information specified in subpart K of part 300 of this title for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce.

(ii) The name and home port of the vessel, or the name and address of the individual, harvesting the Caribbean prohibited coral.

(iii) The port and date of landing the Caribbean prohibited coral.

(iv) A statement signed by the person selling the Caribbean prohibited coral attesting that, to the best of his or her knowledge, information, and belief, such Caribbean prohibited coral was harvested other than in the Caribbean EEZ or the waters of Puerto Rico or the U.S. Virgin Islands.

(b) *Caribbean reef fish.* A live red hind or live mutton snapper in or from the Caribbean EEZ may not be sold or purchased and used in the marine aquarium trade.

(c) *Gulf reef fish.* (1) A Gulf reef fish harvested in the EEZ on board a vessel that does not have a valid commercial permit for Gulf reef fish, as required under § 622.4(a)(2)(v), or a Gulf reef fish possessed under the bag limits specified in § 622.39(b), may not be sold or purchased.

(2) A Gulf reef fish harvested on board a vessel that has a valid commercial permit for Gulf reef fish may be sold only to a dealer who has a valid permit for Gulf reef fish, as required under § 622.4(a)(4).

(3) A Gulf reef fish harvested in the EEZ may be purchased by a dealer who has a valid permit for Gulf reef fish, as required under § 622.4(a)(4), only from a vessel that has a valid commercial permit for Gulf reef fish.

(d) *South Atlantic snapper-grouper.* (1) A person may sell South Atlantic snapper-grouper harvested in the EEZ only to a dealer who has a valid permit for South Atlantic snapper-grouper, as required under § 622.4(a)(4).

(2) A person may purchase South Atlantic snapper-grouper harvested in the EEZ only from a vessel that has a valid commercial permit for South Atlantic snapper-grouper, as required under § 622.4(a)(2)(iv), or from a person who has a valid commercial license to sell fish in the state where the purchase occurs.

(3) Except for the sale or purchase of South Atlantic snapper-grouper harvested by a vessel that has a valid commercial permit for South Atlantic snapper-grouper, the sale or purchase of such fish is limited to the bag limits specified in § 622.39(d)(1).

(4) A warsaw grouper or speckled hind in or from the South Atlantic EEZ may not be sold or purchased.

(e) *South Atlantic wild live rock.* Wild live rock in or from the South Atlantic EEZ may not be sold or purchased. The prohibition on sale or purchase does not apply to wild live rock that was harvested and landed prior to January 1, 1996.

§ 622.46 Prevention of gear conflicts.

(a) No person may knowingly place in the Gulf EEZ any article, including fishing gear, that interferes with fishing or obstructs or damages fishing gear or the fishing vessel of another; or knowingly use fishing gear in such a fashion that it obstructs or damages the fishing gear or fishing vessel of another.

(b) In accordance with the procedures and restrictions of the FMP for the Shrimp Fishery of the Gulf of Mexico, the RD may modify or establish separation zones for shrimp trawling and the use of fixed gear to prevent gear conflicts. Necessary prohibitions or restrictions will be published in the Federal Register.

(c) In accordance with the procedures and restrictions of the FMP for Coastal Migratory Pelagic Resources, when the RD determines that a conflict exists in the king mackerel fishery between hook-and-line and gillnet fishermen in the South Atlantic EEZ off the east coast of Florida between 27°00.6′ N. lat. and 27°50.0′ N. lat., the RD may prohibit or restrict the use of hook-and-line and/or gillnets in all or a portion of that area. Necessary prohibitions or restrictions will be published in the Federal Register.

§ 622.47 Gulf groundfish trawl fishery.

Gulf groundfish trawl fishery means fishing in the Gulf EEZ by a vessel that uses a bottom trawl, the unsorted catch of which is ground up for animal feed or industrial products.

(a) Other provisions of this part notwithstanding, the owner or operator of a vessel in the Gulf groundfish trawl fishery is exempt from the following requirements and limitations for the vessel's unsorted catch of Gulf reef fish:

(1) The requirement for a valid commercial vessel permit for Gulf reef fish in order to sell Gulf reef fish.

(2) Minimum size limits for Gulf reef fish.

(3) Bag limits for Gulf reef fish.

(4) The prohibition on sale of Gulf reef fish after a quota closure.

(b) Other provisions of this part notwithstanding, a dealer in a Gulf state is exempt from the requirement for a dealer permit for Gulf reef fish to receive Gulf reef fish harvested from the Gulf EEZ by a vessel in the Gulf groundfish trawl fishery.

§ 622.48 Adjustment of management measures.

In accordance with the framework procedures of the applicable FMPs, the RD may establish or modify the following management measures:

(a) *Caribbean coral reef resources.* Species for which management measures may be specified; prohibited species; harvest limitations, including quotas, trip, or daily landing limits; gear restrictions; closed seasons or areas; and marine conservation districts.

(b) *Caribbean reef fish.* Size limits, closed seasons or areas, fish trap mesh size, and the threshold level for overfishing.

(c) *Coastal migratory pelagic fish.* For cobia or for migratory groups of king or Spanish mackerel: MSY, TAC, quotas, bag limits, size limits, vessel trip limits, closed seasons or areas, gear restrictions, and initial permit requirements.

(d) *Gulf reef fish.* (1) For species or species groups: Target dates for

rebuilding overfished species, TAC, bag limits, size limits, vessel trip limits, closed seasons or areas, gear restrictions, and quotas.

(2) SMZs and the gear restrictions applicable in each.

(e) *Gulf royal red shrimp.* MSY, OY, and TAC.

(f) *South Atlantic snapper-grouper and wreckfish.* For species or species groups: Target dates for rebuilding overfished species, MSY, ABC, TAC, quotas, trip limits, bag limits, minimum sizes, gear restrictions (ranging from regulation to complete prohibition), and seasonal or area closures.

Appendix A to Part 622—Species Tables

Table 1 of Appendix A to Part 622—Caribbean Coral Reef Resources

I. Sponges—Phylum Porifera
A. Demosponges—Class Demospongiae
Aphimedon compressa, Erect rope sponge
Chondrilla nucula, Chicken liver sponge
Cynachirella alloclada
Geodia neptuni, Potato sponge
Haliclona sp., Finger sponge
Myriastra sp.
Niphates digitalis, Pink vase sponge
N. erecta, Lavender rope sponge
Spinosella policifera
S. vaginalis
Tethya crypta
II. Coelenterates—Phylum Coelenterata
A. Hydrocorals—Class Hydrozoa
1. Hydroids—Order Athecatae
Family Milleporidae
Millepora spp., Fire corals
Family Stylasteridae
Stylaster roseus, Rose lace corals
B. Anthozoans—Class Anthozoa
1. Soft corals—Order Alcyonacea
Family Anthothelidae
Erythropodium caribaeorum, Encrusting gorgonian
Iciligorgia schrammi, Deepwater sea fan
Family Briaridae
Briareum asbestinum, Corky sea finger
Family Clavulariidae
Carijoa riisei
Telesto spp.
2. Gorgonian corals—Order Gorgonacea
Family Ellisellidae
Ellisella spp., Sea whips
Family Gorgoniidae
Gorgonia flabellum, Venus sea fan
G. mariae, Wide-mesh sea fan
G. ventalina, Common sea fan
Pseudopterogorgia acerosa, Sea plume
P. albatrossae
P. americana, Slimy sea plume
P. bipinnata, Bipinnate plume
P. rigida
Pterogorgia anceps, Angular sea whip
P. citrina, Yellow sea whip
Family Plexauridae
Eunicea calyculata, Warty sea rod
E. clavigera
E. fusca, Doughnut sea rod
E. knighti
E. laciniata
E. laxispica
E. mammosa, Swollen-knob
E. succinea, Shelf-knob sea rod
E. touneforti
Muricea atlantica
M. elongata, Orange spiny rod
M. laxa, Delicate spiny rod
M. muricata, Spiny sea fan
M. pinnata, Long spine sea fan
Muriceopsis sp.
M. flavida, Rough sea plume
M. sulphurea
Plexaura flexuosa, Bent sea rod
P. homomalla, Black sea rod
Plexaurella dichotoma, Slit-pore sea rod
P. fusifera
P. grandiflora
P. grisea
P. nutans, Giant slit-pore
Pseudoplexaura crucis
P. flagellosa
P. porosa, Porous sea rod
P. wagenaari
3. Hard Corals—Order Scleractinia
Family Acroporidae
Acropora cervicornis, Staghorn coral
A. palmata, Elkhorn coral
A. prolifera, Fused staghorn
Family Agaricidae
Agaricia agaricities, Lettuce leaf coral
A. fragilis, Fragile saucer
A. lamarcki, Lamarck's sheet
A. tenuifolia, Thin leaf lettuce
Leptoseris cucullata, Sunray lettuce
Family Astrocoeniidae
Stephanocoenia michelinii, Blushing star
Family Caryophyllidae
Eusmilia fastigiata, Flower coral
Tubastrea aurea, Cup coral
Family Faviidae
Cladocora arbuscula, Tube coral
Colpophyllia natans, Boulder coral
Diploria clivosa, Knobby brain coral
D. labyrinthiformis, Grooved brain
D. strigosa, Symmetrical brain
Favia fragum, Golfball coral
Manicina areolata, Rose coral
M. mayori, Tortugas rose coral
Montastrea annularis, Boulder star coral
M. cavernosa, Great star coral
Solenastrea bournoni, Smooth star coral
Family Meandrinidae
Dendrogyra cylindrus, Pillar coral
Dichocoenia stellaris, Pancake star
D. stokesi, Elliptical star
Meandrina meandrites, Maze coral
Family Mussidae
Isophyllastrea rigida, Rough star coral
Isophyllia sinuosa, Sinuous cactus
Mussa angulosa, Large flower coral
Mycetophyllia aliciae, Thin fungus coral
M. danae, Fat fungus coral
M. ferox, Grooved fungus
M. lamarckiana, Fungus coral
Scolymia cubensis, Artichoke coral
S. lacera, Solitary disk
Family Oculinidae
Oculina diffusa, Ivory bush coral
Family Pocilloporidae
Madracis decactis, Ten-ray star coral
M. mirabilis, Yellow pencil
Family Poritidae
Porites astreoides, Mustard hill coral
P. branneri, Blue crust coral
P. divaricata, Small finger coral
P. porites, Finger coral
Family Rhizangiidae
Astrangia solitaria, Dwarf cup coral
Phyllangia americana, Hidden cup coral
Family Siderastreidae
Siderastrea radians, Lesser starlet
S. siderea, Massive starlet
4. Black Corals—Order Antipatharia
Antipathes spp., Bushy black coral
Stichopathes spp., Wire coral
5. Anemones—Order Actiniaria
Aiptasia tagetes, Pale anemone
Bartholomea annulata, Corkscrew anemone
Condylactis gigantea, Giant pink-tipped anemone
Hereractis lucida, Knobby anemone
Lebrunia spp., Staghorn anemone
Stichodactyla helianthus, Sun anemone
6. Colonial Anemones—Order Zoanthidea
Zoanthus spp., Sea mat
7. False Corals—Order Corallimorpharia
Discosoma spp. (formerly *Rhodactis),* False coral
Ricordia florida, Florida false coral
III. Annelid Worms—Phylum Annelida
A. Polychaetes—Class Polychaeta
Family Sabellidae, Feather duster worms
Sabellastarte spp., Tube worms
S. magnifica, Magnificent duster
Family Serpulidae
Spirobranchus giganteus, Christmas tree worm
IV. Mollusks—Phylum Mollusca
A. Gastropods—Class Gastropoda
Family Elysiidae
Tridachia crispata, Lettuce sea slug
Family Olividae
Oliva reticularis, Netted olive
Family Ovulidae
Cyphoma gibbosum, Flamingo tongue
Family Ranellidae
Charonia tritonis, Atlantic triton trumpet
Family Strombidae, Winged conchs
Strombus spp. (except Queen conch, *S. gigas)*
B. Bivalves—Class Bivalvia
Family Limidae
Lima spp., Fileclams
L. scabra, Rough fileclam
Family Spondylidae
Spondylus americanus, Atlantic thorny oyster
C. Cephalopods—Class Cephalopoda
1. Octopuses—Order Octopoda
Family Octopodidae
Octopus spp. (except the Common octopus, *O. vulgaris)*
V. Arthropods—Phylum Arthropoda
A. Crustaceans—Subphylum Crustacea
1. Decapods—Order Decapoda
Family Alpheidae
Alpheaus armatus, Snapping shrimp
Family Diogenidae
Paguristes spp., Hermit crabs
P. cadenati, Red reef hermit
Family Grapsidae
Percnon gibbesi, Nimble spray crab
Family Hippolytidae
Lysmata spp., Peppermint shrimp
Thor amboinensis, Anemone shrimp
Family Majidae, Coral crabs
Mithrax spp., Clinging crabs
M. cinctimanus, Banded clinging
M. sculptus, Green clinging
Stenorhynchus seticornis, Yellowline arrow
Family Palaemonida
Periclimenes spp., Cleaner shrimp

Family Squillidae, Mantis crabs
Gonodactylus spp.
Lysiosquilla spp.
Family Stenopodidae, Coral shrimp
Stenopus hispidus, Banded shrimp
S. scutellatus, Golden shrimp
VI. Bryozoans—Phylum Bryozoa
VII. Echinoderms—Phylum Echinodermata
A. Feather stars—Class Crinoidea
Analcidometra armata, Swimming crinoid
Davidaster spp., Crinoids
Nemaster spp., Crinoids
B. Sea stars—Class Asteroidea
Astropecten spp., Sand stars
Linckia guildingii, Common comet star
Ophidiaster guildingii, Comet star
Oreaster reticulatus, Cushion sea star
C. Brittle and basket stars—Class Ophiuroidea
Astrophyton muricatum, Giant basket star
Ophiocoma spp., Brittlestars
Ophioderma spp., Brittlestars
O. rubicundum, Ruby brittlestar
D. Sea Urchins—Class Echinoidea
Diadema antillarum, Long-spined urchin
Echinometra spp., Purple urchin
Eucidaris tribuloides, Pencil urchin
Lytechinus spp., Pin cushion urchin
Tripneustes ventricosus, Sea egg
E. Sea Cucumbers—Class Holothuroidea
Holothuria spp., Sea cucumbers
VIII. Chordates—Phylum Chordata
A. Tunicates—Subphylum Urochordata
IX. Green Algae—Phylum Chlorophyta
Caulerpa spp., Green grape algae
Halimeda spp., Watercress algae
Penicillus spp., Neptune's brush
Udotea spp., Mermaid's fan
Ventricaria ventricosa, Sea pearls
X. Red Algae—Phylum Rhodophyta
XI. Sea grasses—Phylum Angiospermae
Halodule wrightii, Shoal grass
Halophila spp., Sea vines
Ruppia maritima, Widgeon grass
Syringodium filiforme, Manatee grass
Thalassia testudium, Turtle grass

Table 2 of Appendix A to Part 622—Caribbean Reef Fish

Acanthuridae—Surgeonfishes
Ocean surgeonfish, *Acanthurus bahianus*
Doctorfish, *Acanthurus chirurgus*
Blue tang, *Acanthurus coeruleus*
Antennariidae—Frogfishes
Frogfish, *Antennarius* spp.
Apogonidae—Cardinalfishes
Flamefish, *Apogon maculatus*
Conchfish, *Astrapogen stellatus*
Aulostomidae—Trumpetfishes
Trumpetfish, *Aulostomus maculatus*
Balistidae—Leatherjackets
Scrawled filefish, *Aluterus scriptus*
Queen triggerfish, *Balistes vetula*
Whitespotted filefish, *Cantherhines macrocerus*
Ocean triggerfish, *Canthidermis sufflamen*
Black durgon, *Melichthys niger*
Sargassum triggerfish, *Xanthichthys rigens*
Blenniidae—Combtooth blennies
Redlip blenny, *Ophioblennius atlanticus*
Bothidae—*Lefteye flounders*
Peacock flounder, *Bothus lunatus*
Carangidae—Jacks
Yellow jack, *Caranx bartholomaei*
Blue runner, *Caranx crysos*
Horse-eye jack, *Caranx latus*
Black jack, *Caranx lugubris*
Bar jack, *Caranx ruber*
Greater amberjack, *Seriola dumerili*
Almaco jack, *Seriola rivoliana*
Chaetodontidae—Butterflyfishes
Longsnout butterflyfish, *Chaetodon aculeatus*
Foureye butterflyfish, *Chaetodon capistratus*
Spotfin butterflyfish, *Chaetodon ocellatus*
Banded butterflyfish, *Chaetodon striatus*
Cirrhitidae—Hawkfishes
Redspotted hawkfish, *Amblycirrhitus pinos*
Dactylopteridae—Flying gurnards
Flying gurnard, *Dactylopterus volitans*
Ephippidae—Spadefishes
Atlantic spadefish, *Chaetodipterus faber*
Gobiidae—Gobies
Neon goby, *Gobiosoma oceanops*
Rusty goby, *Priolepis hipoliti*
Grammatidae—Basslets
Royal gramma, *Gramma loreto*
Haemulidae—Grunts
Porkfish, *Anisotremus virginicus*
Margate, *Haemulon album*
Tomtate, *Haemulon aurolineatum*
French grunt, *Haemulon flavolineatum*
White grunt, *Haemulon plumieri*
Bluestriped grunt, *Haemulon sciurus*
Holocentridae—Squirrelfishes
Squirrelfish, *Holocentrus adscensionis*
Longspine squirrelfish, *Holocentrus rufus*
Blackbar soldierfish, *Myripristis jacobus*
Cardinal soldierfish, *Plectrypops retrospinis*
Labridae—Wrasses
Spanish hogfish, *Bodianus rufus*
Creole wrasse, *Clepticus parrae*
Yellowcheek wrasse, *Halichoeres cyanocephalus*
Yellowhead wrasse, *Halichoeres garnoti*
Clown wrasse, *Halichoeres maculipinna*
Puddingwife, *Halichoeres radiatus*
Pearly razorfish, *Hemipteronotus novacula*
Green razorfish, *Hemipteronotus splendens*
Hogfish, *Lachnolaimus maximus*
Bluehead wrasse, *Thalassoma bifasciatum*
Lutjanidae—Snappers
Black snapper, *Apsilus dentatus*
Queen snapper, *Etelis oculatus*
Mutton snapper, *Lutjanus analis*
Schoolmaster, *Lutjanus apodus*
Blackfin snapper, *Lutjanus buccanella*
Gray snapper, *Lutjanus griseus*
Dog snapper, *Lutjanus jocu*
Mahogany snapper, *Lutjanus mahogani*
Lane snapper, *Lutjanus synagris*
Silk snapper, *Lutjanus vivanus*
Yellowtail snapper, *Ocyurus chrysurus*
Wenchman, *Pristipomoides aquilonaris*
Vermilion snapper, *Rhomboplites aurorubens*
Malacanthidae—Tilefishes
Blackline tilefish, *Caulolatilus cyanops*
Sand tilefish, *Malacanthus plumieri*
Mullidae—Goatfishes
Yellow goatfish, *Mulloidichthys martinicus*
Spotted goatfish, *Pseudupeneus maculatus*
Muraenidae—Morays
Chain moray, *Echidna catenata*
Green moray, *Gymnothorax funebris*
Goldentail moray, *Gymnothorax miliaris*
Ogcocephalidae—Batfishes
Batfish, *Ogcocepahalus* spp.
Ophichthidae—Snake eels
Goldspotted eel, *Myrichthys ocellatus*
Opistognathidae—Jawfishes
Yellowhead jawfish, *Opistognathus aurifrons*
Dusky jawfish, *Opistognathus whitehursti*
Ostraciidae—Boxfishes
Spotted trunkfish, *Lactophrys bicaudalis*
Honeycomb cowfish, *Lactophrys polygonia*
Scrawled cowfish, *Lactophrys quadricornis*
Trunkfish, *Lactophrys trigonus*
Smooth trunkfish, *Lactophrys triqueter*
Pomacanthidae—Angelfishes
Cherubfish, *Centropyge argi*
Queen angelfish, *Holacanthus ciliaris*
Rock beauty, *Holacanthus tricolor*
Gray angelfish, *Pomacanthus arcuatus*
French angelfish, *Pomacanthus paru*
Pomacentridae—Damselfishes
Sergeant major, *Abudefduf saxatilis*
Blue chromis, *Chromis cyanea*
Sunshinefish, *Chromis insolata*
Yellowtail damselfish, *Microspathodon chrysurus*
Dusky damselfish, *Pomacentrus fuscus*
Beaugregory, *Pomacentrus leucostictus*
Bicolor damselfish, *Pomacentrus partitus*
Threespot damselfish, *Pomacentrus planifrons*
Priacanthidae—Bigeyes
Bigeye, *Priacanthus arenatus*
Glasseye snapper, *Priacanthus cruentatus*
Scaridae—Parrotfishes
Midnight parrotfish, *Scarus coelestinus*
Blue parrotfish, *Scarus coeruleus*
Striped parrotfish, *Scarus croicensis*
Rainbow parrotfish, *Scarus guacamaia*
Princess parrotfish, *Scarus taeniopterus*
Queen parrotfish, *Scarus vetula*
Redband parrotfish, *Sparisoma aurofrenatum*
Redtail parrotfish, *Sparisoma chrysopterum*
Redfin parrotfish, *Sparisoma rubripinne*
Stoplight parrotfish, *Sparisoma viride*
Sciaenidae—Drums
High-hat, *Equetus acuminatus*
Jackknife-fish, *Equetus lanceolatus*
Spotted drum, *Equetus punctatus*
Scorpaenidae—Scorpionfishes
Serranidae—Sea basses
Rock hind, *Epinephelus adscensionis*
Graysby, *Epinephelus cruentatus*
Yellowedge grouper, *Epinephelus flavolimbatus*
Coney, *Epinephelus fulvus*
Red hind, *Epinephelus guttatus*
Jewfish, *Epinephelus itajara*
Red grouper, *Epinephelus morio*
Misty grouper, *Epinephelus mystacinus*
Nassau Grouper, *Epinephelus striatus*
Butter hamlet, *Hypoplectrus unicolor*
Swissguard basslet, *Liopropoma rubre*
Yellowfin grouper, *Mycteroperca venenosa*
Tiger grouper, *Mycteroperca tigris*
Creole-fish, *Paranthias furcifer*
Greater soapfish, *Rypticus saponaceus*
Orangeback bass, *Serranus annularis*
Lantern bass, *Serranus baldwini*
Tobaccofish, *Serranus tabacarius*
Harlequin bass, *Serranus tigrinus*
Chalk bass, *Serranus tortugarum*
Soleidae—Soles
Caribbean tonguefish, *Symphurus arawak*
Sparidae—Porgies
Sea bream, *Archosargus rhomboidalis*
Jolthead porgy, *Calamus bajonado*
Sheepshead porgy, *Calamus penna*
Pluma, *Calamus pennatula*
Syngnathidae—Pipefishes

Seahorses, *Hippocampus spp.*
Pipefishes, *Syngnathus spp.*
Synodontidae—Lizardfishes
Sand diver, *Synodus intermedius*
Tetraodontidae—Puffers
Sharpnose puffer, *Canthigaster rostrata*
Porcupinefish, *Diodon hystrix*

Table 3 of Appendix A to Part 622—Gulf Reef Fish

Balistidae—Triggerfishes
Gray triggerfish, *Balistes capriscus*
Queen triggerfish, *Balistes vetula*
Carangidae—Jacks
Greater amberjack, *Seriola dumerili*
Lesser amberjack, *Seriola fasciata*
Almaco jack, *Seriola rivoliana*
Banded rudderfish, *Seriola zonata*
Haemulidae—Grunts
Tomtate, *Haemulon aurolineatum*
White grunt, *Haemulon plumieri*
Pigfish, *Orthopristis chrysoptera*
Labridae—Wrasses
Hogfish, *Lachnolaimus maximus*
Lutjanidae—Snappers
Queen snapper, *Etelis oculatus*
Mutton snapper, *Lutjanus analis*
Schoolmaster, *Lutjanus apodus*
Blackfin snapper, *Lutjanus buccanella*
Red snapper, *Lutjanus campechanus*
Cubera snapper, *Lutjanus cyanopterus*
Gray (mangrove) snapper, *Lutjanus griseus*
Dog snapper, *Lutjanus jocu*
Mahogany snapper, *Lutjanus mahogoni*
Lane snapper, *Lutjanus synagris*
Silk snapper, *Lutjanus vivanus*
Yellowtail snapper, *Ocyurus chrysurus*
Wenchman, *Pristipomoides aquilonaris*
Vermilion snapper, *Rhomboplites aurorubens*
Malacanthidae—Tilefishes
Goldface tilefish, *Caulolatilus chrysops*
Blackline tilefish, *Caulolatilus cyanops*
Anchor tilefish, *Caulolatilus intermedius*
Blueline tilefish, *Caulolatilus microps*
Tilefish, *Lopholatilus chamaeleonticeps*
Serranidae—Sea Basses and Groupers
Bank sea bass, *Centropristis ocyurus*
Rock sea bass, *Centropristis philadelphica*
Black sea bass, *Centropristis striata*
Dwarf sand perch, *Diplectrum bivittatum*
Sand perch, *Diplectrum formosum*
Rock hind, *Epinephelus adscensionis*
Speckled hind, *Epinephelus drummondhayi*
Yellowedge grouper, *Epinephelus flavolimbatus*
Red hind, *Epinephelus guttatus*
Jewfish, *Epinephelus itajara*
Red grouper, *Epinephelus morio*
Misty grouper, *Epinephelus mystacinus*
Warsaw grouper, *Epinephelus nigritus*
Snowy grouper, *Epinephelus niveatus*
Nassau grouper, *Epinephelus striatus*
Black grouper, *Mycteroperca bonaci*
Yellowmouth grouper, *Mycteroperca interstitialis*
Gag, *Mycteroperca microlepis*
Scamp, *Mycteroperca phenax*
Yellowfin grouper, *Mycteroperca venenosa*
Sparidae—Porgies
Grass porgy, *Calamus arctifrons*
Jolthead porgy, *Calamus bajonado*
Knobbed porgy, *Calamus nodosus*
Littlehead porgy, *Calamus proridens*
Pinfish, *Lagodon rhomboides*
Red porgy, *Pagrus*

Table 4 of Appendix A to Part 622—South Atlantic Snapper-Grouper

Balistidae—Triggerfishes
Gray triggerfish, *Balistes capriscus*
Queen triggerfish, *Balistes vetula*
Ocean triggerfish, *Canthidermis sufflamen*
Carangidae—Jacks
Yellow jack, *Caranx bartholomaei*
Blue runner, *Caranx crysos*
Crevalle jack, *Caranx hippos*
Bar jack, *Caranx ruber*
Greater amberjack, *Seriola dumerili*
Lesser amberjack, *Seriola fasciata*
Almaco jack, *Seriola rivoliana*
Banded rudderfish, *Seriola zonata*
Ephippidae—Spadefishes
Spadefish, *Chaetodipterus faber*
Haemulidae—Grunts
Black margate, *Anisotremus surinamensis*
Porkfish, *Anisotremus virginicus*
Margate, *Haemulon album*
Tomtate, *Haemulon aurolineatum*
Smallmouth grunt, *Haemulon chrysargyreum*
French grunt, *Haemulon flavolineatum*
Spanish grunt, *Haemulon macrostomum*
Cottonwick, *Haemulon melanurum*
Sailors choice, *Haemulon parrai*
White grunt, *Haemulon plumieri*
Blue stripe grunt, *Haemulon sciurus*
Labridae—Wrasses
Hogfish, *Lachnolaimus maximus*
Puddingwife, *Halichoeres radiatus*
Lutjanidae—Snappers
Black snapper, *Apsilus dentatus*
Queen snapper, *Etelis oculatus*
Mutton snapper, *Lutjanus analis*
Schoolmaster, *Lutjanus apodus*
Blackfin snapper, *Lutjanus buccanella*
Red snapper, *Lutjanus campechanus*
Cubera snapper, *Lutjanus cyanopterus*
Gray snapper, *Lutjanus griseus*
Mahogany snapper, *Lutjanus mahogoni*
Dog snapper, *Lutjanus jocu*
Lane snapper, *Lutjanus synagris*
Silk snapper, *Lutjanus vivanus*
Yellowtail snapper, *Ocyurus chrysurus*
Vermilion snapper, *Rhomboplites aurorubens*
Malacanthidae—Tilefishes
Blueline tilefish, *Caulolatilus microps*
Golden tilefish, *Lopholatilus chamaeleonticeps*
Sand tilefish, *Malacanthus plumieri*
Percichthyidae—Temperate basses
Wreckfish, *Polyprion americanus*
Serranidae—Sea Basses and Groupers
Bank sea bass, *Centropristis ocyurus*
Rock sea bass, *Centropristis philadelphica*
Black sea bass, *Centropristis striata*
Rock hind, *Epinephelus adscensionis*
Graysby, *Epinephelus cruentatus*
Speckled hind, *Epinephelus drummondhayi*
Yellowedge grouper, *Epinephelus flavolimbatus*
Coney, *Epinephelus fulvus*
Red hind, *Epinephelus guttatus*
Jewfish, *Epinephelus itajara*
Red grouper, *Epinephelus morio*
Misty grouper, *Epinephelus mystacinus*
Warsaw grouper, *Epinephelus nigritus*
Snowy grouper, *Epinephelus niveatus*
Nassau grouper, *Epinephelus striatus*
Black grouper, *Mycteroperca bonaci*
Yellowmouth grouper, *Mycteroperca interstitialis*
Gag, *Mycteroperca microlepis*
Scamp, *Mycteroperca phenax*
Tiger grouper, *Mycteroperca tigris*
Yellowfin grouper, *Mycteroperca venenosa*
Sparidae—Porgies
Sheepshead, *Archosargus probatocephalus*
Grass porgy, *Calamus arctifrons*
Jolthead porgy, *Calamus bajonado*
Saucereye porgy, *Calamus*
Whitebone porgy, *Calamus leucosteus*
Knobbed porgy, *Calamus nodosus*
Red porgy, *Pagrus*
Longspine porgy, *Stenotomus caprinus*
Scup, *Stenotomus chrysops*

Appendix B to Part 622—Gulf Areas

TABLE 1 OF APPENDIX B TO PART 622.—SEAWARD COORDINATES OF THE LONGLINE AND BUOY GEAR RESTRICTED AREA

Point No. and reference location [1]	North lat.	West long.
1 Seaward limit of Florida's waters north of Dry Tortugas	24°48.0′	82°48.0′
2 North of Rebecca Shoal	25°07.5′	82°34.0′
3 Off Sanibel Island—Offshore	26°26.0′	82°59.0′
4 West of Egmont Key	27°30.0′	83°21.5′
5 Off Anclote Keys—Offshore	28°10.0′	83°45.0′
6 Southeast corner of Florida Middle Ground	28°11.0′	84°00.0′
7 Southwest corner of Florida Middle Ground	28°11.0′	84°07.0′
8 West corner of Florida Middle Ground	28°26.6′	84°24.8′
9 Northwest corner of Florida Middle Ground	28°42.5′	84°24.8′
10 South of Carrabelle	29°05.0′	84°47.0′
11 South of Cape St. George	29°02.5′	85°09.0′
12 South of Cape San Blas lighted bell buoy—20 fathoms	29°21.0′	85°30.0′

TABLE 1 OF APPENDIX B TO PART 622.—SEAWARD COORDINATES OF THE LONGLINE AND BUOY GEAR RESTRICTED AREA—Continued

Point No. and reference location [1]	North lat.	West long.
13 South of Cape San Blas lighted bell buoy—50 fathoms	28°58.7′	85°30.0′
14 De Soto Canyon	30°06.0′	86°55.0′
15 South of Pensacola	29°46.0′	87°19.0′
16 South of Perdido Bay	29°29.0′	87°27.5′
17 East of North Pass of the Mississippi River	29°14.5′	88°28.0′
18 South of Southwest Pass of the Mississippi River	28°46.5′	89°26.0′
19 Northwest tip of Mississippi Canyon	28°38.5′	90°08.5′
20 West side of Mississippi Canyon	28°34.5′	89°59.5′
21 South of Timbalier Bay	28°22.5′	90°02.5′
22 South of Terrebonne Bay	28°10.5′	90°31.5′
23 South of Freeport	27°58.0′	95°00.0′
24 Off Matagorda Island	27°43.0′	96°02.0′
25 Off Aransas Pass	27°30.0′	96°23.5′
26 Northeast of Port Mansfield	27°00.0′	96°39.0′
27 East of Port Mansfield	26°44.0′	96°37.5′
28 Northeast of Port Isabel	26°22.0′	96°21.0′
29 U.S./Mexico EEZ boundary	26°00.5′	96°24.5′
Thence westerly along U.S./Mexico EEZ boundary to the seaward limit of Texas' waters.		

[1] Nearest identifiable landfall, boundary, navigational aid, or submarine area.

TABLE 2 OF APPENDIX B TO PART 622.—SEAWARD COORDINATES OF THE STRESSED AREA

Point No. and reference location [1]	North lat.	West long.
1 Seaward limit of Florida's waters northeast of Dry Tortugas	24°45.5′	82°41.5′
2 North of Marquesas Keys	24°48.0′	82°06.5′
3 Off Cape Sable	25°15.0′	82°02.0′
4 Off Sanibel Island—Inshore	26°26.0′	82°29.0′
5 Off Sanibel Island—Offshore	26°26.0′	82°59.0′
6 West of Egmont Key	27°30.0′	83°21.5′
7 Off Anclote Keys—Offshore	28°10.0′	83°45.0′
8 Off Anclote Keys—Inshore	28°10.0′	83°14.0′
9 Off Deadman Bay	29°38.0′	84°00.0′
10 Seaward limit of Florida's waters east of Cape St. George	29°35.5′	84°38.6′
Thence westerly along the seaward limit of Florida's waters to:		
11 Seaward limit of Florida's waters south of Cape San Blas	29°32.2′	85°27.1′
12 Southwest of Cape San Blas	29°30.5′	85°52.0′
13 Off St. Andrew Bay	29°53.0′	86°10.0′
14 De Soto Canyon	30°06.0′	86°55.0′
15 South of Florida/Alabama border	29°34.5′	87°38.0′
16 Off Mobile Bay	29°41.0′	88°00.0′
17 South of Alabama/Mississippi border	30°01.5′	88°23.7′
18 Horn/Chandeleur Islands	30°01.5′	88°40.5′
19 Chandeleur Islands	29°35.5′	88°37.0′
20 Seaward limit of Louisiana's waters off North Pass of the Mississippi River	29°16.3′	89°00.0′
Thence southerly and westerly along the seaward limit of Louisiana's waters to:		
21 Seaward limit of Louisiana's waters off Southwest Pass of the Mississippi River	28°57.3′	89°28.2′
22 Southeast of Grand Isle	29°09.0′	89°47.0′
23 Quick flashing horn buoy south of Isles Dernieres	28°32.5′	90°42.0′
24 Southeast of Calcasieu Pass	29°10.0′	92°37.0′
25 South of Sabine Pass—10 fathoms	29°09.0′	93°41.0′
26 South of Sabine Pass—30 fathoms	28°21.5′	93°28.0′
27 East of Aransas Pass	27°49.0′	96°19.5′
28 East of Baffin Bay	27°12.0′	96°51.0′
29 Northeast of Port Mansfield	26°46.5′	96°52.0′
30 Northeast of Port Isabel	26°21.5′	96°35.0′
31 U.S./Mexico EEZ boundary	26°00.5′	96°36.0′
Thence westerly along U.S./Mexico EEZ boundary to the seaward limit of Texas' waters.		

[1] Nearest identifiable landfall, boundary, navigational aid, or submarine area.

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Appendix C to Part 622—Fish Length Measurements

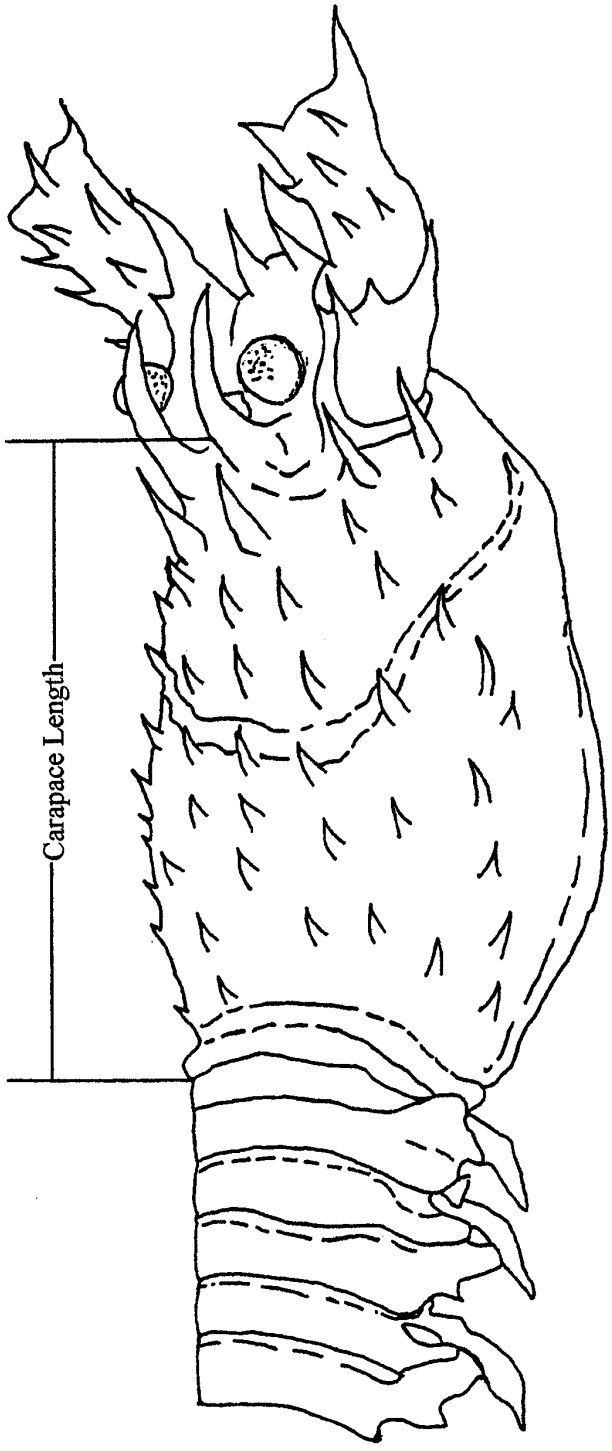
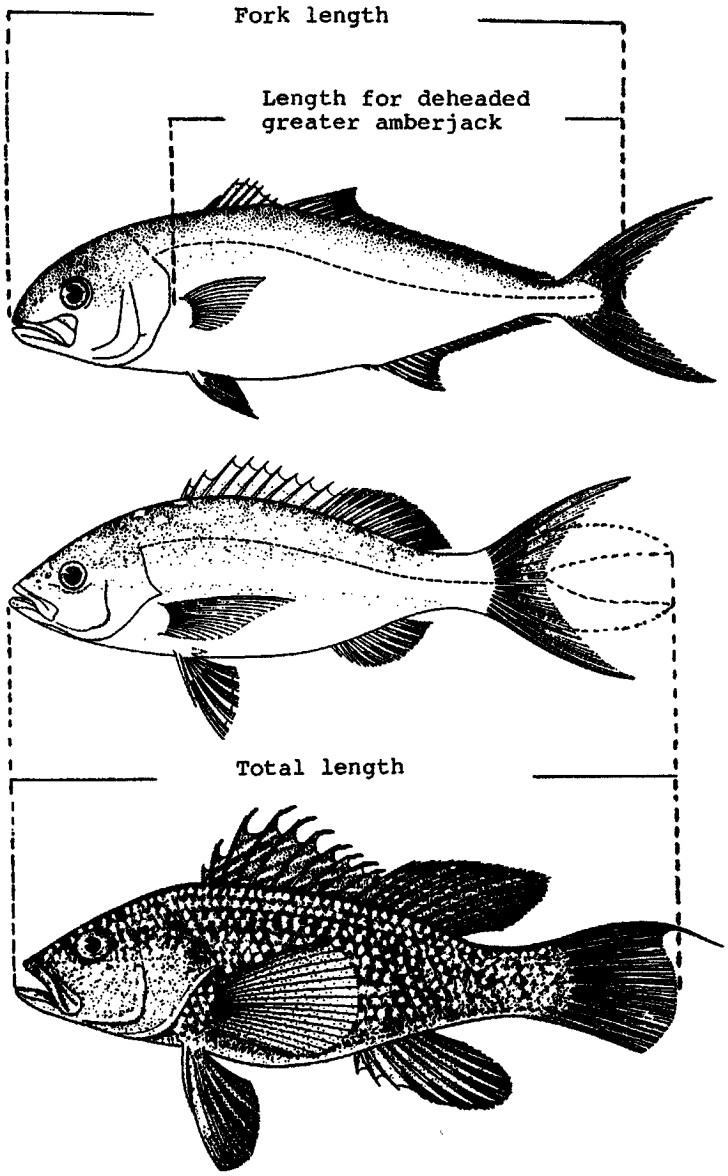


Figure 1 of Appendix C to Part 622—Carapace Length


Fork length
Length for deheaded greater amberjack
Total length

PARTS 638, 641, 642, 645, 646, 647, 653, 658, 659, 669, AND 670—[REMOVED]

4. Under the authority of 16 U.S.C. 1801 *et seq.*, parts 638, 641, 642, 645, 646, 647, 653, 658, 659, 669, and 670 are removed.

[FR Doc. 96–16254 Filed 7–1–96; 8:45 am]

BILLING CODE 3510–22–M

Federal Register

Wednesday
July 3, 1996

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 625, et al.

Fisheries of the Northeastern United States; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 625, 648, 650, 651, 652, 655, and 657

[Docket No. 960612172–6172–01; I.D. 051096C]

RIN 0648–AI21

Fisheries of the Northeastern United States

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

ACTION: Final rule.

SUMMARY: NMFS is consolidating six CFR parts governing the marine fisheries of the Northeast region into one new CFR part. The new part contains regulations implementing the fishery management plans (FMPs) for: summer flounder; Atlantic sea scallops; Northeast multispecies; Atlantic surf clams and ocean quahogs; Atlantic mackerel, squid, and butterfish; and Atlantic salmon and implementing management measures for scup. This final rule reorganizes the FMPs' and scup management measures into a more logical and cohesive order, removes duplicative and outdated provisions, and makes technical and editorial changes to improve readability and clarity, to achieve uniformity in regulatory language, and to correct errors in the existing regulations. This final rule also amends references to Paperwork Reduction Act (PRA) information collection requirements to reflect the consolidation. The purpose of this final rule is to make the regulations more concise, better organized, and thereby easier for the public to use. This action is part of the President's Regulatory Reinvention Initiative.

EFFECTIVE DATE: July 1, 1996, except for paragraphs (a)(78), (k), and (l) of § 648.14, and subpart H of part 648 (§§ 648.124—648.125), which are effective from July 1, through September 29, 1996.

ADDRESSES: Comments regarding burden-hour estimates for collection-of-information requirements contained in this rule should be sent to Dr. Andrew A. Rosenberg, Regional Director, 1 Blackburn Drive, Gloucester, MA 01930 and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Patricia A. Kurkul, NMFS, 508–281–9331.

SUPPLEMENTARY INFORMATION:

Background

In March 1995, President Clinton issued a directive to Federal agencies regarding their responsibilities under his Regulatory Reinvention Initiative. This initiative is part of the National Performance Review and calls for comprehensive regulatory reform. The President directed all agencies to undertake a review of all their regulations, with an emphasis on eliminating or modifying those that are obsolete, duplicative, or otherwise in need of reform. This final rule is intended to carry out the President's directive with respect to those regulations implementing Northeast region FMPs and management measures for scup.

Currently, regulations implementing the FMPs for the Northeast fisheries are contained in six separate CFR parts (50 CFR parts 625, 650, 651, 652, 655, and 657). NMFS, through this rulemaking, removes those six parts and consolidates the regulations contained therein into one new part (50 CFR part 648). This consolidated regulation provides the public with a single reference source for Federal fisheries regulations specific to the Northeast region. The restructuring of six parts into a single part results in one set of regulations that is more concise, clearer, and easier to use than six separate parts. General regulations pertaining to all fisheries and regulations pertaining to foreign fisheries have been consolidated and restructured in new 50 CFR part 600 by earlier rulemaking.

The summer flounder fishery in the Northwest Atlantic is managed jointly by NMFS and the Atlantic States Marine Fisheries Commission (Commission) under the FMP for the summer flounder fishery, which is implemented by regulations formerly at 50 CFR part 625. This FMP was prepared by the Mid-Atlantic Fishery Management Council (MAFMC) in cooperation with Commission and the New England Fishery Management Council (NEFMC) and the South Atlantic Fishery Management Council (SAFMC). NMFS manages the harvest of sea scallops under the FMP for the Atlantic sea scallop fishery, which is implemented through regulations formerly at 50 CFR part 650. The Northeast multispecies fishery is managed by NMFS under regulations implementing the FMP for the Northeast multispecies fishery formerly at 50 CFR part 651. The FMPs for the Atlantic sea scallop fishery and the Northeast multispecies fisheries were prepared by the NEFMC, in consultation with the MAFMC (multispecies and scallops) and the SAFMC (scallops). Atlantic surf clam and ocean quahog fisheries are managed by NMFS under regulations implementing the FMP for the Atlantic surf clam and ocean quahog fisheries formerly at 50 CFR part 652. This FMP was prepared by the MAFMC in consultation with the NEFMC. Atlantic mackerel, squid, and butterfish fisheries are managed by NMFS under the FMP for the Atlantic mackerel, squid, and butterfish fisheries of the Northwest Atlantic Ocean, which is implemented by regulations formerly at 50 CFR part 655. The regulations governing fishing for Atlantic mackerel, squid, and butterfish by vessels other than vessels of the United States are contained in 50 CFR part 600. This FMP was prepared by the MAFMC. The Atlantic salmon fishery is managed by NMFS under the FMP for Atlantic salmon, which is implemented by regulations formerly at 50 CFR part 657. This FMP was prepared by the NEFMC.

All of these FMPs were prepared under the authority of the Magnuson Fishery Conservation and Management Act.

The MAFMC recently submitted to NMFS Amendment 8 to the FMP for the summer flounder fishery. That amendment would include scup in the management unit of the FMP. The MAFMC requested NMFS to impose management measures for scup on an emergency interim basis pending its requested approval and implementation of Amendment 8. The emergency measures imposed by NMFS formerly appeared at 50 CFR part 625.

In new part 648, portions of the existing regulations that contain identical or nearly identical provisions have been combined and restructured into similar measures. Paragraph headings have been added for ease in identifying measures, and regulatory language has been revised to make needed technical changes and corrections and to improve clarity and consistency.

Section 3507(c)(B)(i) of the PRA requires that agencies inventory and display a current control number assigned by the Director, OMB, for each agency information collection. Section 902.1(b) of 15 CFR identifies the location of NOAA regulations for which OMB approval numbers have been issued. Because this final rule recodifies many recordkeeping and reporting requirements, it also revises section 902.1(b) to reference correctly the new

sections resulting from the consolidation.

Classification

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

Because this rule makes only nonsubstantive and technical changes to existing regulations, no useful purpose would be served by providing advance notice and opportunity for public comment. Accordingly, the Assistant Administrator for Fisheries, NOAA, under 5 U.S.C. 553(b)(B), for good cause finds that providing notice and opportunity for public comment is unnecessary. To the extent that the technical changes made by this rule are nonsubstantive, they are not subject to a 30-day delay in effective date under 5 U.S.C. 553(d). To the extent that the technical changes made by this rule are substantive, the Assistant Administrator, under 5 U.S.C. 553(d)(3), for good cause finds that it is impracticable, unnecessary, and contrary to the public interest to delay their effective date for 30 days. The technical changes do not require any changes in the conduct of fishery participants and thus a 30-day delay in effective date is unnecessary. Further to delay their effectiveness would make it extremely difficult for the affected public to use and understand the regulations and, thus, such a delay would be impracticable and contrary to the public interest.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

The following collection-of-information requirements for Northeast fisheries have been approved by OMB:

(a) *Approved under 0648–0018*—Processed Products Family of Forms—(1) Fishery products: Fish meal oil = 9.6 min/response; (2) fishery products U.S Processors and wholesalers: 3.5 min/response; (3) small processors = 6.6 min/response; (4) large processors = 3.85 min/response; and (5) additional responses in mandatory fisheries = 6.6 min/response.

(b) *Approved under 0648–0202*—Northeast Permit Family of Forms—(1) Vessel permit (initial) = 30 min/response; (2) vessel permit (renewal) 5 min/response; (3) appeal permit denial = 30 min/response; (4) operator permit = 1 hr/response; (5) dealer permit = 5 min/response; (6) observer deployments 2 min/response; (7) experimental fishing exemption = 1.9 hr/response; and (8) vessel identification = 45 min/response.

(c) *Approved under 0648–0212*—Vessel Logbooks—(1) Vessel log = 5 min/response; (2) shellfish log = 12.5 min/response; and (3) pound net log = 15 min/response.

(d) *Approved under 0648–0229*—Dealer Purchase Reports = 2 min/response.

(e) *Approved under 0648–0235*—Survey of Intent and Capacity—Written response = 15 min/response; phone = 5 min/response.

(f) *Approved under 0648–0238*—ITQ Allocation Transfer Request = 5 min/response.

(g) *Approved under 0648–0240*—Application to Shuck at Sea = 5 min/response.

(h) *Approved under 0648–0305*—Gear Identification Requirements = 1 min/response.

(i) *Approved under 0648–0306*—Vessel Identification Requirements = 45 min/response.

(j) *Approved under 0648–0307*—Vessel Monitoring and Communications Requirements (VTS) = 5 sec/response.

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

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Parts 625, 648, and 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

50 CFR Parts 650, 652, and 655

Fisheries, Reporting and recordkeeping requirements.

50 CFR Part 657

Fisheries, Fishing.

Dated: June 24, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX and, under the authority of 16 U.S.C. 1801 *et seq.*, 50 CFR chapter VI are amended as follows:

15 CFR CHAPTER IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, paragraph (b) the table is amended by removing in the left column under 50 CFR, the entries ''625.4'', ''625.5'', ''625.6'', ''625.7'', ''625.20'', ''625.27'', ''650.4'', ''650.5'', ''650.6'', ''650.7'', ''650.8'', ''650.24'', ''650.25'', ''650.26'', ''650.28'', ''651.4'', ''651.5'', ''651.6'', ''651.7'', ''651.8'', ''651.20'', ''651.21'', ''651.22'', ''651.25'', ''651.28'', ''651.29'', ''652.4'', ''652.5'', ''652.6'', ''652.7'', ''652.9'', ''652.20'', ''652.24'', ''655.4'' and 655.6'', and in the right column, in corresponding positions, the control numbers; and by adding, in numerical order, the following entries to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * *	
50 CFR	
* * * * *	
648.4	–0202, –0212
648.5	–0202
648.6	–0202
648.7	–0018, –0212 and –0229
648.8	–0306, –0229
648.9	–0202 and –0307
648.10	–0202
648.11	–0202
648.15	–0202
648.53	–0202
648.70	–0238
648.74	–0240
648.80	–0202
648.81	–0202
648.82	–0202
648.84	–0305
648.100	–0202
648.106	–0202

* * * * *

3. Part 648 is added effective July 1, 1996, except for paragraphs (a)(78), (k), and (l) of § 648.14 and subpart H (§§ 648.124—648.125), which are effective from July 1, through September 29, 1996, to read as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

Subpart A—General Provisions

Sec.
648.1 Purpose and scope.
648.2 Definitions.
648.3 Relation to other laws.
648.4 Vessel permits.
648.5 Operator permits.
648.6 Dealer/processor permits.
648.7 Recordkeeping and reporting requirements.
648.8 Vessel identification.
648.9 VTS requirements.
648.10 DAS notification requirements.
648.11 At-sea sea sampler/observer coverage.
648.12 Experimental fishing.
648.13 Transfers at sea.
648.14 Prohibitions.
648.15 Facilitation of enforcement.
648.16 Penalties.

Subpart B—Management Measures for the Atlantic Mackerel, Squid, and Butterfish Fisheries

648.20 Maximum OYs.
648.21 Procedures for determining initial annual amounts.
648.22 Closure of the fishery.
648.23 Gear restrictions.

Subpart C—Management Measures for Atlantic Salmon

648.40 Prohibition on possession.

Subpart D— Management Measures for the Atlantic Sea Scallop Fishery

648.50 Shell-height standard.
648.51 Gear and crew restrictions.
648.52 Possession restrictions.
648.53 DAS allocations.
648.54 State waters exemption.
648.55 Framework adjustments to management measures.

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

Subpart A—General Provisions

§ 648.1 Purpose and scope.

(a) This part implements the fishery management plans for the Atlantic mackerel, squid, and butterfish fisheries (Atlantic Mackerel, Squid, and Butterfish FMP); Atlantic salmon (Atlantic Salmon FMP); the Atlantic sea scallop fishery (Atlantic Sea Scallop FMP (Scallop FMP)); the Atlantic surf clam and ocean quahog fisheries (Atlantic Surf Clam and Ocean Quahog FMP); the Northeast multispecies fishery (NE Multispecies FMP); and the summer flounder fishery (Summer Flounder FMP). These FMPs and the regulations in this part govern the conservation and management of fisheries of the northeastern United States.

(b) This part governs domestic fishing only. Foreign fishing is governed under subpart F of part 600 of this chapter.

§ 648.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 600.10 of this chapter, the terms used in this part have the following meanings:

Alewife means *Alosa pseudoharengus.*

American lobster or *lobster* means *Homarus americanus.*

American shad means *Alosa sapidissima.*

Atlantic butterfish or *butterfish* means *Peprilus triacanthus.*

Atlantic croaker means *Micropogonias undulatus.*

Atlantic mackerel or *mackerel* means *Scomber scombrus.*

Atlantic Mackerel, Squid, and Butterfish Monitoring Committee means the committee made up of staff representatives of the MAFMC and the NEFMC, and the Northeast Regional Office and NEFSC of NMFS. The MAFMC Executive Director or a designee chairs the Committee.

Atlantic salmon means *Salmo salar.*

Atlantic sea scallop or *scallop* means *Placopecten magellanicus,* throughout its range.

Black sea bass means *Centropristis striata.*

Blowfish (puffer) means any species in the family Tetraodontidae.

Bluefish means *Pomotomus saltatrix.*

Bushel (bu) means a standard unit of volumetric measurement deemed to hold 1.88 ft^3 (53.24 L) of surf clams or ocean quahogs in the shell.

Cage means a container with a standard unit of volumetric measurement containing 60 ft^3 (1,700 L). The outside dimensions of a standard cage generally are 3 ft (91 cm) wide, 4 ft (122 cm) long, and 5 ft (152 cm) high.

Chafing gear or *cookies,* with respect to the scallop fishery, means steel, rubberized or other types of donut rings, disks, washers, twine, or other material attached to or between the steel rings of a sea scallop dredge.

Charter or *party boat* means any vessel that carries passengers for hire to engage in recreational fishing and, with respect to multispecies, that is not fishing under a DAS.

Combination vessel means a vessel that has fished in any one calendar year with scallop dredge gear and otter trawl gear during the period 1988 through 1990, and that is eligible for an allocation of individual DAS under the NE Multispecies FMP and has applied for or been issued a limited access scallop permit.

Commercial fishing or *fishing commercially* means fishing that is intended to, or results in, the barter, trade, transfer, or sale of fish.

Commission means the Atlantic States Marine Fisheries Commission.

Conger eel means *Conger oceanicus.*

Cunner means *Tautogolabrus adspersus.*

Council means the New England Fishery Management Council (NEFMC) for the Atlantic sea scallop and the NE multispecies fisheries or the Mid-Atlantic Fishery Management Council (MAFMC) for the Atlantic mackerel, squid, and butterfish; the Atlantic surf clam and ocean quahog; and the summer flounder fisheries.

Day(s)-at-sea (DAS), with respect to the NE multispecies and scallop fisheries, means the 24-hour periods of time during which a fishing vessel is absent from port in which the vessel intends to fish for, possess or land; or fishes for, possesses, or lands regulated species or scallops.

Dealer means any person who receives, for a commercial purpose (other than solely for transport on land),

from the owner or operator of a vessel issued a valid permit under this part, any species of fish, the harvest of which is managed by this part.

Dredge or *dredge gear,* with respect to the scallop fishery, means gear consisting of a mouth frame attached to a holding bag constructed of metal rings, or any other modification to this design, that can be or is used in the harvest of scallops.

Dredge bottom, with respect to scallops, means the rings and links found between the bail of the dredge and the club stick, which, when fishing, would be in contact with the sea bed. This includes the triangular shaped portions of the ring bag commonly known as ''diamonds.''

Dredge top, with respect to the scallop fishery, means the mesh panel in the top of a dredge and immediately adjacent rings and links found between the bail of the dredge, the club stick, and the two side panels. The bail of the dredge is the rigid structure of the forward portion of the dredge that connects to the warp and holds the dredge open. The club stick is the rigid bar at the tail of the dredge bag that is attached to the rings.

Dredge vessel, with respect to the scallop fishery, means any fishing vessel that is equipped for fishing using dredge gear and that is capable of catching scallops.

Exempted gear, with respect to the NE multispecies fishery, means gear that is deemed to be not capable of catching NE multispecies and includes: Pelagic hook and line, pelagic longline, spears, rakes, diving gear, cast nets, tongs, harpoons, weirs, dipnets, stop nets, pound nets, pelagic gillnets, pots and traps, purse seines, shrimp trawls (with a properly configured grate as defined under this part), and midwater trawls.

Fishing trip or *trip* means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel returns to port.

Fishing year means:

(1) For the scallop fishery, from March 1 through the last day of February of the following year.

(2) For the NE multispecies fishery, from May 1 through April 30 of the following year.

(3) For all other fisheries in this part, from January 1 through December 31.

FMP means fishery management plan.

Fourspot flounder means *Paralichthys oblongus.*

Gross registered tonnage (GRT) means the gross registered tonnage specified on the USCG documentation for a vessel.

Hagfish means *Myxine glutinosa.*

Handline or *handline gear* means fishing gear that is released by hand and consists of one main line to which is attached no more than two leaders for a total of no more than three hooks. Handlines are retrieved only by hand, not by mechanical means.

Harbor porpoise means *Phocoena phocoena.*

Harbor Porpoise Review Team (HPRT) means a team of scientific and technical experts appointed by the NEFMC to review, analyze, and propose harbor porpoise take mitigation alternatives.

Herring means Atlantic herring, *Clupea harengus,* or blueback herring, *Alosa aestivalis.*

Hickory shad means *Alosa mediocris.*

Hook gear means fishing gear that is comprised of a hook or hooks attached to a line and includes, but is not limited to, longline, setline, jigs, troll line, rod and reel, and line trawl.

Illex means *Illex illecebrosus* (short-finned or summer squid).

John Dory means *Zenopsis conchifera.*

Land means to begin offloading fish, to offload fish, or to enter port with fish.

Liner means a piece of mesh or any other material rigged inside or outside the main or outer net or dredge that restricts the mesh or ring size or otherwise reduces escapement.

Link, with respect to the sea scallop fishery, means the material, usually made of a 3/8-inch (10-mm) or 7/16-inch (11-mm) diameter metal rod, that joins two adjacent rings within the ring bag of a dredge.

Loligo means *Loligo pealei* (long-finned or bone squid).

Longhorn sculpin means *Myoxocephalus octodecimspinosus.*

Longline gear means fishing gear that is or is designed to be set horizontally, either anchored, floating, or attached to a vessel, and that consists of a main or ground line with three or more gangions and hooks.

Menhaden means Atlantic menhaden, *Brevoortia tyrannus.*

Midwater trawl gear means trawl gear that is designed to fish for, is capable of fishing for, or is being used to fish for pelagic species, no portion of which is designed to be or is operated in contact with the bottom at any time.

Monkfish or *anglerfish* means *Lophius americanus.*

Mullet means any species in the family Mugilidae.

Multispecies Monitoring Committee means a team of scientific and technical staff appointed by the NEFMC to review, analyze, and recommend adjustments to the management measures. The team consists of staff from the NEFMC and the MAFMC, NMFS' Northeast Regional Office, the NEFSC, the USCG, an industry representative, and no more than two representatives from each affected coastal state appointed by the Commission.

NEFSC means the Northeast Fisheries Science Center, NMFS.

Net tonnage (NT) means the net tonnage specified on the USCG documentation for a vessel.

Northeast (NE) multispecies or *multispecies* means the following species:

American plaice—*Hippoglossoides platessoides.*
Atlantic cod—*Gadus morhua.*
Haddock—*Melanogrammus aeglefinus.*
Ocean pout—*Macrozoarces americanus.*
Pollock—*Pollachius virens.*
Redfish—*Sebastes marinus.*
Red hake—*Urophycis chuss.*
Silver hake (whiting)—*Merluccius bilinearis.*
White hake—*Urophycis tenuis.*
Windowpane flounder—*Scophthalmus aquosus.*
Winter flounder—*Pleuronectes americanus.*
Witch flounder—*Glyptocephalus cynoglossus.*
Yellowtail flounder—*Pleuronectes ferrugineus.*

Northern shrimp means *Pandalus borealis.*

Ocean quahog means the species *Arctica islandica.*

Offload or *offloading* means to begin to remove, to remove, to pass over the rail, or otherwise take away fish from any vessel. For purposes of the surf clam and ocean quahog fishery, it means to separate physically a cage from a vessel, such as by removing the sling or wire used to remove the cage from the harvesting vessel.

Operator means the master, captain, or other individual on board a fishing vessel, who is in charge of that vessel's operations.

Out of the multispecies fishery or DAS program means the period of time during which a vessel is absent from port and is not fishing for regulated species under the NE multispecies DAS program.

Pair trawl or *pair trawling* means to tow a single net between two vessels for the purpose of, or that is capable of, catching NE multispecies.

Pelagic hook or longline gear means fishing gear that is not fixed, nor designed to be fixed, nor anchored to the bottom and that consists of monofilament main line (as opposed to a cable main line) to which gangions are attached.

Personal use, with respect to the surf clam or ocean quahog fishery, means harvest of surf clams or ocean quahogs for use as bait, for human consumption,

or for other purposes (not including sale or barter) in amounts not to exceed 2 bu (106.48 L) per person per fishing trip.

Postmark means independently verifiable evidence of date of mailing, such as U.S. Postal Service postmark, United Parcel Service (U.P.S.) or other private carrier postmark, certified mail receipt, overnight mail receipt, or receipt received upon hand delivery to an authorized representative of NMFS.

Prior to leaving port, with respect to the call-in notification system for NE multispecies, means prior to the last dock or mooring in port from which a vessel departs to engage in fishing, including the transport of fish to another port.

Processor means a person who receives surf clams or ocean quahogs for a commercial purpose and removes them from a cage.

Purse seine gear means an encircling net with floats on the top edge, weights and a purse line on the bottom edge, and associated gear, or any net designed to be, or capable of being, used in such fashion.

Recreational fishing means fishing that is not intended to, nor results in the barter, trade, or sale of fish.

Recreational fishing vessel, with respect to the scup fishery, means any vessel from which no fishing other than recreational fishing is conducted. Charter and party boats are considered recreational fishing vessels for purposes of the scup minimum size requirement.

Regional Director means the Director, Northeast Region, NMFS, or a designee.

Regulated species means the subset of NE multispecies that includes Atlantic cod, witch flounder, American plaice, yellowtail flounder, haddock, pollock, winter flounder, windowpane flounder, redfish, and white hake.

Reporting month means the period of time beginning at 0001 hours local time on the first day of each calendar month and ending at 2400 hours local time on the last day of each calendar month.

Reporting week means the period of time beginning at 0001 local time on Sunday and ending at 2400 hours local time the following Saturday.

Re-rig or *re-rigged* means physical alteration of the vessel or its gear in order to transform the vessel into one capable of fishing commercially for a species in the applicable fishery.

Rigged hooks means hooks that are baited, or only need to be baited, in order to be fished. Unsecured, unbaited hooks and gangions are not considered to be rigged.

Rod and reel means a hand-held (including rod holder) fishing rod with a manually operated reel attached.

Scallop dredge vessel means any fishing vessel, other than a combination vessel, that uses or is equipped to use scallop dredge gear.

Scup means *Stenotomus chrysops.*

Sea Scallop Plan Development Team (PDT) means a team of technical experts appointed by the NEFMC.

Sea raven means *Hemitripterus americanus.*

Searobin means any species of the family Triglidae.

Shucking or *to shuck* means opening or to open a scallop, surf clam, or ocean quahog and removing the meat or the adductor muscle from the shell.

Shucking machine means any mechanical device that automatically removes the meat or the adductor muscle from a scallop, surf clam, or ocean quahog shell.

Sink gillnet or bottom-tending gillnet means with respect to the NE multispecies fishery, any gillnet, anchored or otherwise, that is designed to be, or is fished on or near the bottom in the lower third of the water column.

Skate means any species of the family Rajidae.

Smooth dogfish means *Mustelis canis.*

Sorting machine means any mechanical device that automatically sorts whole scallops by shell height, size, or other physical characteristics.

Spiny dogfish means *Squalus acanthias.*

Spot means *Leiostomus xanthurus.*

Square mesh, with respect to the NE multispecies fishery, means mesh in which the horizontal bars of the mesh run perpendicular to the long axis of the net so when the net is placed under a strain the mesh remains open to a square-like shape. Square mesh can be formed by hanging diamond mesh ''on the square,'' if the resulting mesh conforms with the above description of square mesh.

Squid means *Loligo pealei* or *Illex illecebrosus.*

Standard tote means a box typically constructed of plastic, designed to hold 100 lb (45.3 kg) of fish plus ice, and that has a liquid capacity of 70 L, or a volume of not more than 4,320 cubic in (2.5 cubic ft or 70.79 cubic cm).

Substantially similar harvesting capacity means the same or less GRT and vessel length.

Summer flounder means *Paralichthys dentatus.*

Summer Flounder Monitoring Committee means a committee made up of staff representatives of the MAFMC, NEFMC, and SAFMC, the NMFS Northeast Regional Office, the NEFSC, the Southeast Science Center, and the Commission. The MAFMC Executive Director or a designee chairs the committee.

Surf clams means Atlantic surf clams of the species *Spisula solidissima.*

Swordfish means *Xiphias gladius.*

Tautog (blackfish) means *Tautoga onitas.*

Tied up to the dock, with respect to NE multispecies, means to tie-up at a dock, on a mooring, or in a harbor.

Tilefish means *Lopholatilus chamaeleonticeps.*

Target total allowable catch (TAC) means the annual domestic harvest targets for regulated species.

Transfer means to begin to remove, to remove, to pass over the rail, or to otherwise take away fish from any vessel and move them to another vessel.

Trawl sweep means the total length of the footrope on a trawl net that is directly attached to the webbing of a net.

Upon returning to port, for purposes of the call-in notification system for the NE multispecies fishery, means the first point when a vessel ties up at a dock or mooring in a port at the end of a fishing trip.

Vessel length means the length specified on the USCG documentation for a vessel or on the state registration for a vessel not required to be documented under title 46 U.S.C., if the state length is verified by an authorized officer or NMFS official.

Vessel Tracking System (VTS) means a vessel tracking system as set forth in § 648.9 and approved by NMFS for use by scallop and NE multispecies vessels, as required by this part.

VTS unit means a device installed on board a vessel used for vessel tracking and transmitting the vessel's position as required by this part.

Weakfish means *Cynoscion regalis.*

Whiting means *Merluccius bilinearis.*

§ 648.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 600.705.

(b) Nothing in these regulations supersedes more restrictive state management measures for any of the species referenced in § 648.1 and, for Atlantic salmon, more restrictive local management measures.

§ 648.4 Vessel permits.

(a) *Fishery specific vessel permit information.* (1) *NE multispecies vessels.* Any vessel of the United States, including a charter or party boat, must have been issued and have on board a valid multispecies permit to fish for, possess or land multispecies in or from the EEZ. Recreational vessels and vessels fishing for NE multispecies exclusively in state waters are exempt from this requirement.

(i) *Limited access multispecies permits*—(A) *Eligibility.* To be eligible to

apply for a limited access multispecies permit, as specified in § 648.82, in 1996 and thereafter, a vessel must have been issued a limited access multispecies permit for the preceding year, must be replacing a vessel that was issued a limited access multispecies permit for the preceding year, or must qualify for a 1996 limited access multispecies hook-gear permit under this paragraph (a)(1)(i). Vessels qualifying for 1996 limited access multispecies hook-gear permits are qualified only for that limited access permit category. A vessel is eligible for a 1996 limited access multispecies hook-gear permit, provided:

(*1*) The vessel was issued a 1995 open access multispecies hook-gear permit and the owner or operator of the vessel submitted to the Regional Director, no later than January 26, 1996, fishing log reports dated between June 1, 1994, and June 1, 1995, when fishing with hook gear under the open access hook-gear permit, documenting landings of at least 500 lb (226.8 kg) of NE multispecies finfish, or its equivalent in numbers of fish; or

(*2*) The vessel is replacing such a vessel.

(B) *Application/renewal restrictions.* Owners of vessels must apply for a limited access multispecies hook-gear permit before September 1, 1996, to receive an automatic mailing of an application to renew their permit in 1997 and to be assured that their permit application will be processed within 30 days. Vessel owners applying after December 31, 1996, will be ineligible to apply for an initial limited access multispecies hook-gear permit. To renew or apply for a limited access multispecies permit, a completed application must be received by the Regional Director by the first day of the fishing year for which the permit is required. Failure to renew a limited access multispecies permit in any year bars the renewal of the permit in subsequent years.

(C) *Qualification restriction.* Unless the Regional Director determines to the contrary, no more than one vessel may qualify, at any one time, for a limited access permit based on that or another vessel's fishing and permit history. If more than one vessel owner claims eligibility for a limited access permit, based on one vessel's fishing and permit history, the Regional Director will determine who is entitled to qualify for the permit and the DAS allocation according to paragraph (a)(1)(i)(D) of this section.

(D) *Change in ownership.* The fishing and permit history of a vessel is presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.

(E) *Replacement vessels.* To be eligible for a limited access permit under this section, the replacement vessel must meet the following criteria and any applicable criteria under paragraph (a)(1)(i)(F) of this section:

(*1*) The replacement vessel's horsepower may not exceed by more than 20 percent the horsepower of the vessel that was initially issued a limited access permit as of the date the initial vessel applied for such permit.

(*2*) The replacement vessel's length, GRT, and NT may not exceed by more than 10 percent the length, GRT, and NT of the vessel that was initially issued a limited access permit as of the date the initial vessel applied for such permit. For purposes of this paragraph (a)(1)(i)(E)(*2*), a vessel not required to be documented under title 46 U.S.C. will be considered to be 5 NT. For undocumented vessels, GRT does not apply.

(F) *Upgraded vessel.* A vessel may be upgraded, whether through refitting or replacement, and still be eligible for or be eligible to retain or renew a limited access permit, only if the upgrade complies with the following:

(*1*) The vessel's horsepower may be increased, whether through refitting or replacement, only once. Such an increase may not exceed 20 percent of the horsepower of the vessel initially issued a limited access permit as of the date the initial vessel applied for such permit.

(*2*) The vessel's length, GRT, and NT may be increased, whether through refitting or replacement, only once. Any increase in any of these three specifications of vessel size may not exceed 10 percent of the respective specification of the vessel initially issued a limited access permit as of the date the initial vessel applied for such permit. If any of these three specifications is increased, any increase in the other two must be performed at the same time. This type of upgrade may be done separately from an engine horsepower upgrade.

(G) *Consolidation restriction.* Limited access permits and DAS allocations may not be combined or consolidated.

(H) *Appeal of denial of permit.* (*1*) *Eligibility.* Any applicant eligible to apply for an initial limited access multispecies hook-gear permit who is denied such permit may appeal the denial to the Regional Director within 30 days of the notice of denial. Any such appeal must be based on one or more of the following grounds, must be in writing, and must state the grounds for the appeal:

(*i*) The information used by the Regional Director was based on mistaken or incorrect data.

(*ii*) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria.

(*iii*) The applicant has new or additional information.

(*2*) *Appeal review.* The Regional Director will appoint a designee who will make the initial decision on the appeal. The appellant may request a review of the initial decision by the Regional Director by so requesting in writing within 30 days of the notice of the initial decision. If the appellant does not request a review of the initial decision within 30 days, the initial decision shall become the final administrative action of the Department of Commerce. Such review will be conducted by a hearing officer appointed by the Regional Director. The hearing officer shall make findings and a recommendation to the Regional Director which shall be advisory only. Upon receiving the findings and a recommendation, the Regional Director will issue a final decision on the appeal. The Regional Director's decision is the final administrative action of the Department of Commerce.

(*3*) *Status of vessels pending appeal.* A vessel denied a limited access multispecies hook-gear permit may fish under the limited access multispecies hook-gear category, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Director authorizing the vessel to fish under the limited access hook-gear category. The Regional Director will issue such a letter for the pendency of any appeal. Any such decision is the final administrative action of the Department of Commerce on allowable fishing activity, pending a final decision on the appeal. The letter of authorization must be carried on board the vessel. If the appeal is finally denied, the Regional Director shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after receipt of the notice of denial.

(I) *Limited access permit restrictions.* (*1*) A vessel may be issued a limited access multispecies permit in only one category during a fishing year. Vessels may not change limited access multispecies permit categories during the fishing year, except as provided in

paragraph (a)(1)(i)(I)(*2*) of this section. A vessel issued a limited access multispecies hook-gear permit may not change its limited access permit category at any time.

(*2*) The owner of a vessel issued a limited access multispecies permit may request a change in permit category, unless otherwise restricted by paragraph (a)(1)(i)(I)(*1*) of this section. In 1996, a vessel owner has one opportunity to request a change in permit category by submitting an application to the Regional Director by August 14, 1996. If a complete application is not submitted by that date, the vessel must fish only in the DAS program assigned for the remainder of the 1996 fishing year. Any DAS that a vessel uses prior to a change in permit category will be counted against its allocation received under any subsequent permit category. For 1997 and beyond, the owner of a limited access multispecies vessel eligible to request a change in permit category must elect a category prior to the start of each fishing year and will have one opportunity to request a change in permit category by submitting an application to the Regional Director within 45 days of issuance of the vessel's permit. After that date, the vessel must remain in that permit category for the duration of the fishing year.

(*3*) With the exception of combination vessels, sea scallop dredge vessels are not eligible for limited access multispecies permits.

(J) *Confirmation of Permit History.* Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, may apply for and receive a Confirmation of Permit History (CPH) if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a CPH, the applicant must show that the qualifying vessel meets the eligibility requirements, as applicable, in this part. Issuance of a valid and current CPH preserves the eligibility of the applicant to apply for or renew a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified in this section. A CPH must be applied for and received on an annual basis in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. If fishing privileges have been assigned or allocated previously under this part, based on the qualifying vessel's fishing and permit history, the CPH also preserves such fishing privileges. Any decision regarding the issuance of a CPH for a qualifying vessel that has applied for or been issued previously a limited access permit is a final agency action subject to judicial review under 5 U.S.C. 704. An application for a CPH must be received by the Regional Director by the beginning of the fishing year for which it is required. Information requirements for the CPH application are the same as those for a limited access permit with any request for information about the vessel being applicable to the qualifying vessel that has been sunk, destroyed, or transferred. Vessel permit applicants who have been issued a CPH and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to this paragraph (a)(1)(i)(J).

(K) *Abandonment or voluntary relinquishment of permits.* If a vessel's limited access permit for a particular fishery is voluntarily relinquished to the Regional Director, or abandoned through failure to renew or otherwise, no limited access permit for that fishery may be re-issued or renewed based on that vessel's history or to any vessel relying on that vessel's history.

(L) *Restriction on permit splitting.* A limited access multispecies permit may not be issued to a vessel or its replacement, or remain valid, if the vessel's permit or fishing history has been used to qualify another vessel for another Federal fishery.

(ii) *Open access permits.* Subject to the restrictions in § 648.88, a U.S. vessel that has not been issued a limited access multispecies permit is eligible for an open access multispecies handgear or charter/party permit. A U.S. vessel that has been issued a valid limited access scallop permit, but that has not been issued a limited access multispecies permit, is eligible for an open access scallop multispecies possession limit permit. The owner of a vessel issued an open access permit may request a different open access permit category by submitting an application to the Regional Director at any time.

(2) *Atlantic sea scallop vessels*—Any vessel of the United States that fishes for, possesses, or lands Atlantic sea scallops in quantities greater than 40 lb (18.14 kg) shucked, or 5 bu (176.2 L) of in-shell scallops per trip, except vessels that fish exclusively in state waters for scallops, must have been issued and carry on board a valid scallop permit.

(i) *Limited access scallop permits.* Any vessel of the United States that possesses or lands more than 400 lb (181.44 kg) of shucked, or the equivalent amount of in-shell scallops (50 bu (176.2 L)) per trip, except vessels that fish exclusively in state waters for scallops, must have been issued and carry on board a valid limited access scallop permit.

(A) *Eligibility.* To be eligible to apply for a limited access scallop permit, a vessel must have been issued a limited access scallop permit for the preceding year, or the vessel must be replacing a vessel that has been issued a limited access scallop permit for the preceding year.

(B) *Application/renewal restrictions.* To renew or apply for a limited access scallop permit, a completed application must be received by the Regional Director by the first day of the fishing year for which the permit is required. Failure to renew a limited access scallop permit in any year bars the renewal of the permit in subsequent years.

(C) *Qualification restriction.* See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership.* See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels.* See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel.* See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction.* See paragraph (a)(1)(i)(G) of this section.

(H) *Percentage ownership restrictions.* (*1*) For any vessel acquired after March 1, 1994, a vessel owner is not eligible to be issued a limited access scallop permit for the vessel if the issuance of the permit will result in the vessel owner, or any person who is a shareholder or partner of the vessel owner, having an ownership interest in limited access scallop vessels in excess of 5 percent of the number of all limited access scallop vessels at the time of permit application.

(*2*) Vessel owners who were initially issued a 1994 limited access scallop permit, or were issued or renewed a limited access scallop permit for a vessel in 1995 and thereafter in compliance with the ownership restrictions in paragraph (a)(2)(i)(H)(*1*) of this section, are eligible to renew such permit(s), regardless of whether the renewal of the permits will result in the 5 percent ownership restriction being exceeded.

(*3*) Having an ownership interest includes, but is not limited to, persons who are shareholders in a vessel owned by a corporation, who are partners (general or limited) to a vessel owner, or who, in any way, partly own a vessel.

(I) *Limited access permit restrictions.* A vessel may be issued a limited access scallop permit in only one category during a fishing year. The owner of a vessel issued a limited access scallop

permit must elect a permit category for that vessel prior to the start of each fishing year and will have one opportunity to request a change in permit category by submitting an application to the Regional Director within 45 days of issuance of the vessel's permit. After this date, the vessel must remain in that permit category for the duration of the fishing year. Any DAS that a vessel uses prior to a change in permit category will be counted against its allocation received under any subsequent permit category.

(J) *Confirmation of Permit History.* See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits.* See paragraph (a)(1)(i)(K) of this section.

(ii) *General scallop permit.* Any vessel of the United States that is not in possession of a limited access scallop permit, and that possesses, or lands per trip, more than 40 lb (18.14 kg) and less than or including 400 lb (181.44 kg) of shucked meats, or the equivalent amount of in-shell scallops (5 and 50 bu (176.2 L and 176.2 L), respectively), except vessels that fish exclusively in state waters for scallops, must carry on board a valid general scallop permit.

(3) *Summer flounder vessels.* Any vessel of the United States that fishes for or retains summer flounder in the EEZ must have been issued and carry on board a valid summer flounder permit, except for vessels other than party or charter vessels that observe the possession limit set forth in § 648.105.

(i) *Moratorium permits (applicable through 1997).* (A) *Eligibility.* To be eligible to apply for a moratorium permit to fish for and retain summer flounder in excess of the possession limit in § 648.105 in the EEZ, a vessel must have been issued a summer flounder moratorium permit in a previous year or be replacing a vessel that was issued a moratorium permit for a previous year.

(B) *Application/renewal restriction.* No one may apply for a summer flounder moratorium permit for a vessel after:

(*1*) The owner retires the vessel from the fishery.

(*2*) The vessel fails to land any summer flounder at least once within any 52-consecutive-week period.

(C) *Replacement vessels.* To be eligible for a moratorium permit, the replacement vessel must be replacing a vessel of substantially similar harvesting capacity that is judged unseaworthy by the USCG, for reasons other than lack of maintenance, or that involuntarily left the fishery during the moratorium. Both the entering and replaced vessels must be owned by the same person. Vessel permits issued to vessels that involuntarily leave the fishery may not be combined to create larger replacement vessels.

(ii) *Party and charter boat permits.* Any party or charter boat is eligible for a permit to fish for summer flounder, other than a summer flounder moratorium permit, if it is carrying passengers for hire. Such vessel must observe the possession limits specified in § 648.105.

(iii) *Exemption permits.* Owners of summer flounder vessels seeking an exemption from the minimum mesh requirement under the provisions of § 648.104(b)(1) must apply to the Regional Director under paragraph (c) of this section at least 7 days prior to the date they wish the permit to become effective. The applicant must mark ''Exemption Permit Request'' on the permit application at the top. A permit issued under this paragraph (a)(3)(iii) does not meet the requirements of paragraph (a)(3)(i) of this section, but is subject to the other provisions of this section. Persons issued an exemption permit must surrender it to the Regional Director at least 1 day prior to the date they wish to fish not subject to the exemption. The Regional Director may impose temporary additional procedural requirements by publishing a notification in the Federal Register.

(4) *Surf clam and ocean quahog vessels.*—Any vessel of the United States that fishes for surf clams or ocean quahogs, except vessels taking surf clams and ocean quahogs for personal use or fishing exclusively within state waters, must have been issued and carry on board a valid surf clam or ocean quahog permit, respectively.

(5) *Mackerel, squid, and butterfish vessels*—Beginning on January 1, 1997, any vessel of the United States, including party or charter vessels, that fishes for, possesses, or lands mackerel, squid, or butterfish in or from the EEZ, must have been issued and carry on board a valid *Loligo* and butterfish moratorium permit, incidental catch permit, mackerel and *Illex* permit or party/charter permit. This requirement does not apply to recreational fishing vessels. Until January 1, 1997, vessels that have been issued 1995 Federal mackerel, squid, and butterfish permits and are not otherwise subject to permit sanctions due to enforcement proceedings, may fish for, possess, or land mackerel, squid, or butterfish in or from the EEZ.

(i) *Loligo squid and butterfish moratorium permits.* (A) *Eligibility.* A vessel is eligible for a moratorium permit to fish for and retain *Loligo* squid or butterfish in excess of the incidental catch allowance specified in paragraph (a)(5)(i) of this section, if it meets any of the following criteria:

(*1*) The vessel landed and sold at least 20,000 lb (9.07 mt) of *Loligo* squid or butterfish in any 30 consecutive day period between August 13, 1981, and August 13, 1993.

(*2*) The vessel is replacing such a vessel and meets the requirements of paragraph (a)(3)(i)(C) of this section.

(B) *Application/renewal restrictions.* No one may apply for an initial *Loligo* squid and butterfish moratorium permit for a vessel after:

(*1*) May 2, 1997.

(*2*) The owner retires the vessel from the fishery.

(C) *Replacement vessels.* See paragraph (a)(3)(i)(C) of this section.

(D) *Appeal of denial of permit.* (*1*) Any applicant denied a moratorium permit may appeal to the Regional Director within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Director erred in concluding that the vessel did not meet the criteria in paragraph (a)(5)(i)(A)(*1*) of this section. The appeal shall set forth the basis for the applicant's belief that the Regional Director's decision was made in error.

(*2*) The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by the Regional Director.

(*3*) The hearing officer shall make a recommendation to the Regional Director.

(*4*) The decision on the appeal by the Regional Director is the final decision of the Department of Commerce.

(ii) *Incidental catch permits.* Any vessel of the United States may obtain a permit to fish for or retain up to 2,500 lb (1.13 mt) of *Loligo squid* or butterfish as an incidental catch in another directed fishery. The incidental catch allowance may be revised by the Regional Director, based upon a recommendation by the Council, following the procedure set forth in § 648.21.

(iii) *Mackerel and Illex squid permits.* Any vessel of the United States may obtain a permit under this section to fish for or retain Atlantic mackerel or Illex squid in or from the EEZ.

(iv) *Party and charter boat permits.* The owner of any party or charter boat must obtain a permit to fish for or retain in or from the EEZ mackerel, squid, or butterfish while carrying passengers for hire.

(b) *Permit conditions.* Vessel owners who apply for a fishing vessel permit under this section must agree as a condition of the permit that the vessel

and vessel's fishing activity, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed), are subject to all requirements of this part, unless exempted from such requirements under this part. All such fishing activities, catch, and pertinent gear will remain subject to all applicable state requirements. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the EEZ for any species managed under this part must comply with the more restrictive requirement. Owners and operators of vessels fishing under the terms of a summer flounder moratorium permit must also agree, as a condition of the permit, not to land summer flounder in any state that the Regional Director has determined no longer has commercial quota available. A state not receiving an allocation of summer flounder shall be deemed to have no commercial quota available. Owners or operators fishing for surf clams and ocean quahogs within waters under the jurisdiction of any state that requires cage tags are not subject to any conflicting Federal minimum size or tagging requirements. If a surf clam and ocean quahog requirement of this part differs from a surf clam and ocean quahog management measure required by a state that does not require cage tagging, any vessel owner or operator permitted to fish in the EEZ for surf clams and ocean quahogs must comply with the more restrictive requirement while fishing in state waters. However, surrender of a surf clam and ocean quahog vessel permit by the owner by certified mail addressed to the Regional Director allows an individual to comply with the less restrictive state minimum size requirement, so long as fishing is conducted exclusively within state waters.

(c) *Vessel permit applications*—(1) *General.* Applicants for a permit under this section must submit a completed application on an appropriate form obtained from the Regional Director. The application must be signed by the owner of the vessel, or the owner's authorized representative, and be submitted to the Regional Director at least 30 days before the date on which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section. Vessel owners who are eligible to apply for limited access or moratorium permits under this part shall provide information with the application sufficient for the Regional Director to determine whether the vessel meets the applicable eligibility requirements specified in this section.

(2) *Information requirements.* (i) An application for a permit issued under this section, in addition to the information specified in paragraph (c)(1) of this section, also must contain at least the following information, and any other information required by the Regional Director: Vessel name; owner name, mailing address, and telephone number; USCG documentation number and a copy of the vessel's current USCG documentation or, for a vessel not required to be documented under title 46 U.S.C., the vessel's state registration number and a copy of the current state registration; a copy of the vessel's current party/charter boat license (if applicable); home port and principal port of landing; length overall; GRT; NT; engine horsepower; year the vessel was built; type of construction; type of propulsion; approximate fish hold capacity; type of fishing gear used by the vessel; number of crew; number of party or charter passengers licensed to carry (if applicable); permit category; if the owner is a corporation, a copy of the current Certificate of Incorporation or other corporate papers showing the date of incorporation and the names of the current officers of the corporation, and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; if the owner is a partnership, a copy of the current Partnership Agreement and the names and addresses of all partners; if there is more than one owner, names of all owners having a 25-percent interest or more; the name and signature of the owner or the owner's authorized representative; and permit number of any current or, if expired, previous Federal fishery permit issued to the vessel.

(ii) An application for an initial limited access multispecies hook-gear permit must also contain the following information:

(A) If the engine horsepower was changed or a contract to change the engine horsepower had been entered into prior to May 1, 1996, such that it is different from that stated in the vessel's most recent application for a Federal fisheries permit before May 1, 1996, sufficient documentation to ascertain the different engine horsepower. However, the engine replacement must be completed within 1 year of the date of when the contract for the replacement engine was signed.

(B) If the length, GRT, or NT was changed or a contract to change the length, GRT, or NT been entered into prior to May 1, 1996, such that it is different from that stated in the vessel's most recent application for a Federal fisheries permit, sufficient documentation to ascertain the different length, GRT, or NT. However, the upgrade must be completed within 1 year from the date when the contract for the upgrade was signed.

(iii) An application for a multispecies permit must also contain a copy of the vendor installation receipt from a NMFS certified VTS vendor as described in § 648.9, if the vessel has been issued a limited access multispecies Combination Vessel permit or individual DAS category permit, or if the applicant elects to use a VTS unit, although not required.

(iv) An application for a limited access scallop permit must also contain the following information:

(A) For every person named by applicants for limited access scallop permits pursuant to paragraph (c)(2)(i) of this section, the names of all other vessels in which that person has an ownership interest and for which a limited access scallop permit has been issued or applied for.

(B) If applying for full-time or part-time limited access scallop permit, or if opting to use a VTS unit, though not required, a copy of the vendor installation receipt from a NMFS-approved VTS vendor as described in § 648.9.

(C) If applying to fish under the small dredge program set forth under § 648.51(e), an annual declaration into the program.

(v) An application for a surf clam and ocean quahog permit must also contain the pump horsepower.

(d) *Fees.* The Regional Director may charge a fee to recover administrative expenses of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from the Regional Director, for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (e) of this section. Any fee paid by an insufficiently funded commercial instrument shall render any permit issued on the basis thereof null and void.

(e) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, the

Regional Director shall issue a permit within 30 days of receipt of the application, unless the application is deemed incomplete for the following reasons:

(i) The applicant has failed to submit a complete application. An application is complete when all requested forms, information, documentation, and fees, if applicable, have been received and the applicant has submitted all applicable reports specified in § 648.7;

(ii) The application was not received by the Regional Director by the applicable deadline set forth in this section;

(iii) The applicant and applicant's vessel failed to meet all applicable eligibility requirements set forth in this section;

(iv) The applicant applying for a limited access multispecies combination vessel or individual DAS permit, a full-time or part-time limited access scallop permit, or electing to use a VTS, has failed to meet all of the VTS requirements specified in §§ 648.9 and 648.10; or

(v) The applicant has failed to meet any other application requirements stated in this part.

(2) *Incomplete applications.* Upon receipt of an incomplete or improperly executed application for any permit under this part, the Regional Director shall notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(f) *Change in permit information.* Any change in the information specified in paragraph (c)(2) of this section must be submitted by the applicant in writing to the Regional Director within 15 days of the change, or the permit is void.

(g) *Expiration.* A permit expires upon the renewal date specified in the permit.

(h) *Duration.* A permit will continue in effect unless it is revoked, suspended, or modified under 15 CFR part 904, or otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Director as specified in paragraph (f) of this section. However, the Regional Director may authorize the continuation of a permit if the new owner so requests. Applications for permit continuations must be addressed to the Regional Director.

(i) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(j) *Reissuance.* Permits may be issued by the Regional Director when requested in writing by the owner, stating the need for reissuance, the name of the vessel, and the fishing permit number assigned. An application for a reissued permit will not be considered a new application. The fee for a reissued permit shall be the same as for an initial permit.

(k) *Transfer.* Permits issued under this part are not transferable or assignable. A permit will be valid only for the fishing vessel and owner for which it is issued.

(l) *Display.* The permit must be carried, at all times, on board the vessel for which it is issued, and must be maintained in legible condition. The permit shall be subject to inspection upon request by any authorized official.

(m) *Sanctions.* The Assistant Administrator may suspend, revoke, or modify, any permit issued or sought under this section. Procedures governing enforcement-related permit sanctions or denials are found at subpart D of 15 CFR part 904.

§ 648.5 Operator permits.

(a) *General.* Any operator of a vessel fishing for or possessing sea scallops in excess of 40 lb (18.1 kg), NE multispecies, Atlantic mackerel, squid or butterfish harvested in or from the EEZ, or issued a permit for these species under this part, must have and carry on board a valid operator permit issued under this section. An operator permit issued pursuant to part 649 shall satisfy the permitting requirement of this section. This requirement does not apply to operators of recreational vessels.

(b) *Operator permit application.* Applicants for a permit under this section must submit a completed application on an appropriate form provided by the Regional Director. The application must be signed by the applicant and submitted to the Regional Director at least 30 days before the date upon which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application, pursuant to this section.

(c) *Condition.* Vessel operators who apply for an operator's permit under this section must agree as a condition of this permit that the operator and vessel's fishing, catch, crew size, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed) are subject to all requirements of this part while fishing in the EEZ or on board a vessel for which a permit is issued under § 648.4, unless exempted from such requirements under § 648.12. The vessel and all such fishing, catch, and gear will remain subject to all applicable state or local requirements. Further, such operators must agree, as a condition of this permit, that, if the permit is suspended or revoked pursuant to 15 CFR part 904, the operator cannot be aboard any fishing vessel issued a Federal fisheries permit or any vessel subject to Federal fishing regulations while the vessel is at sea or engaged in offloading. If a requirement of this part and a management measure required by state or local law differ, any operator issued a permit under this part must comply with the more restrictive requirement.

(d) *Information requirements.* An applicant must provide at least all the following information and any other information required by the Regional Director: Name, mailing address, and telephone number; date of birth; hair color; eye color; height; weight; social security number (optional); and signature of the applicant. The applicant must also provide two recent (no more than 1 year old), color, passport-size photographs.

(e) *Fees.* Same as § 648.4(d).

(f) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Director shall issue an operator's permit within 30 days of receipt of a completed application, if the criteria specified herein are met. Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(g) *Expiration.* Same as § 648.4(g).

(h) *Duration.* A permit is valid until it is revoked, suspended or modified under 15 CFR part 904, or otherwise expires, or the applicant has failed to report a change in the information on the permit application to the Regional Director as specified in paragraph (k) of this section.

(i) *Reissuance.* Reissued permits, for otherwise valid permits, may be issued by the Regional Director when requested in writing by the applicant, stating the need for reissuance and the Federal operator permit number assigned. An applicant for a reissued permit must also provide two recent, color, passport-size photos of the applicant. An application for a reissued permit will not be considered a new application. An appropriate fee may be charged.

(j) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the person to whom it is issued.

(k) *Change in permit application information.* Notice of a change in the permit holder's name, address, or telephone number must be submitted in writing to, and received by, the Regional Director within 15 days of the change in information. If written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

(l) *Alteration.* Same as § 648.4(i).

(m) *Display.* Any permit issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer or NMFS official.

(n) *Sanctions.* Vessel operators with suspended or revoked permits may not be aboard a federally permitted fishing vessel in any capacity while the vessel is at sea or engaged in offloading. Procedures governing enforcement related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(o) *Vessel owner responsibility.* Vessel owners are responsible for ensuring that their vessels are operated by an individual with a valid operator's permit issued under this section.

§ 648.6 Dealer/processor permits.

(a) *General.* All NE multispecies, scallop, summer flounder, surf clam and ocean quahog dealers, and surf clam and ocean quahog processors must have been issued and have in their possession a permit for such species issued under this section. As of January 1, 1997, all mackerel, squid, and butterfish dealers must have been issued and have in their possession a valid dealers permit for those species.

(b) *Dealer/processor permit applications.* Same as § 648.5(b).

(c) *Information requirements.* Applications must contain at least the following information, and any other information required by the Regional Director: Company name, place(s) of business (principal place of business if applying for a surf clam and ocean quahog permit), mailing address(es) and telephone number(s), owner's name, dealer permit number (if a renewal), name and signature of the person responsible for the truth and accuracy of the application, a copy of the certificate of incorporation if the business is a corporation, and a copy of the Partnership Agreement and the names and addresses of all partners if the business is a partnership.

(d) *Fees.* Same as § 648.4(d).

(e) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit at any time during the fishing year to an applicant, unless the applicant fails to submit a completed application. An application is complete when all requested forms, information, and documentation have been received and the applicant has submitted all applicable reports specified in § 648.7 during the 12 months immediately preceding the application. Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(f) *Expiration.* Same as § 648.4(g).

(g) *Duration.* A permit is valid until it is revoked, suspended, or modified under 15 CFR part 904, or otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Director as required by paragraph (j) of this section.

(h) *Reissuance.* Reissued permits, for otherwise valid permits, may be issued by the Regional Director when requested in writing by the applicant, stating the need for reissuance and the Federal dealer permit number assigned. An application for a reissued permit will not be considered a new application. An appropriate fee may be charged.

(i) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the person to whom, or other business entity to which, it is issued.

(j) *Change in application information.* Same as § 648.5(k).

(k) *Alteration.* Same as § 648.4(i).

(l) *Display.* Same as § 648.5(m).

(m) *Federal versus state requirements.* If a requirement of this part differs from a fisheries management measure required by state law, any dealer issued a Federal dealer permit must comply with the more restrictive requirement.

(n) *Sanctions.* Same as § 648.4(m).

§ 648.7 Recordkeeping and reporting requirements.

(a) *Dealers*—(1) *Weekly report.* Federally-permitted dealers must send by mail to the Regional Director, or official designee, on a weekly basis on forms supplied by or approved by the Regional Director a report of fish purchases, except that surf clam and ocean quahog dealers or processors are required only to report surf clam and ocean quahog purchases. If authorized in writing by the Regional Director, dealers may submit reports electronically or through other media. The following information, and any other information required by the Regional Director, must be provided in the report:

(i) Summer flounder, scallop, NE multispecies and squid, mackerel and butterfish dealers must provide: Name and mailing address of dealer, dealer number, name and permit number of the vessels from which fish are landed or received, dates of purchases, pounds by species, price by species, and port landed. If no fish are purchased during the week, a report so stating must be submitted. All report forms must be signed by the dealer or other authorized individual.

(ii) Surf clam and ocean quahog processors and dealers must provide: Date of purchase or receipt; name, permit number and mailing address; number of bushels by species; cage tag numbers; allocation permit number; vessel name and permit number; price per bushel by species. Dealers must also report disposition of surf clams or ocean quahogs, including name and permit number of recipients. Processors must also report size distribution and meat yield per bushel by species.

(2) *Annual report.* All persons required to submit reports under paragraph (a)(1) of this section are required to submit the following information on an annual basis, on forms supplied by the Regional Director:

(i) Summer flounder, scallop, NE multispecies, and squid, mackerel and butterfish dealers must complete the ''Employment Data'' section of the Annual Processed Products Reports; completion of the other sections of that form is voluntary. Reports must be submitted to the address supplied by the Regional Director.

(ii) Surf clam and ocean quahog processors and dealers must provide the average number of processing plant employees during each month of the year just ended; average number of employees engaged in production of processed surf clam and ocean quahog products, by species, during each month of the year just ended; plant capacity to process surf clam and ocean quahog shellstock, or to process surf clam and ocean quahog meats into finished products, by species; an estimate, for the next year, of such processing capacities; and total payroll for surf clam and ocean quahog processing, by month. If the plant processing capacities described in this paragraph (a)(2)(ii) change more than 10 percent during any year, the processor shall promptly notify the Regional Director.

(b) *Vessel owners*—(1) *Fishing Vessel Log Reports*—(i) *Owners of vessels issued summer flounder moratorium, scallop, multispecies, or mackerel, squid, and butterfish permits.* The owner or operator of any vessel issued a vessel permit for summer flounder

moratorium, scallops, NE multispecies, or, as of January 1, 1997, a mackerel, squid, or butterfish vessel permit, must maintain on board the vessel, and submit, an accurate daily fishing log report for all fishing trips, regardless of species fished for or taken, on forms supplied by or approved by the Regional Director. If authorized in writing by the Regional Director, vessel owners or operators may submit reports electronically, for example by using a VTS or other media. At least the following information, and any other information required by the Regional Director, must be provided: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; pounds, by species, of all species landed or discarded; dealer permit number; dealer name; date sold; port and state landed; and vessel operator's name, signature, and operator permit number (if applicable).

(ii) *Surf clam and ocean quahog vessel owners and operators.* The owner or operator of any vessel conducting any surf clam and ocean quahog fishing operations, except those conducted exclusively in waters of a state that requires cage tags or when he/she has surrendered the surf clam and ocean quahog fishing vessel permit, shall maintain, on board the vessel, an accurate daily fishing log for each fishing trip, on forms supplied by the Regional Director, showing at least: Name and permit number of the vessel, total amount in bushels of each species taken, date(s) caught, time at sea, duration of fishing time, locality fished, crew size, crew share by percentage, landing port, date sold, price per bushel, buyer, tag numbers from cages used, quantity of surf clams and ocean quahogs discarded, and allocation permit number.

(iii) *Owners of party and charter boats.* The owner of any party or charter boat issued a summer flounder permit other than a moratorium permit and carrying passengers for hire shall maintain on board the vessel, and submit, an accurate daily fishing log report for each charter or party fishing trip that lands summer flounder, unless such a vessel is also issued a summer flounder moratorium permit, a sea scallop permit, a multispecies permit, or, as of January 1, 1997, a mackerel, squid or butterfish permit, in which case a fishing log report is required for each trip regardless of species retained. If authorized in writing by the Regional Director, vessel owners may submit reports electronically, for example, by using a VTS or other media. At least the following information, and any other information required by the Regional Director, must be provided: Vessel name; USGC documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers; gear fished; quantity and size of gear; chart area fished; average depth; latitude/longitude (or loran station and bearings); average tow time duration; count, by species, of all species landed or discarded; port and state landed; and vessel operator's name, signature, and operator permit number (if applicable).

(c) *When to fill out a log report.* Log reports required by paragraph (b)(1)(i) of this section must be filled out, except for information required but not yet ascertainable, before offloading or landing has begun. All information must be filled out before starting the next fishing trip. Log reports required by paragraph (b)(1)(ii) of this section must be filled out before landing any surf clams or ocean quahogs. Log reports required by paragraph (b)(1)(iii) of this section must be filled out, except for information required but not yet ascertainable, before offloading or landing has begun. All information required in paragraph (b)(1)(iii) of this section must be filled out for each fishing trip by the end of each fishing trip.

(d) *Inspection.* All persons required to submit reports under this section, upon the request of an authorized officer, or by an employee of NMFS designated by the Regional Director to make such inspections, must make immediately available for inspection copies of the required reports that have been submitted, or should have been submitted, and the records upon which the reports were based. At any time during or after a trip, owners and operators must make immediately available for inspection the fishing log reports currently in use, or to be submitted.

(e) *Record retention.* Copies of reports, and records upon which the reports were based, must be retained and be available for review for 1 year after the date of the last entry on the report. Copies of fishing log reports must be retained and available for review for 1 year after the date of the last entry on the log. Dealers must retain required reports and records at their principal place of business.

(f) *Submitting reports*—(1) *Dealer or processor reports.* Weekly dealer or processor reports must be received or postmarked, if mailed, within 3 days after the end of each reporting week. Each dealer will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a dealer permit. If no fish or fish product was purchased during a week, a report so stating must be submitted. Annual reports for a calendar year must be submitted to NMFS Statistics, and must be postmarked by February 10 of the following year. Contact the Regional Director for the address of NMFS Statistics.

(2) *Fishing vessel log reports.* Fishing log reports must be received or postmarked, if mailed, within 15 days after the end of the reporting month. Each owner will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a Federal fisheries permit. If no fishing trip is made during a month, a report so stating must be submitted. Annual reports must be submitted to NMFS Statistics and must be postmarked by February 10 of the following year.

(3) *At-sea purchasers, receivers, or processors.* All persons purchasing, receiving, or processing any summer flounder or mackerel, squid, and butterfish at sea for landing at any port of the United States must submit information identical to that required by paragraph (a)(1) or (a)(2) of this section, as applicable, and provide those reports to the Regional Director or designee on the same frequency basis.

§ 648.8 Vessel identification.

(a) *Vessel name and official number.* Each fishing vessel subject to this part and over 25 ft (7.6 m) in registered length must:

(1) Affix permanently its name on the port and starboard sides of the bow and, if possible, on its stern.

(2) Display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft. The official number is the USCG documentation number or the vessel's state registration number for vessels not required to be documented under title 46 U.S.C.

(b) *Numerals.* Except as provided in paragraph (d) of this section, the official number must be displayed in block arabic numerals in contrasting color at least 18 inches (45.7 cm) in height for fishing vessels over 65 ft (19.8 m) in

registered length, and at least 10 inches (25.4 cm) in height for all other vessels over 25 ft (7.6 m) in registered length. The registered length of a vessel, for purposes of this section, is that registered length set forth in USCG or state records.

(c) *Duties of owner.* The owner of each vessel subject to this part shall ensure that—

(1) The vessel's name and official number are kept clearly legible and in good repair.

(2) No part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from any enforcement vessel or aircraft.

(d) *Non-permanent marking.* Vessels carrying recreational fishing parties on a per capita basis or by charter must use markings that meet the above requirements, except for the requirement that they be affixed permanently to the vessel. The non-permanent markings must be displayed in conformity with the above requirements.

(e) *New Jersey surf clam or ocean quahog vessels.* Instead of complying with paragraph (a) of this section, surf clam or ocean quahog vessels licensed under New Jersey law may use the appropriate vessel identification markings established by that state.

§ 648.9 VTS requirements.

(a) *Approval.* The Regional Director will annually approve VTSs that meet the minimum performance criteria specified in paragraph (b) of this section. Any changes to the performance criteria will be published annually in the Federal Register and a list of approved VTSs will be published in the Federal Register upon addition or deletion of a VTS from the list. In the event that a VTS is deleted from the list, vessel owners that purchased a VTS unit that is part of that VTS prior to publication of the revised list will be considered to be in compliance with the requirement to have an approved unit, unless otherwise notified by the Regional Director.

(b) *Minimum VTS performance criteria.* The basic required features of the VTS are as follows:

(1) The VTS shall be tamper proof, i.e., shall not permit the input of false positions; furthermore, if a system uses satellites to determine position, satellite selection should be automatic to provide an optimal fix and should not be capable of being manually overridden by any person aboard a fishing vessel or by the vessel owner.

(2) The VTS shall be fully automatic and operational at all times, regardless of weather and environmental conditions.

(3) The VTS shall be capable of tracking vessels in all U.S. waters in the Atlantic Ocean from the shoreline of each coastal state to a line 215 nm offshore and shall provide position accuracy to within 400 m (1,300 ft).

(4) The VTS shall be capable of transmitting and storing information including vessel identification, date, time, and latitude/longitude.

(5) The VTS shall provide accurate hourly position transmissions every day of the year. In addition, the VTS shall allow polling of individual vessels or any set of vessels at any time and receive position reports in real time. For the purposes of this specification, ''real time'' shall constitute data that reflect a delay of 15 minutes or less between the displayed information and the vessel's actual position.

(6) The VTS shall be capable of providing network message communications between the vessel and shore. The VTS shall allow NMFS to initiate communications or data transfer at any time.

(7) The VTS vendor shall be capable of transmitting position data to a NMFS-designated computer system via a modem at a minimum speed of 9600 baud. Transmission shall be in ASCII text in a file format acceptable to NMFS.

(8) The VTS shall be capable of providing vessel locations relative to international boundaries and fishery management areas.

(9) The VTS vendor shall be capable of archiving vessel position histories for a minimum of 1 year and providing transmission to NMFS of specified portions of archived data in response to NMFS requests and in a variety of media (tape, floppy, etc.).

(c) *Operating requirements.* All required VTS units must transmit a signal indicating the vessel's accurate position at least every hour, 24 hours a day, throughout the year.

(d) *Presumption.* If a VTS unit fails to transmit an hourly signal of a vessel's position, the vessel shall be deemed to have incurred a DAS, or fraction thereof, for as long as the unit fails to transmit a signal, unless a preponderance of evidence shows that the failure to transmit was due to an unavoidable malfunction or disruption of the transmission that occurred while the vessel was declared out of the scallop fishery or NE multispecies fishery, as applicable, or was not at sea.

(e) *Replacement.* Should a VTS unit require replacement, a vessel owner must submit documentation to the Regional Director, within 3 days of installation and prior to the vessel's next trip, verifying that the new VTS unit is an operational approved system as described under paragraph (a)(1) of this section.

(f) *Access.* As a condition to obtaining a limited access scallop or multispecies permit, all vessel owners must allow NMFS, the USCG, and their authorized officers or designees access to the vessel's DAS and location data obtained from its VTS at the time of or after its transmission to the vendor or receiver, as the case may be.

(g) *Tampering.* Tampering with a VTS, a VTS unit, or a VTS signal, is prohibited. Tampering includes any activity that is likely to affect the unit's ability to operate properly, signal, or accuracy of computing the vessel's position fix.

§ 648.10 DAS notification requirements.

(a) *VTS Demarcation Line.* The VTS Demarcation Line is defined by straight lines connecting the following coordinates in the order stated (a copy of a map showing the line is available from the Regional Director upon request):

VTS DEMARCATION LINE

Description	N. Long.	W. Lat.
1. Northern terminus point (Canada landmass)	45°03′	66°47′
2. A point east of West Quoddy Head Light	44°48.9′	66°56.1′
3. A point east of Little River Light	44°39.0′	67°10.5′
4. Whistle Buoy ''8BI'' (SSE of Baker Island)	44°13.6′	68°10.8′
5. Isle au Haut Light	44°03.9′	68°39.1′
6. Pemaquid Point Light	43°50.2′	69°30.4′
7. A point west of Halfway Rock	43°38.0′	70°05.0′
8. A point east of Cape Neddick Light	43°09.9′	70°34.5′

VTS DEMARCATION LINE—Continued

Description	N. Long.	W. Lat.
9. Merrimack River Entrance ''MR'' Whistle Buoy	42°48.6′	70°47.1′
10. Halibut Point Gong Buoy ''1AHP''	42°42.0′	70°37.5′
11. Connecting reference point	42°40′	70°30′
12. Whistle Buoy ''2'' off Eastern Point	42°34.3′	70°39.8′
13. The Graves Light (Boston)	42°21.9′	70°52.2′
14. Minots Ledge Light	42°16.2′	70°45.6′
15. Farnham Rock Lighted Bell Buoy	42°05.6′	70°36.5′
16. Cape Cod Canal Bell Buoy ''CC''	41°48.9′	70°27.7′
17. A point inside Cape Cod Bay	41°48.9′	70°05′
18. Race Point Lighted Bell Buoy ''RP''	42°04.9′	70°16.8′
19. Peaked Hill Bar Whistle Buoy ''2PH''	42°07.0′	70°06.2′
20. Connecting point, off Nauset Light	41°50′	69°53′
21. A point south of Chatham ''C'' Whistle Buoy	41°38′	69°55.2′
22. A point in eastern Vineyard Sound	41°30′	70°33′
23. A point east of Martha's Vineyard	41°22.2′	70°24.6′
24. A point east of Great Pt. Light, Nantucket	41°23.4′	69°57′
25. A point SE of Sankaty Head, Nantucket	41°13′	69°57′
26. A point west of Nantucket	41°15.6′	70°25.2′
27. Squibnocket Lighted Bell Buoy ''1''	41°15.7′	70°46.3′
28. Wilbur Point (on Sconticut Neck)	41°35.2′	70°51.2′
29. Mishaum Point (on Smith Neck)	41°31.0′	70°57.2′
30. Sakonnet Entrance Lighted Whistle Buoy ''SR''	41°25.7′	71°13.4′
31. Point Judith Lighted Whistle Buoy ''2''	41°19.3′	71°28.6′
32. A point off Block Island Southeast Light	41°08.2′	71°32.1′
33. Shinnecock Inlet Lighted Whistle Buoy ''SH''	40°49.0′	72°28.6′
34. Scotland Horn Buoy ''S'', off Sandy Hook (NJ)	40°26.5′	73°55.0′
35. Barnegat Lighted Gong Buoy ''2''	39°45.5′	73°59.5′
36. A point east of Atlantic City Light	39°21.9′	74°22.7′
37. A point east of Hereford Inlet Light	39°00.4′	74°46′
38. A point east of Cape Henlopen Light	38°47′	75°04′
39. A point east of Fenwick Island Light	38°27.1′	75°02′
40. A point NE of Assateague Island (VA)	38°00′	75°13′
41. Wachapreague Inlet Lighted Whistle Buoy ''A''	37°35.0′	75°33.7′
42. A point NE of Cape Henry	36°55.6′	75°58.5′
43. A point east of Currituck Beach Light	36°22.6′	75°48′
44. Oregon Inlet (NC) Whistle Buoy	35°48.5′	75°30′
45. Wimble Shoals, east of Chicamacomico	35°36′	75°26′
46. A point SE of Cape Hatteras Light	35°12.5′	75°30′
47. Hatteras Inlet Entrance Buoy ''HI''	35°10′	75°46′
48. Ocracoke Inlet Whistle Buoy ''OC''	35°01.5′	76°00.5′
49. A point east of Cape Lookout Light	34°36.5′	76°30′
50. Southern terminus point	34°35′	76°41′

(b) *VTS notification.* Multispecies vessels issued an individual DAS or combination permit, scallop vessels issued a full-time or part-time limited access scallop permit, or scallop vessels fishing under the small dredge program specified in § 648.51(e), or vessels issued a limited access multispecies or scallop permit and whose owners elect to fish under the VTS notification of this paragraph (b), unless otherwise authorized or required by the Regional Director under § 648.9(a), must have installed on board an operational VTS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified as specified in § 648.9(a). Owners of such vessels must provide documentation to the Regional Director at the time of application for a limited access permit that the vessel has an operational VTS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified as specified in § 648.9(a). If a vessel has already been issued a limited access permit without providing such documentation, the Regional Director shall allow at least 30 days for the vessel to instal an operational VTS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified as specified in § 648.9(a), and to provide documentation of such installation to the Regional Director. The VTS unit shall be subject to the following requirements and presumption:

(1) Multispecies vessels issued an individual DAS or combination permit, scallop vessels issued a full-time or part-time limited access scallop permit, or vessels issued a limited access multispecies or scallop permit and whose owners elect to fish under the VTS notification of this paragraph (b), that have crossed the VTS Demarcation Line specified under paragraph (a) of this section, are deemed to be fishing under the DAS program, unless the vessel's owner or authorized representative declares the vessel out of the scallop or NE multispecies fishery, as applicable, for a specific time period by notifying the Regional Director through the VTS prior to the vessel leaving port.

(2) Part-time scallop vessels may not fish in the DAS allocation program unless they declare into the scallop fishery for a specific time period by notifying the Regional Director through the VTS.

(3) Notification that the vessel is not under the DAS program must be received prior to the vessel leaving port. A change in status of a vessel cannot be made after the vessel leaves port or before it returns to port on any fishing trip.

(4) DAS for vessels that are under the VTS notification requirements of this paragraph (b) are counted beginning

with the first hourly location signal received showing that the vessel crossed the VTS Demarcation Line leaving port. A trip concludes and accrual of DAS ends with the first hourly location signal received showing that the vessel crossed the VTS Demarcation Line upon its return to port.

(5) If the VTS is not available or not functional, and if authorized by the Regional Director, a vessel owner must provide the notifications required by paragraphs (b)(1), (2), and (3) of this section by using the call-in notification system described under paragraph (c) of this section, instead of using the VTS system.

(c) *Call-in notification.* Owners of vessels issued limited access multispecies permits who are participating in a DAS program and who are not required to provide notification using a VTS, owners of scallop vessels qualifying for a DAS allocation under the occasional category and who have not elected to fish under the VTS notification requirements of paragraph (b) of this section, and vessels fishing pending an appeal as specified in § 648.4(a)(1)(i)(H)(*3*) are subject to the following requirements:

(1) Prior to the vessel leaving port, the vessel owner or authorized representative must notify the Regional Director that the vessel will be participating in the DAS program or the charter/party fishery by calling the Regional Director and providing the following information: Owner and caller name and phone number, vessel's name and permit number, type of trip to be taken, and that the vessel is beginning a trip. For NE multispecies vessels, the port of departure also must be specified. A DAS or a vessel's participation in the charter/party fishery begins once the call has been received and a confirmation number is given by the Regional Director.

(2) The confirmation number given by the Regional Director must be kept on board for the duration of the trip and must be provided to an authorized officer upon request.

(3) Upon the vessel's return to port, the vessel owner or owner's representative must call the Regional Director and notify him/her that the trip has ended by providing the following information: Owner and caller name and phone number, vessel's name and permit number, and that the vessel has ended a trip. For NE multispecies vessels, the port of landing also must be specified. A DAS ends for all but vessels fishing with gillnet gear when the call has been received and confirmation given by the Regional Director. For vessels fishing with gillnet gear, DAS continue to accrue as long as the vessel's gillnet gear remains in the water. A trip concludes and accrual of DAS ends for a gillnet vessel when the vessel returns to port with all of its gillnet gear that was in the water on board, the phone call has been received, and confirmation has been given by the Regional Director.

(4) The Regional Director will furnish a phone number for DAS notification call-ins upon request.

(5) Any vessel that possesses or lands per trip more than 400 lb (181.44 kg) of scallops, and any vessel issued a limited access multispecies permit subject to the DAS program and call-in requirement, that possesses or lands regulated species, except as provided in § 648.83, shall be deemed in the DAS program for purposes of counting DAS, regardless of whether the vessel's owner or authorized representative provided adequate notification as required by paragraph (b) of this section.

(d) *Temporary authorization for use of the call-in system.* The Regional Director may authorize or require, on a temporary basis, the use of the call-in system of notification specified in paragraph (c) of this section. If use of the call-in system is authorized or required, the Regional Director shall notify affected permit holders through a letter, notification in the Federal Register, or other appropriate means.

(e) *Charter/party multispecies vessels.* Charter/party multispecies vessels that are not fishing under a multispecies DAS must declare into and out of the charter/party fishery, providing notification under paragraph (b) of this section, must remain in the charter/party fishery for a minimum of 24 hours after declaring into the fishery, and are subject to the restrictions in § 648.89.

(f) *Scallop vessels fishing under exemptions.* Vessels fishing under the exemptions provided by § 648.54 (a) and/or (b) must notify the Regional Director by VTS notification or through call-in notification as follows:

(1) *VTS notification.* (i) Notify the Regional Director, via their VTS, prior to the vessel's first trip under the state waters exemption program, that the vessel will be fishing exclusively in state waters; and

(ii) Notify the Regional Director, via their VTS, prior to the vessel's first planned trip in the EEZ, that the vessel is to resume fishing under the vessel's DAS allocation.

(2) *Call-in notification.* (i) Notify the Regional Director by calling the Regional Director and providing the following information at least 7 days prior to fishing under the exemption: Owner and caller name and address, vessel name and permit number, and beginning and ending dates of the exemption period.

(ii) Remain under the exemption for a minimum of 7 days.

(iii) If, under the exemption for a minimum of 7 days and wishing to withdraw earlier than the designated end of the exemption period, notify the Regional Director of early withdrawal from the program by calling the Regional Director, providing the vessel's name and permit number and the name and phone number of the caller, and stating that the vessel is withdrawing from the exemption. The vessel may not leave port to fish in the EEZ until 48 hours after notification of early withdrawal is received by the Regional Director.

(iv) The Regional Director will furnish a phone number for call-ins upon request.

§ 648.11 At-sea sea sampler/observer coverage.

(a) The Regional Director may request any vessel holding a mackerel, squid, and butterfish; scallop; NE multispecies; or summer flounder permit to carry a NMFS-approved sea sampler/observer. If requested by the Regional Director to carry an observer or sea sampler, a vessel may not engage in any fishing operations in the respective fishery unless an observer or sea sampler is on board, or unless the requirement is waived.

(b) If requested by the Regional Director to carry an observer or sea sampler, it is the responsibility of the vessel owner to arrange for and facilitate observer or sea sampler placement. Owners of vessels selected for sea sampler/observer coverage must notify the appropriate Regional or Science and Research Director, as specified by the Regional Director, before commencing any fishing trip that may result in the harvest of resources of the respective fishery. Notification procedures will be specified in selection letters to vessel owners.

(c) The Regional Director may waive the requirement to carry a sea sampler or observer if the facilities on a vessel for housing the observer or sea sampler, or for carrying out observer or sea sampler functions, are so inadequate or unsafe that the health or safety of the observer or sea sampler, or the safe operation of the vessel, would be jeopardized.

(d) An owner or operator of a vessel on which a NMFS-approved sea sampler/observer is embarked must:

(1) Provide accommodations and food that are equivalent to those provided to the crew.

(2) Allow the sea sampler/observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the sea sampler's/observer's duties.

(3) Provide true vessel locations, by latitude and longitude or loran coordinates, as requested by the observer/sea sampler, and allow the sea sampler/observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position.

(4) Notify the sea sampler/observer in a timely fashion of when fishing operations are to begin and end.

(5) Allow for the embarking and debarking of the sea sampler/observer, as specified by the Regional Director, ensuring that transfers of observers/sea samplers at sea are accomplished in a safe manner, via small boat or raft, during daylight hours as weather and sea conditions allow, and with the agreement of the sea samplers/observers involved.

(6) Allow the sea sampler/observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish.

(7) Allow the sea sampler/observer to inspect and copy any the vessel's log, communications log, and records associated with the catch and distribution of fish for that trip.

(e) The owner or operator of a summer flounder vessel, if requested by the sea sampler/observer also must:

(1) Notify the sea sampler/observer of any sea turtles, marine mammals, summer flounder, or other specimens taken by the vessel.

(2) Provide the sea sampler/observer with sea turtles, marine mammals, summer flounder, or other specimens taken by the vessel.

(3) Provide storage for biological specimens, including cold storage if available, and retain such specimens on board the vessel as instructed by the sea sampler/observer, until retrieved by authorized NMFS personnel.

(f) NMFS may accept observer coverage funded by outside sources if:

(1) All coverage conducted by such observers is determined by NMFS to be in compliance with NMFS' observer guidelines and procedures.

(2) The owner or operator of the vessel complies with all other provisions of this part.

(3) The observer is approved by the Regional Director.

§ 648.12 Experimental fishing.

The Regional Director may exempt any person or vessel from the requirements of subparts B (Atlantic mackerel, squid, and butterfish), D (sea scallops), E (surf clams and ocean quahogs), F (NE multispecies) or G (summer flounder) of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. The Regional Director shall consult with the Executive Director of the MAFMC regarding such exemptions for the Atlantic mackerel, squid, and butterfish and the summer flounder fisheries.

(a) The Regional Director may not grant such an exemption unless he/she determines that the purpose, design, and administration of the exemption is consistent with the objectives of the respective FMP, the provisions of the Magnuson Act, and other applicable law, and that granting the exemption will not:

(1) Have a detrimental effect on the respective resources and fishery;

(2) Cause any quota to be exceeded; or

(3) Create significant enforcement problems.

(b) Each vessel participating in any exempted experimental fishing activity is subject to all provisions of the respective FMP, except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Director to each vessel participating in the exempted activity. This letter must be carried on board the vessel seeking the benefit of such exemption.

(c) Experimental fishing for surf clams or ocean quahogs will not require an allocation permit.

§ 648.13 Transfers at sea.

(a) Only vessels issued a *Loligo* and butterfish moratorium permit under § 648.4(a)(5) and vessels issued a mackerel, squid, and butterfish incidental catch permit and authorized in writing by the Regional Director to do so, may transfer or attempt to transfer *Loligo* or butterfish from one vessel to another vessel.

(b) Vessels issued a multispecies permit under § 648.4(a)(1) or a scallop permit under § 648.4(a)(2) are prohibited from transferring or attempting to transfer any fish from one vessel to another vessel, except that vessels issued a multispecies permit under § 648.4(a)(1) and specifically authorized in writing by the Regional Director to do so, may transfer species other than regulated species from one vessel to another vessel.

(c) All persons are prohibited from transferring or attempting to transfer NE multispecies or scallops from one vessel to another vessel, except in accordance with paragraph (b) of this section.

§ 648.14 Prohibitions.

(a) In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(1) Fail to report to the Regional Director within 15 days any change in the information contained in an applicable vessel, operator, or dealer/processor permit application.

(2) Falsify or fail to affix and maintain vessel markings as required by § 648.8.

(3) Make any false statement in connection with an application, declaration, or report under this part.

(4) Fail to comply in an accurate and timely fashion with the log report, reporting, record retention, inspection, and other requirements of § 648.7, or submit or maintain false information in records and reports required to be kept or filed under § 648.7.

(5) Alter, erase, or mutilate any permit issued under this part.

(6) Alter, erase, mutilate, duplicate or cause to be duplicated, or steal any cage tag issued under this part.

(7) Tamper with, damage, destroy, alter, or in any way distort, render useless, inoperative, ineffective, or inaccurate the VTS, VTS unit, or VTS signal required to be installed on or transmitted by vessel owners or operators required to use a VTS by this part.

(8) Assault, resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, or coercion either a NMFS-approved observer or sea sampler aboard a vessel conducting his or her duties aboard a vessel, or an authorized officer conducting any search, inspection, investigation, or seizure in connection with enforcement of this part.

(9) Refuse to carry an observer or sea sampler if requested to do so by the Regional Director.

(10) To refuse reasonable assistance to either a NMFS-approved observer or sea sampler conducting his or her duties aboard a vessel.

(11) Fish for surf clams or ocean quahogs in any area closed to surf clam or ocean quahog fishing.

(12) Fish for, take, catch, harvest or land any species of fish regulated by this part in or from the EEZ, unless the vessel has a valid and appropriate permit issued under this part and the permit is on board the vessel and has not been surrendered, revoked, or suspended.

(13) Purchase, possess or receive for a commercial purpose or attempt to purchase possess or receive for a commercial purpose any species regulated under this part unless in possession of a valid dealer permit issued under this part, except that this prohibition does not apply to species that are purchased or received from a vessel not issued a permit under this part and fishing exclusively in state waters.

(14) Produce, or cause to be produced, cage tags required under this part without written authorization from the Regional Director.

(15) Tag a cage with a tag that has been rendered null and void or with a tag that has been previously used.

(16) Tag a cage of surf clams with an ocean quahog cage tag or tag a cage of ocean quahogs with a surf clam cage tag.

(17) Possess, import, export, transfer, land, have custody or control of any species of fish regulated pursuant to this part that do not meet the minimum size provisions in this part, unless such species were harvested exclusively within state waters by a vessel not issued a permit under this part or whose permit has been surrendered in accordance with applicable regulations.

(18) Possess an empty cage to which a cage tag required by § 648.75 is affixed or possess any cage that does not contain surf clams or ocean quahogs and to which a cage tag required by § 648.75 is affixed.

(19) Land or possess, after offloading, any cage holding surf clams or ocean quahogs without a cage tag or tags required by § 648.75, unless the person can demonstrate the inapplicability of the presumption set forth in § 648.75(t)(1)(iii).

(20) Sell null and void tags.

(21) Shuck surf clams or ocean quahogs harvested in or from the EEZ at sea, unless permitted by the Regional Director under the terms of § 648.74.

(22) Receive for a commercial purpose other than transport, surf clams or ocean quahogs harvested in or from the EEZ, whether or not they are landed under an allocation under § 648.70, unless issued a dealer/processor permit under this part.

(23) Land unshucked surf clams or ocean quahogs harvested in or from the EEZ in containers other than cages from vessels capable of carrying cages.

(24) Offload unshucked surf clams or ocean quahogs harvested in or from the EEZ from vessels not capable of carrying cages other than directly into cages.

(25) Fish for surf clams or ocean quahogs in the EEZ without giving prior notification, or fail to comply with any of the notification requirements specified in § 648.15(b).

(26) Fish for, retain, or land both surf clams and ocean quahogs in or from the EEZ on the same trip.

(27) Fish for, retain, or land ocean quahogs in or from the EEZ on a trip designated as a surf clam fishing trip under § 648.15(b), or fish for, retain, or land surf clams in or from the EEZ on a trip designated as an ocean quahog fishing trip under § 648.15(b).

(28) Fail to offload any surf clams or ocean quahogs harvested in the EEZ from a trip discontinued pursuant to § 648.15(b) prior to commencing fishing operations in waters under the jurisdiction of any state.

(29) Land or possess any surf clams or ocean quahogs harvested in or from the EEZ in excess of, or without, an individual allocation.

(30) Transfer any surf clams or ocean quahogs harvested in or from the EEZ to any person for a commercial purpose, other than transport, without a surf clam or ocean quahog processor or dealer permit.

(31) Fish for, possess, or land NE multispecies, unless:

(i) The NE multispecies are being fished for or were harvested in or from the EEZ by a vessel holding a valid multispecies permit under this part, or a letter under § 648.4(a)(1), and the operator on board such vessel has been issued an operator's permit and has a valid permit on board the vessel;

(ii) The NE multispecies were harvested by a vessel not issued a multispecies permit that fishes for NE multispecies exclusively in state waters; or

(iii) The NE multispecies were harvested in or from the EEZ by a recreational fishing vessel.

(32) Land, offload, remove, or otherwise transfer, or attempt to land, offload, remove or otherwise transfer multispecies from one vessel to another vessel, unless both vessels have not been issued multispecies permits and both fish exclusively in state waters, or unless authorized in writing by the Regional Director.

(33) Sell, barter, trade, or otherwise transfer; or attempt to sell, barter, trade, or otherwise transfer for a commercial purpose any NE multispecies from a trip, unless the vessel is holding a multispecies permit, or a letter under § 648.4(a)(1), and is not fishing under the charter/party vessel restrictions specified in § 648.89, or unless the NE multispecies were harvested by a vessel without a multispecies permit that fishes for NE multispecies exclusively in state waters.

(34) Operate or act as an operator of a vessel fishing for or possessing NE multispecies in or from the EEZ, or holding a multispecies permit without having been issued and possessing a valid operator's permit.

(35) Fish with, use, or have on board within the area described in § 648.80(a)(1), nets of mesh whose size is smaller than the minimum mesh size specified in § 648.80(a)(2), except as provided in § 648.80(a) (3) through (6), (a)(8), (a)(9), (d), (e) and (i), or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(36) Fish with, use, or have available for immediate use within the area described in § 648.80(b)(1), nets of mesh size smaller than the minimum size specified in § 648.80(b)(2), except as provided in § 648.80 (b)(3), (d), (e), and (i), or unless the vessel has not been issued a multispecies permit and fishes for multispecies exclusively in state waters.

(37) Fish with, use, or have available for immediate use within the area described in § 648.80(c)(1), nets of mesh size smaller than the minimum size specified in § 648.80(c)(2), except as provided in § 648.8 (c)(3), (d), (e), and (i), or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(38) Enter or be in the area described in § 648.81(a)(1) on a fishing vessel, except as provided in § 648.81(a) (2) and (d).

(39) Enter or be in the area described in § 648.81(b)(1) on a fishing vessel, except as provided by § 648.81(b)(2).

(40) Enter or be in the area described in § 648.81(c)(1), on a fishing vessel, except as provided in § 648.81 (c)(2) and (d)(2).

(41) Fail to comply with the gear-marking requirements of § 648.84.

(42) Fish within the areas described in § 648.80(a)(4) with nets of mesh smaller than the minimum size specified in § 648.80(a)(2), unless the vessel is issued and possesses on board an authorizing letter issued under § 648.80(a)(4)(i).

(43) Violate any of the provisions of § 648.80(a)(4), (5), (8), or (9). A violation of any of these paragraphs is a separate violation.

(44) Fish for, land, or possess NE multispecies harvested by means of pair trawling or with pair trawl gear, except under the provisions of § 648.80(d), or unless the vessels that engaged in pair trawling have not been issued multispecies permits and fish for NE multispecies exclusively in state waters.

(45) Fish for, harvest, possess, or land in or from the EEZ northern shrimp, unless such shrimp were fished for or harvested by a vessel meeting the requirements specified in § 648.80(a)(3).

(46) Violate any terms of a letter authorizing experimental fishing pursuant to § 648.12 or fail to keep such letter on board the vessel during the period of the experiment.

(47) Fish for the species specified in § 648.80 (d) or (e) with a net of mesh size smaller than the applicable mesh size specified in § 648.80(a) (2), (b)(2), or (c)(2), or possess or land such species, unless the vessel is in compliance with the requirements specified in § 648.80 (d) or (e), or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(48) Violate any provision of § 648.88.

(49) Violate any of the restrictions on fishing with scallop dredge gear specified in § 648.80(h).

(50) Violate any of the provisions of § 648.80(i).

(51) Obstruct or constrict a net as described in § 648.80(g) (1) or (2).

(52) Enter, be on a fishing vessel in, or fail to remove gear from the EEZ portion of the areas described in § 648.81 (f)(1) through (h)(1) during the time period specified, except as provided in § 648.81(d), (f)(2), (g)(2), and (h)(2).

(53) Possess, land, or fish for regulated species, except winter flounder as provided for in accordance with § 648.80(i) and from or within the areas described in § 648.80(i), while in possession of scallop dredge gear on a vessel not fishing under the scallop DAS program as described in § 648.53, or fishing under a general scallop permit, unless the vessel and the dredge gear conform with the stowage requirements of § 648.51 (a)(2)(ii) and (e)(2), or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(54) Possess or land fish caught with nets of mesh smaller than the minimum size specified in § 648.51, or with scallop dredge gear on a vessel not fishing under the scallop DAS program described in § 648.54 of this chapter, or fishing under a general scallop permit, unless said fish are caught, possessed or landed in accordance with §§ 648.80 and 648.86, or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(55) Purchase, possess, or receive as a dealer, or in the capacity of a dealer, regulated species in excess of the possession limit specified in § 648.86 applicable to a vessel issued a multispecies permit.

(56) Possess, or land per trip, scallops in excess of 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops, unless:

(i) The scallops were harvested by a vessel that has been issued and carries on board a general or limited access scallop permit; or

(ii) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(57) Fish for, possess, or land per trip, scallops in excess of 400 lb (181.44 kg) of shucked, or 50 bu (176.2 L) of in-shell scallops, unless:

(i) The scallops were harvested by a vessel that has been issued and carries on board a limited access scallop permit, or a letter under § 648.4(b)(2)(viii)(F); or

(ii) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(58) Fish for, possess, or land per trip, scallops in excess of 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops, unless:

(i) The scallops were harvested by a vessel with an operator on board who has been issued an operator's permit and the permit is on board the vessel and is valid; or

(ii) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(59) Have a shucking or sorting machine on board a vessel that shucks scallops at sea, while in possession of more than 400 lb (181.44 kg) of shucked scallops, unless that vessel has not been issued a scallop permit and fishes exclusively in state waters.

(60) Land, offload, remove, or otherwise transfer, or attempt to land, offload, remove or otherwise transfer, scallops from one vessel to another, unless that vessel has not been issued a scallop permit and fishes exclusively in state waters.

(61) Sell, barter or trade, or otherwise transfer, or attempt to sell, barter or trade, or otherwise transfer, for a commercial purpose, any scallops from a trip whose catch is 40 lb (18.14 kg) of shucked scallops or less, or 5 bu (176.1 L) of in-shell scallops, unless the vessel has been issued a valid general or limited access scallop permit, or the scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(62) Purchase, possess, or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose, in the capacity of a dealer, scallops taken from a fishing vessel that were harvested in or from the EEZ, unless issued, and in possession of, a valid scallop dealer's permit.

(63) Purchase, possess, or receive for commercial purposes, or attempt to purchase or receive for commercial purposes, scallops caught by a vessel other than one issued a valid limited access or general scallop permit unless the scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(64) Operate or act as an operator of a vessel fishing for or possessing any species of fish regulated by this part in or from the EEZ, or issued a permit pursuant to this part, without having been issued and possessing a valid operator's permit.

(65) Possess in or harvest from the EEZ summer flounder, either in excess of the possession limit specified in § 648.105, or before or after the time period specified in § 648.102, unless the vessel was issued a summer flounder moratorium permit and the moratorium permit is on board the vessel and has not been surrendered, revoked, or suspended.

(66) Possess nets or netting with mesh not meeting the minimum mesh requirement of § 648.104 if the person possesses summer flounder harvested in or from the EEZ in excess of the threshold limit of § 648.105(a).

(67) Purchase or otherwise receive, except for transport, summer flounder from the owner or operator of a vessel issued a summer flounder moratorium permit, unless in possession of a valid summer flounder dealer permit.

(68) Purchase or otherwise receive for commercial purposes summer flounder caught by other than a vessel with a summer flounder moratorium permit not subject to the possession limit of § 648.105.

(69) Purchase or otherwise receive for a commercial purpose summer flounder landed in a state after the effective date published in the Federal Register notifying permit holders that commercial quota is no longer available in that state.

(70) Fail to comply with any sea turtle conservation measure specified in § 648.106, including any sea turtle conservation measure implemented by notification in the Federal Register in accordance with § 648.106(d).

(71) Use any vessel of the United States for taking, catching, harvesting, fishing for, or landing any Atlantic salmon taken from or in the EEZ.

(72) Transfer, directly or indirectly, or attempt to transfer to any vessel any Atlantic salmon taken in or from the EEZ.

(73) Take and retain, or land more mackerel, squid, and butterfish than specified under a notice issued under § 648.22.

(74) Possess nets or netting with mesh not meeting the minimum size requirement of § 648.23 and not stowed in accordance with the requirements of § 648.23, if in possession of *Loligo* harvested in or from the EEZ.

(75) Transfer *Loligo* or butterfish within the EEZ, unless the vessels participating in the transfer have been issued valid *Loligo* and butterfish moratorium permits or valid letters of authorization from the Regional Director.

(76) Purchase, possess or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose, in the capacity of a dealer, except for transport on land, mackerel, squid, and butterfish taken from a fishing vessel unless issued, and in possession of a valid mackerel, squid, and butterfish fishery dealer permit.

(77) Purchase or otherwise receive for a commercial purpose, mackerel, squid, and butterfish caught by other than a vessel issued a mackerel, squid, and butterfish permit, unless the vessel has not been issued a permit under this part and fishes exclusively within the waters under the jurisdiction of any state.

(78) Land any scup harvested in or from the EEZ in fillet form with the skin removed.

(79) Violate any other provision of this part, the Magnuson Act, or any regulation, notice, or permit issued under the Magnuson Act.

(b) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel holding a multispecies permit, issued an operator's permit, or issued a letter under § 648.4(a)(1)(i)(H)(*3*), to land, or possess on board a vessel, more than the possession limits specified in § 648.86(a), or violate any of the other provisions of § 648.86.

(c) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) and (b) of this section, it is unlawful for any person owning or operating a vessel issued a limited access multispecies permit or a letter under § 648.4(a)(1)(i)(H)(*3*), to do any of the following:

(1) Fish for, possess at any time during a trip, or land per trip more than the possession limit of regulated species specified in § 648.86(c) after using up the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 648.82, unless otherwise exempted under § 648.82(b)(3) or § 648.89.

(2) If required by § 648.10 to have a VTS unit:

(i) Fail to have a certified, operational, and functioning VTS unit that meets the specifications of § 648.9 on board the vessel at all times.

(ii) Fail to comply with the notification, replacement, or any other requirements regarding VTS usage as specified in § 648.10(a).

(3) Combine, transfer, or consolidate DAS allocations.

(4) Fish for, possess, or land NE multispecies with or from a vessel that has had the horsepower of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(1)(i) (E) and (F).

(5) Fish for, possess, or land NE multispecies with or from a vessel that has had the length, GRT, or NT of such vessel or its replacement increased or upgraded in excess of limitations specified in § 648.4(a)(1)(i) (E) and (F).

(6) Fail to comply with any requirement specified in § 648.10.

(7) Possess or land per trip more than the possession limit specified under § 648.8 if the vessel has been issued a limited access multispecies permit.

(8) Fail to comply with the restrictions on fishing and gear specified in § 648.82(b)(4), if the vessel has been issued a limited access multispecies hook-gear permit.

(9) Fail to declare, and be, out of the NE multispecies fishery as required by § 648.82(g), using the procedure described under § 648.82(h), as applicable.

(10) Land, or possess on board a vessel, more than the possession limit of winter flounder specified in § 648.86(b), or violate any of the other provisions specified of § 648.86(b).

(d) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a), (b), and (c) of this section, it is unlawful for any person owning or operating a vessel issued a multispecies handgear permit to do any of the following:

(1) Possess, at any time during a trip, or land per trip, more than the possession limit of regulated species specified in § 648.88(a), unless the regulated species were harvested by a charter or party vessel.

(2) Use, or possess on board, gear capable of harvesting NE multispecies, other than rod and reel or handline, while in possession of, or fishing for, NE multispecies.

(3) Possess or land NE multispecies during the time period specified in § 648.86(a)(2).

(e) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) through (d) of this section, it is unlawful for any person owning or operating a vessel issued a multispecies possession limit permit for scallops to possess or land more than the possession limit of regulated species specified at § 648.88(c) or to possess or land regulated species when not fishing under a scallop DAS.

(f) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a limited access scallop permit or a general scallop permit under § 648.4(a)(2) to land, or possess at or after landing, in-shell scallops smaller than the minimum shell height specified in § 648.50(a).

(g) In addition to the general prohibitions specified in § 600.725 of this chapter and the prohibitions specified in paragraphs (a) through (f) of this section, it is unlawful for the owner or operator of a charter or party boat issued a multispecies permit, or of a recreational vessel, as applicable, to:

(1) Fish with gear in violation of the restrictions specified in § 648.89(a).

(2) Possess cod and haddock in excess of the possession limits specified in § 648.89(c).

(3) Sell, trade, barter, or otherwise transfer, or attempt to sell, trade, barter or otherwise transfer, NE multispecies for a commercial purpose as specified in § 648.89(d).

(h) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) and (g) of this section, it is unlawful for any person owning or operating a vessel issued a limited access scallop permit under § 648.4(a)(2) to do any of the following:

(1) Possess, or land per trip, more than 400 lb (181.44 kg) of shucked, or 50 bu (176.2 L) of in-shell scallops after using up the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 648.10, unless exempted from DAS allocations as provided in § 648.54.

(2) Land scallops on more than one trip per calendar day after using up the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 648.10, unless exempted from DAS allocations as provided in § 648.55.

(3) Fail to have an approved, operational, and functioning VTS unit that meets the specifications of § 648.9

on board the vessel at all times, unless the vessel is not subject to the VTS requirements specified in § 648.10.

(4) If the vessel is not subject to VTS requirements specified in § 648.10(a), fail to comply with the requirements of the call-in system specified in § 648.10(b).

(5) Combine, transfer, or consolidate DAS allocations.

(6) Have an ownership interest in more than 5 percent of the total number of vessels issued limited access scallop permits, except as provided in § 648.4(a)(2)(i)(H).

(7) Fish for, possess, or land scallops with or from a vessel that has had the horsepower of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(2)(i) (E) or (F).

(8) Fish for, possess, or land scallops with or from a vessel that has had the length, GRT, or NT of such vessel or its replacement increased or upgraded in excess of limitations specified in § 648.4(a)(2)(i) (E) or (F).

(9) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops or participate in the DAS allocation program, while in possession of trawl nets that have a maximum sweep exceeding 144 ft (43.9 m), as measured by the total length of the footrope that is directly attached to the webbing of the net, except as specified in § 648.51(a)(2)(iii).

(10) Fish under the DAS allocation program with, or have available for immediate use, trawl nets of mesh smaller than the minimum size specified in § 648.51(a)(2).

(11) Fish under the DAS allocation program with trawl nets that use chafing gear or other means or devices that do not meet the requirements of § 648.51(a)(3).

(12) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops or participate in the DAS allocation program, while in possession of dredge gear that has a maximum combined dredge width exceeding 31 ft (9.4 m), measured at the widest point in the bail of each dredge, except as specified in § 648.51(b)(1).

(13) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.1 L) of in-shell scallops, or fish under the DAS allocation program, while in possession of dredge gear that uses net or net material on the top half of the dredge of a minimum mesh size smaller than that specified in § 648.51(b)(2).

(14) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.1 L) of in-shell scallops, or fish under the DAS allocation program, while in possession of dredge gear containing rings that have minimum sizes smaller than those specified in § 648.51(b)(3).

(15) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops, or participate in the DAS allocation program, while in possession of dredge gear that uses links between rings of the gear or ring configurations that do not conform to the specifications described in § 648.51(b)(4)(ii).

(16) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops, or participate in the DAS allocation program, while in possession of dredge gear that uses cookies or chafing gear, or other gear, means, or devices on the top half of a dredge that obstruct the openings in or between the rings, except as specified in § 648.51(b)(4).

(17) Participate in the DAS allocation program with more than the number of persons specified in § 648.51(c), including the operator, on board when the vessel is not docked or moored in port, unless otherwise authorized by the Regional Director.

(18) Fish under the small dredge program specified in § 648.51(e), with, or while in possession of, a dredge that exceeds 10.5 ft (3.2 m) in overall width, as measured at the widest point in the bail of the dredge.

(19) Fish under the small dredge program as specified in § 648.51(e) with more than five persons, including the operator, aboard the vessel, unless otherwise authorized by the Regional Director.

(20) Have a shucking or sorting machine on board a vessel that shucks scallops at sea while fishing under the DAS allocation program, unless otherwise authorized by the Regional Director.

(21) Refuse or fail to carry an observer if requested to do so by the Regional Director.

(22) Fail to provide an observer with required food, accommodations, access, and assistance, as specified in § 648.11.

(23) Fail to comply with any requirement for declaring in and out of the DAS allocation program as specified in § 648.10.

(24) Fail to comply with any requirement for participating in the DAS Exemption Program as specified in § 648.54.

(25) Fish with, possess on board, or land scallops while in possession of trawl nets, when fishing for scallops under the DAS allocation program, unless exempted as provided for in § 648.51(f).

(26) Fail to comply with the restriction on twine top described in § 648.51(b)(4)(iv).

(i) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a), (f), and (g) of this section, it is unlawful for any person owning or operating a vessel issued a general scallop permit to do any of the following:

(1) Possess, or land per trip, more than 400 lb (181.44 kg) of shucked, or 50 bu (176.2 L) of in-shell scallops.

(2) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that has a maximum combined dredge width exceeding 31 ft (9.4 m), measured at the widest point in the bail of each dredge, except as specified in § 648.51(b)(1).

(3) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.1 L) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that uses net or net material on the top half of the dredge of a minimum mesh size smaller than that specified in § 648.51(b)(2).

(4) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.1 L) of in-shell scallops while in possession of, or fish for scallops with, dredge gear containing rings that have minimum sizes smaller than those specified in § 648.51(b)(3).

(5) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that uses links between rings of the gear or ring configurations that do not conform to the specifications described in § 648.51(b)(4)(ii).

(6) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that uses cookies or chafing gear, or other gear, means, or devices on the top half of a dredge that obstruct the openings in or between the rings, except as specified in § 648.51(b)(4).

(7) Fish for, or land, more than 40 lb (18.14 kg) of scallops on more than one trip per calendar day.

(j) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a summer flounder permit (including moratorium permit) to do any of the following:

(1) Possess 100 lb or more (45.4 kg or more) of summer flounder between May 1 and October 31, or 200 lb or more (90.7 kg or more) of summer flounder between November 1 and April 30, unless the vessel meets the minimum mesh size requirement specified in § 648.104(a), or is fishing in the exempted area with an exemption permit as specified in § 648.104(b)(1), or

holds an exemption permit and is in transit from the exemption area with nets properly stowed as specified in § 648.104(f), or is fishing with exempted gear specified in § 648.104(b)(2).

(2) Possess summer flounder in other than a box specified in § 648.105(d) if fishing with nets having mesh that does not meet the minimum mesh-size requirement specified in § 648.104(a), unless the vessel is fishing pursuant to the exemptions specified in § 648.104(b).

(3) Land summer flounder for sale in a state after the effective date of the notification in the Federal Register notifying permit holders that commercial quota is no longer available in that state.

(4) Fish with or possess nets or netting that do not meet the minimum mesh requirement, or that are modified, obstructed or constricted, if subject to the minimum mesh requirement specified in § 648.104, unless the nets or netting are stowed in accordance with § 648.104(f).

(5) Fish with or possess nets or netting that do not meet the minimum mesh requirement, or that are modified, obstructed or constricted, if fishing with an exempted net described in § 648.104, unless the nets or netting are stowed in accordance with § 648.104(f).

(6) Fish west or south, as appropriate, of the line specified in § 648.104(b)(1) if exempted from the minimum mesh requirement specified in § 648.104 by a summer flounder exemption permit.

(7) Sell or transfer to another person for a commercial purpose, other than transport, any summer flounder, unless the transferee has a valid summer flounder dealer permit.

(8) Carry passengers for hire, or carry more than three crew members for a charter boat or five crew members for a party boat, while fishing commercially pursuant to a summer flounder moratorium permit.

(k) In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person owning or operating a vessel fishing commercially for scup that are harvested in or from the EEZ, to do any of the following:

(1) Possess 4,000 lb or more (1,814.4 kg or more) of scup harvested in or from the EEZ, unless the vessel meets the minimum mesh size requirement specified in § 648.124(a).

(2) Fish with or possess nets or netting in the EEZ that do not meet the minimum mesh requirement, or that are modified, obstructed, constricted, or constructed with mesh in which the bars entering or exiting the knots twist around each other, if subject to the minimum mesh requirement specified in § 648.124(a), unless the nets or netting are stowed in accordance with § 648.23(b).

(3) Engage in recreational fishing in the EEZ while simultaneously conducting commercial fishing operations.

(l) It is unlawful for the owner or operator of any recreational fishing vessel, including party or charter boats, to possess scup harvested in or from the EEZ smaller than the minimum size limit for recreational fishermen specified in § 648.125(b).

(m) It is unlawful for the owner and operator of a party or charter boat issued a summer flounder permit (including moratorium permit), when the boat is carrying passengers for hire or carrying more than three crew members if a charter boat or more than five members if a party boat, to:

(1) Possess summer flounder in excess of the possession limit established pursuant to § 648.105.

(2) Fish for summer flounder other than during a season specified pursuant to § 648.102.

(3) Sell or transfer summer flounder to another person for a commercial purpose.

(n) It is unlawful to violate any terms of a letter authorizing experimental fishing pursuant to § 648.12 or to fail to keep such letter aboard the vessel during the time period of the experimental fishing.

(o) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a surf clam and ocean quahog permit or issued a surf clam and ocean quahog allocation permit under § 648.70, to land or possess any surf clams or ocean quahogs in excess of, or without, an individual allocation, or to transfer any surf clams or ocean quahogs to any person for a commercial purpose other than transport, unless that person has a surf clam and ocean quahog processor/dealer permit.

(p) In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person owning or operating a vessel issued a valid mackerel, squid, and butterfish fishery permit, or issued an operator's permit, to do any of the following:

(1) Possess more than the incidental catch allowance of *Loligo* or butterfish, unless issued a Loligo squid and butterfish fishery moratorium permit.

(2) Take, retain, or land mackerel, squid, or butterfish in excess of a trip allowance specified under § 648.22.

(3) Take, retain, or land mackerel, squid, or butterfish after a total closure specified under § 648.22.

(4) Fish with or possess nets or netting that do not meet the minimum mesh requirement for *Loligo* specified in § 648.23(a), or that are modified, obstructed, or constricted, if subject to the minimum mesh requirement, unless the nets or netting are stowed in accordance with § 648.23(b) or the vessel is fishing under an exemption specified in § 648.23(a).

(5) Transfer squid or butterfish at sea to another vessel, unless that other vessel has been issued a valid *Loligo* squid and butterfish fishery moratorium permit or a letter of authorization by the Regional Director.

(6) Fail to comply with any measures implemented pursuant to § 648.21.

(7) Carry passengers for hire while fishing commercially under a mackerel, squid, and butterfish fishery permit.

(8) Fail to carry on board a letter of authorization, if fishing in an experimental fishery pursuant to § 648.12.

(q) It is unlawful for the owner and operator of a party or charter boat issued a mackerel, squid, and butterfish fishery permit (including a moratorium permit), when the boat is carrying passengers for hire, to do any of the following:

(1) Violate any recreational fishing measures established pursuant to § 648.21(d).

(2) Sell or transfer mackerel, squid, or butterfish to another person for a commercial purpose.

(r) It is unlawful for any person to violate any terms of a letter authorizing experimental fishing pursuant to § 648.11 or to fail to keep such letter on board the vessel during the period of the experiment.

(s) Any person possessing or landing per trip, scallops in excess of 40 lb (18.14 kg) of shucked, or 5 bu (176.1 L) of in-shell scallops, at or prior to the time when those scallops are received or possessed by a dealer, is subject to all of the scallop prohibitions specified in this section, unless the scallops were harvested by a vessel without a scallop permit that fishes for scallops exclusively in state waters. Any person, regardless of the quantity of scallops possessed or landed, is subject to the prohibitions of paragraphs (a)(4) through (7), (10), (11), (68), (69), (71), (72), (73), and (87) of this section.

(t) For purposes of this section, the following presumptions apply:

(1) *Surf clams and ocean quahogs.* (i) Possession of surf clams or ocean quahogs on the deck of any fishing vessel in closed areas, or the presence of any part of a vessel's gear in the water

in closed areas, or the presence of any part of a vessel's gear in the water more than 12 hours after an announcement closing the entire fishery becomes effective, is prima facie evidence that such vessel was fishing in violation of the provisions of the Magnuson Act and these regulations.

(ii) Surf clams or ocean quahogs landed from a trip for which notification was provided under § 648.15(b) or § 648.70(b) are deemed to have been harvested in the EEZ and count against the individual's annual allocation.

(iii) Surf clams or ocean quahogs found in cages without a valid state tag are deemed to have been harvested in the EEZ, and to be part of an individual's allocation, unless such individual demonstrates that he/she has surrendered his/her surf clam and ocean quahog vessel permit issued under § 648.4 and has conducted fishing operations exclusively within waters under the jurisdiction of any state. Surf clams and ocean quahogs in cages with a Federal tag or tags, issued and still valid pursuant to this section, affixed thereto are deemed to have been harvested by the individual allocation holder to whom the tags were issued or transferred under § 648.70(d)(2) or § 648.75(b).

(2) *Scallops.* Scallops that are possessed or landed at or prior to the time when the scallops are received by a dealer, or scallops that are possessed by a dealer, are deemed to be harvested from the EEZ, unless the preponderance of all submitted evidence demonstrates that such scallops were harvested by a vessel without a scallop permit and fishing exclusively for scallops in state waters.

(3) *Summer flounder.* All summer flounder possessed aboard a party or charter boat issued a summer flounder permit are deemed to have been harvested from the EEZ.

(4) *NE multispecies.* (i) Regulated species possessed for sale that do not meet the minimum sizes specified in § 648.83 for sale are deemed to have been taken or imported in violation of these regulations, unless the preponderance of all submitted evidence demonstrates that such fish were harvested by a vessel not issued a permit under this part and fishing exclusively within state waters. This presumption does not apply to fish being sorted on deck.

(ii) Regulated species possessed for sale that do not meet the minimum sizes specified in § 648.83 for sale are deemed taken from the EEZ or imported in violation of these regulations, unless the preponderance of all submitted evidence demonstrates that such fish were harvested by a vessel not issued a permit under this part and fishing exclusively within state waters. This presumption does not apply to fish being sorted on deck.

(5) *Mackerel, squid, and butterfish.* All mackerel and butterfish possessed on board a party or charter boat issued a mackerel, squid, and butterfish fishery permit are deemed to have been harvested from the EEZ.

§ 648.15 Facilitation of enforcement.

(a) *General.* See § 600.504 of this chapter.

(b) *Special notification requirements applicable to surf clam and ocean quahog vessel owners and operators.* (1) Vessel owners or operators are required to call the NMFS Office of Law Enforcement nearest to the point of offloading (contact the Regional Director for locations and phone numbers) and accurately provide the following information prior to the departure of their vessel from the dock to fish for surf clams or ocean quahogs in the EEZ: Name of the vessel; NMFS permit number assigned to the vessel; expected date and time of departure from port; whether the trip will be directed on surf clams or ocean quahogs; expected date, time, and location of landing; and name of the individual providing notice.

(2) Owners or operators that have given notification of a fishing trip under this paragraph (b) who decide to cancel or postpone the trip prior to departure must immediately provide notice of cancellation by telephone to the Office of Law Enforcement to which the original notification was provided. A separate notification shall be provided for the next fishing trip. Owners or operators that discontinue a fishing trip in the EEZ must immediately provide notice of discontinuance by telephone to the Office of Law Enforcement to which the original notification was provided. The owner or operator providing notice of discontinuance shall advise of any changes in landing time or port of landing. The owner or operator discontinuing a fishing trip in the EEZ must return to port and offload any surf clams or ocean quahogs prior to commencing fishing operations in the waters under the jurisdiction of any state.

(3) The vessel permits, the vessel, its gear, and catch shall be subject to inspection upon request by an authorized officer.

§ 648.16 Penalties.

See § 600.735.

Subpart B—Management Measures for the Atlantic Mackerel, Squid, and Butterfish Fisheries

§ 648.20 Maximum optimum yield (OYs).

The OYs specified pursuant to § 648.21 during a fishing year may not exceed the following amounts:

(a) Mackerel—that quantity of mackerel that is less than or equal to the allowable biological catch (ABC) in U.S. waters specified pursuant to § 648.21.

(b) *Loligo*—36,000 mt (79,362,000 lb).

(c) *Illex*—30,000 mt (66,135,000 lb).

(d) Butterfish—16,000 mt (35,272,000 lb).

§ 648.21 Procedures for determining initial annual amounts.

(a) *Initial recommended annual specifications.* The Atlantic Mackerel, Squid, and Butterfish Monitoring Committee (Monitoring Committee) shall meet annually to develop and recommend the following specifications for consideration by the Mackerel, Squid, and Butterfish Committee of the MAFMC: (1) Initial OY (IOY), domestic annual harvest (DAH), and domestic annual processing (DAP) for the squids; (2) IOY, DAH, DAP, and bycatch level of the total allowable level of foreign fishing (TALFF), if any, for butterfish; and (3) IOY, DAH, DAP, joint venture processing (JVP), if any, and TALFF, if any, for mackerel. The Monitoring Committee may also recommend that certain ratios of TALFF, if any, for mackerel to purchases of domestic harvested fish and/or domestic processed fish be established in relation to the initial annual amounts.

(b) *Guidelines.* As the basis for its recommendations under paragraph (a) of this section, the Monitoring Committee shall review available data pertaining to: Commercial and recreational landings, discards, current estimates of fishing mortality, stock status, the most recent estimates of recruitment, virtual population analysis results, levels of noncompliance by harvesters or individual states, impact of size/mesh regulations, results of a survey of domestic processors and joint venture operators of estimated mackerel processing capacity and intent to use that capacity, results of a survey of fishermen's trade associations of estimated mackerel harvesting capacity and intent to use that capacity, and any other relevant information. The specifications recommended pursuant to paragraph (a) of this section must be consistent with the following:

(1) *Squid.* (i) The ABC for any fishing year must be either the maximum OY specified in § 648.20, or a lower amount, if stock assessments indicate that the

potential yield is less than the maximum OY.

(ii) IOY is a modification of ABC based on social and economic factors.

(2) *Mackerel.* (i) Mackerel ABC must be calculated from the formula ABC = S − C − T, where C is the estimated catch of mackerel in Canadian waters for the upcoming fishing year; S is the mackerel spawning stock size at the beginning of the year for which quotas are specified; and T, which must be equal to or greater than 900,000 mt (1,984,050,000 lb), is the spawning stock size that must be maintained in the year following the year for which quotas are specified.

(ii) IOY is a modification of ABC, based on social and economic factors, and must be less than or equal to ABC.

(iii) IOY is composed of DAH and TALFF. DAH, DAP, and JVP must be projected by reviewing data from sources specified in paragraph (a) of this section and other relevant data, including past domestic landings, projected amounts of mackerel necessary for domestic processing and for joint ventures during the fishing year, projected recreational landings, and other data pertinent for such a projection. The JVP component of DAH is the portion of DAH that domestic processors either cannot or will not use. In addition, IOY is based on the criteria set forth in the Magnuson Act, specifically section 201(e), and on the following economic factors:

(A) Total world export potential by mackerel producing countries.

(B) Total world import demand by mackerel consuming countries.

(C) U.S. export potential based on expected U.S. harvests, expected U.S. consumption, relative prices, exchange rates, and foreign trade barriers.

(D) Increased/decreased revenues to the United States from foreign fees.

(E) Increased/decreased revenues to U.S. harvesters (with/without joint ventures).

(F) Increased/decreased revenues to U.S. processors and exporters.

(G) Increases/decreases in U.S. harvesting productivity due to decreases/increases in foreign harvest.

(H) Increases/decreases in U.S. processing productivity.

(I) Potential impact of increased/decreased TALFF on foreign purchases of U.S. products and services and U.S.-caught fish, changes in trade barriers, technology transfer, and other considerations.

(3) *Butterfish.* (i) If the Monitoring Committee's review indicates that the stock cannot support a level of harvest equal to the maximum OY, the Monitoring Committee shall recommend establishing an ABC less than the maximum OY for the fishing year. This level represents the modification of maximum OY to reflect biological and ecological factors. If the stock is able to support a harvest level equivalent to the maximum OY, the ABC must be set at that level.

(ii) IOY is a modification of ABC based on social and economic factors. The IOY is composed of a DAH and bycatch TALFF that is equal to 0.08 percent of the allocated portion of the mackerel TALFF.

(c) *Recommended measures.* Based on the review of the data described in paragraph (a) of this section, the Monitoring Committee will recommend to the Squid, Mackerel, and Butterfish Committee the measures it determines are necessary to assure that the specifications are not exceeded from the following measures:

(1) Commercial quotas.

(2) The amount of *Loligo* and butterfish that may be retained, possessed and landed by vessels issued the incidental catch permit specified in § 648.4(a)(5).

(3) Commercial minimum fish sizes.

(4) Commercial trip limits.

(5) Commercial seasonal quotas.

(6) Minimum mesh sizes.

(7) Commercial gear restrictions.

(8) Recreational harvest limit.

(9) Recreational minimum fish size.

(10) Recreational possession limits.

(11) Recreational season.

(d) *Annual fishing measures.* (1) The Squid, Mackerel, and Butterfish Committee shall review the recommendations of the Monitoring Committee. Based on these recommendations and any public comment received thereon, the Squid, Mackerel, and Butterfish Committee shall recommend to the MAFMC appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC shall review these recommendations and based on the recommendations and any public comment received thereon, the MAFMC shall recommend to the Regional Director appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Director shall review the recommendations, and on or about November 1 of each year, shall publish notification in the Federal Register proposing specifications and any measures necessary to assure that the specifications will not be exceeded and providing a 30-day public comment period. If the proposed specifications differ from those recommended by the MAFMC, the reasons for any differences shall be clearly stated and the revised specifications must satisfy the criteria set forth in this section. The MAFMC's recommendations shall be available for inspection at the office of the Regional Director during the public comment period.

(2) On or about December 15 of each year, the Assistant Administrator will make a final determination concerning the specifications for each species and any measures necessary to assure that the specifications will not be exceeded contained in the Federal Register notification. After the Assistant Administrator considers all relevant data and any public comments, notification of the final specifications and any measures necessary to assure that the specifications will not be exceeded and responses to the public comments will be published in the Federal Register. If the final specification amounts differ from those recommended by the MAFMC, the reason(s) for the difference(s) must be clearly stated and the revised specifications must be consistent with the criteria set forth in paragraph (b) of this section.

(e) *Inseason adjustments.* The specifications established pursuant to this section may be adjusted by the Regional Director, in consultation with the MAFMC, during the fishing year by publishing notification in the Federal Register stating the reasons for such an action and providing a 30-day comment public comment period.

§ 648.22 Closure of the fishery.

(a) *General.* The Assistant Administrator shall close the directed mackerel or *Loligo* or *Illex* squid or butterfish fishery in the EEZ when U.S. fishermen have harvested 80 percent of the DAH, of that fishery if such closure is necessary to prevent the DAH from being exceeded. The closure shall remain in effect for the remainder of the fishing year, with incidental catches allowed as specified in paragraph (c) of this section, until the entire DAH is attained. When the Regional Director projects that DAH will be attained for any of the species, the Assistant Administrator shall close the fishery in the EEZ to all fishing for that species, and the incidental catches specified in paragraph (c) of this section will be prohibited.

(b) *Notification.* Upon determining that a closure is necessary, the Assistant Administrator will notify, in advance of

the closure, the Executive Directors of the MAFMC, NEFMC, and SAFMC; mail notification of the closure to all holders of mackerel, squid, and butterfish fishery permits at least 72 hours before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of closure in the Federal Register.

(c) *Incidental catches.* During the closure of a directed fishery, the trip limit for the species for which the fishery is closed is 10 percent, by weight, of the total amount of fish on board for a vessel with a *Loligo*/butterfish moratorium permit or *Illex* or a mackerel commercial permit. During a period of closure of the directed fishery for *Loligo* or butterfish, the trip limit for a vessel with an incidental catch permit for those species is 10 percent, by weight, of the total amount of fish on board, or the allowed level of incidental catch specified in § 648.4(e)(2), whichever is less.

§ 648.23 Gear restrictions.

(a) *Mesh restrictions and exemptions.* Owners or operators of otter trawl vessels possessing *Loligo* harvested in or from the EEZ may only fish with nets having a minimum mesh size of 1⅞ inches (48 mm) diamond mesh, inside stretch measure, applied throughout the entire net, unless they are fishing during the months of June, July, August, and September for *Illex* seaward of the following coordinates (copies of a map depicting this area are available from the Regional Director upon request):

Point	N. Lat.	W. Long.
M1	43°58.0′	67°22.0′
M2	43°50.0′	68°35.0′
M3	43°30.0′	69°40.0′
M4	43°20.0′	70°00.0′
M5	42°45.0′	70°10.0′
M6	42°13.0′	69°55.0′
M7	41°00.0′	69°00.0′
M8	41°45.0′	68°15.0′
M9	42°10.0′	67°10.0′
M10	41°18.6′	66°24.8′
M11	40°55.5′	66°38.0′
M12	40°45.5′	68°00.0′
M13	40°37.0′	68°00.0′
M14	40°30.0′	69°00.0′
M15	40°22.7′	69°00.0′
M16	40°18.7′	69°40.0′
M17	40°21.0′	71°03.0′
M18	39°41.0′	72°32.0′
M19	38°47.0′	73°11.0′
M20	38°04.0′	74°06.0′
M21	37°08.0′	74°46.0′
M22	36°00.0′	74°52.0′
M23	35°45.0′	74°53.0′
M24	35°28.0′	74°52.0′

Vessels fishing under this exemption may not have available for immediate use, as defined in paragraph (b) of this section, any net, or any piece of net, with a mesh size less than 1⅞ inches (48 mm) diamond mesh or any net, or any piece of net, with mesh that is rigged in a manner that is inconsistent with such minimum mesh size, when the vessel is landward of the specified coordinates.

(b) *Definition of ''not available for immediate use.''* A net that can be shown not to have been in recent use and that is stowed in conformance with one of the following methods is considered to be not available for immediate use:

(1) *Below deck stowage.* (i) It is stored below the main working deck from which it is deployed and retrieved;

(ii) The towing wires, including the leg wires, are detached from the net; and

(iii) It is fan-folded (flaked) and bound around its circumference.

(2) *On-deck stowage.* (i) It is fan-folded (flaked) and bound around its circumference;

(ii) It is securely fastened to the deck or rail of the vessel; and

(iii) The towing wires, including the leg wires, are detached from the net.

(3) *On-reel stowage.* (i) It is on a reel and it's entire surface is covered with canvas or other similar material that is securely bound;

(ii) The towing wires, including the leg wires, are detached from the net; and

(iii) The codend is removed and stored below deck.

(4) *Other methods of stowage.* Any other method of stowage authorized in writing by the Regional Director and published in the Federal Register.

(c) *Mesh obstruction or constriction.* The owner or operator of a fishing vessel shall not use any combination of mesh or liners that effectively decreases the mesh size below the minimum mesh size, except that a liner may be used to close the opening created by the rings in the rearmost portion of the net, provided the liner extends no more than 10 meshes forward of the rearmost portion of the net.

(d) *Net obstruction or constriction.* The owner or operator of a fishing vessel shall not use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net that results in an effective mesh opening of less than 1⅞ inches (48 mm) diamond mesh, inside stretch measure. Net strengtheners (covers), splitting straps and/or bull ropes or wire may be used, provided they do not constrict the top of the regulated portion of the net to less than an effective mesh opening of 1⅞ inches (48 mm), diamond mesh, inside stretch measure. Net strengtheners (covers) may not have an effective mesh opening of less than 4.5 inches (11.43 cm), diamond mesh, inside stretch measure. ''Top of the regulated portion of the net'' means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph (d), head ropes are not to be considered part of the top of the regulated portion of a trawl net.

Subpart C—Management Measures for Atlantic Salmon

§ 648.40 Prohibition on possession.

(a) *Incidental catch.* All Atlantic salmon caught incidental to a directed fishery for other species in the EEZ must be released in such a manner as to insure maximum probability of survival.

(b) *Presumption.* The possession of Atlantic salmon is prima facie evidence that such Atlantic salmon were taken in violation of this regulation. Evidence that such fish were harvested in state waters, or from foreign waters, or from aquaculture enterprises, will be sufficient to rebut the presumption. This presumption does not apply to fish being sorted on deck.

Subpart D—Management Measures for the Atlantic Sea Scallop Fishery

§ 648.50 Shell-height standard.

(a) *Minimum shell height.* The minimum shell height for in-shell scallops that may be landed, or possessed at or after landing, is 3.5 inches (89 mm). Shell height is a straight line measurement from the hinge to the outermost part of the shell, that is, the edge farthest away from the hinge.

(b) *Compliance and sampling.* Compliance with the minimum shell-height standard will be determined by inspection and enforcement at or after landing, including the time when the scallops are received or possessed by a dealer or person acting in the capacity of a dealer as follows: An authorized officer will take samples of 40 scallops each, at random, from the total amount of scallops in possession. The person in possession of the scallops may request that as many as 10 samples (400 scallops) be examined as a sample group. A sample group fails to comply with the standard if more than 10 percent of all scallops sampled are less than the shell height specified. The total amount of scallops in possession will be deemed in violation of this subpart and subject to forfeiture, if the sample group

fails to comply with the standard. All scallops will be subject to inspection and enforcement, in accordance with these compliance and sampling procedures, up to and including the time when a dealer receives or possesses scallops for a commercial purpose.

§ 648.51 Gear and crew restrictions.

(a) *Trawl vessel gear restrictions.* Trawl vessels in possession of more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops, trawl vessels fishing for scallops, and trawl vessels issued a limited access scallop permit under § 648.4(a)(2), while fishing under or subject to the DAS allocation program for scallops and authorized to fish with or possess on board trawl nets pursuant to § 648.51(f), must comply with the following:

(1) *Maximum sweep.* The trawl sweep of nets in use by or available for immediate use, as specified in paragraph (a)(2)(iii) of this section, shall not exceed 144 ft (43.9 m) as measured by the total length of the footrope that is directly attached to the webbing of the net.

(2) *Net requirements*—(i) *Minimum mesh size.* The mesh size for any scallop trawl net in all areas shall not be smaller than 5.5 inches (13.97 cm).

(ii) *Mesh stowage.* Same as § 648.23(b).

(iii) *Measurement of mesh size.* Mesh size is measured by using a wedge-shaped gauge having a taper of 2 cm in 8 cm and a thickness of 2.3 mm, inserted into the meshes under a pressure or pull of 5 kg. The mesh size is the average of the measurements of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes. The mesh in the regulated portion of the net will be measured at least five meshes away from the lacings running parallel to the long axis of the net.

(3) *Chafing gear and other gear obstructions*—(i) *Net obstruction or constriction.* A fishing vessel may not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net, except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 inches (7.62 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the trawl net. ''The top of the trawl net'' means the 50 percent of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph (a)(3), head ropes shall not be considered part of the top of the trawl net.

(ii) *Mesh obstruction or constriction.* A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (a)(3)(i) of this section, if it obstructs the meshes of the net in any manner.

(iii) A fishing vessel may not use or possess a net capable of catching scallops in which the bars entering or exiting the knots twist around each other.

(b) *Dredge vessel gear restrictions.* All dredge vessels fishing for or in possession of more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops, and all dredge vessels issued a limited access scallop permit and fishing under the DAS Program, with the exception of hydraulic clam dredges and mahogany quahog dredges in possession of 400 lb (181.44 kg) of scallops, or less, must comply with the following restrictions:

(1) *Maximum dredge width.* The combined dredge width in use by or in possession on board such vessels shall not exceed 31 ft (9.4 m) measured at the widest point in the bail of the dredge, except as provided under paragraph (e) of this section. However, component parts may be on board the vessel such that they do not conform with the definition of ''dredge or dredge gear'' in § 648.2, i.e., the metal ring bag and the mouth frame, or bail, of the dredge are not attached, and such that no more than one complete spare dredge could be made from these components parts.

(2) *Minimum mesh size.* (i) The mesh size of net material on the top of a scallop dredge in use by or in possession of such vessels shall not be smaller than 5.5 inches (13.97 cm).

(ii) Mesh size is measured as provided in paragraph (a)(2)(iii) of this section.

(3) *Minimum ring size.* (i) The inside ring size of a scallop dredge in use by or in possession of such vessels shall not be smaller than 3.5 inches (89 mm).

(ii) Ring size is determined by measuring the shortest straight line passing through the center of the ring from one inside edge to the opposite inside edge of the ring. The measurement shall not include normal welds from ring manufacturing or links. The rings to be measured will be at least five rings away from the mouth, and at least two rings away from other rigid portions of the dredge.

(4) *Chafing gear and other gear obstructions*—(i) *Chafing gear restrictions.* No chafing gear or cookies shall be used on the top of a scallop dredge.

(ii) *Link restrictions.* No more than double links between rings shall be used in or on all parts of the dredge bag, except the dredge bottom. No more than triple linking shall be used in or on the dredge bottom portion and the diamonds. Damaged links that are connected to only one ring, i.e., ''hangers,'' are allowed, unless they occur between two links that both couple the same two rings. Dredge rings may not be attached via links to more than four adjacent rings. Thus, dredge rings must be rigged in a configuration such that, when a series of adjacent rings are held horizontally, the neighboring rings form a pattern of horizontal rows and vertical columns. (A copy of a diagram showing a schematic of a legal dredge ring pattern is available upon request to the Office of the Regional Director).

(iii) *Dredge or net obstructions.* No material, device, net, dredge, ring, or link configuration or design shall be used if it results in obstructing the release of scallops that would have passed through a legal sized and configured net and dredge, as described in this part, that did not have in use any such material, device, net, dredge, ring link configuration or design.

(iv) *Twine top restrictions.* Vessels issued limited access scallop permits that are fishing for scallops under the DAS Program are also subject to the following restrictions:

(A) If a vessel is rigged with more than one dredge, or if rigged with only one dredge, such dredge is greater than 8 ft (2.44 m) in width, there must be at least seven rows of non-overlapping steel rings unobstructed by netting or any other material, between the terminus of the dredge (club stick) and the net material on the top of the dredge (twine top).

(B) For vessels rigged with only one dredge, and such dredge is less than 8 ft (2.44 m) in width, there must be at least four rows of non-overlapping steel rings unobstructed by netting or any other material between the club stick and the twine top of the dredge. (A copy of a diagram showing a schematic of a legal dredge with twine top is available from the Regional Director upon request).

(c) *Crew restrictions.* Limited access vessels participating in or subject to the scallop DAS allocation program may have no more than seven people aboard, including the operator, when not docked or moored in port, unless participating in the small dredge program specified in paragraph (e) of this section, or otherwise authorized by the Regional Director.

(d) *Sorting and shucking machines.* (1) Shucking machines are prohibited on all limited access vessels fishing under the scallop DAS program or any vessel in possession of more than 400 lb (181.44 kg) of scallops, unless the vessel has not been issued a limited access scallop permit and fishes exclusively in state waters.

(2) Sorting machines are prohibited on limited access vessels fishing under the scallop DAS program that shuck scallops at sea.

(e) *Small dredge program restrictions.* Any vessel owner whose vessel is assigned to either the part-time or occasional category may request, in the application for the vessel's annual permit, to be placed in one category higher. Vessel owners making such a request will be placed in the appropriate category for the entire year, if they agree to comply with the following restrictions, in addition to and notwithstanding other restrictions of this part, when fishing under the DAS program described in § 648.53, or in possession of more than 400 lb (181.44 kg) of shucked, or 50 bu (176.2 L) of in-shell scallops:

(1) The vessel must fish exclusively with one dredge no more than 10.5 ft (3.2 m) in width.

(2) The vessel may not have more than one dredge on board or in use.

(3) The vessel may have no more than five people, including the operator, on board.

(f) *Restrictions on use of trawl nets*—(1) *Prohibition on use of trawl nets.* Vessels issued a limited access scallop permit fishing for scallops under the DAS allocation program may not fish with, possess on board, or land scallops while in possession of trawl nets, unless such vessels have on board a valid letter of authorization to use trawl nets issued under paragraphs (f)(2) and (3) of this section.

(2) *Eligibility for a letter of authorization to use trawl nets.* To be eligible for a letter of authorization to use trawl nets, a vessel may not have fished for scallops with a scallop dredge from January 1, 1988, to the present, except pursuant to a letter of authorization issued pursuant to paragraph (f)(3) of this section. Only vessels that were issued 1995 limited access scallop permits or that were eligible to be issued such a permit, and for which a determination has been made in 1995, except as provided in paragraph (f)(4) of this section, are eligible to receive a letter of authorization.

(3) *Authorization to use trawl nets.* Vessels determined to have met the criteria set forth in paragraph (f)(2) of this section for a letter of authorization shall be issued a letter of authorization by the Regional Director. Such letter must be carried on board the vessel at all times. In subsequent years, eligibility for this exemption will be indicated on the vessel's permit.

(4) *Authorization to use trawl nets by replacement vessels.* To be eligible for a letter of authorization to use trawl nets, any replacement vessel of a vessel authorized to fish for scallops with trawl nets must meet the eligibility requirements of paragraph (f)(2) of this section and have on board a valid letter of authorization issued under paragraph (f)(3) of this section. The letter of authorization must be requested at the time the vessel owner initially applies for a permit for the replacement vessel.

§ 648.52 Possession restrictions.

(a) Owners or operators of vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or have used up their DAS allocations and vessels possessing a general scallop permit, unless exempted under the state waters exemption program described under § 648.54, are prohibited from possessing or landing per trip more than 400 lb (181.44 kg) of shucked, or 50 bu (176.2 L) of in-shell scallops, with not more than one scallop trip allowable in any calendar day.

(b) Owners or operators of vessels without a scallop permit, except vessels fishing for scallops exclusively in state waters, are prohibited from possessing or landing per trip, more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops. Owners or operators of vessels without a scallop permit are prohibited from selling, bartering, or trading scallops harvested from Federal waters.

§ 648.53 DAS allocations.

(a) *Assignment to DAS categories.* For each fishing year, each vessel issued a limited access scallop permit shall be assigned to the DAS category (full-time, part-time, or occasional) it was assigned in the preceding fishing year. Limited access scallop permits will indicate which category the vessel is assigned to. Vessels are prohibited from fishing for, landing per trip, or possessing more than 400 lb (181.44 kg) of shucked, or 50 bu (176.2 L) of in-shell scallops once their allocated number of DAS, as specified under paragraph (b) of this section, are used up.

(b) *DAS allocations.* Each vessel qualifying for one of the three categories specified in paragraph (a) of this section shall be allocated, annually, the maximum number of DAS it may participate in the limited access scallop fishery, according to its category. A vessel whose owner/operator has declared it out of the scallop fishery pursuant to the provisions of § 648.10, or has used up its allocated DAS, may leave port without being assessed a DAS, so long as it does not possess or land more than 400 lb (181.44 kg) of shucked, or 50 bu (176.2 L) of in-shell scallops, and complies with the other requirements of this part. The annual allocations of DAS for each category of vessel for the fishing years indicated are as follows:

DAS category	1995–96 and 1996–97	1997–98	1998–99 and 1999–2000	2000+
Full-time	182	164	142	120
Part-time	82	66	57	48
Occasional	16	14	12	10

(c) *Adjustments in annual DAS allocations.* Adjustments or changes in annual DAS allocations, if required to meet fishing mortality reduction goals, may be made following a reappraisal and analysis under the framework provisions specified in § 648.55.

(d) *End-of-year carry-over.* Limited access vessels with unused DAS on the last day of February of any year may carry over a maximum of 10 DAS into the next year. At no time may more than 10 DAS be carried over.

(e) *Accrual of DAS.* DAS shall accrue in hourly increments, with all partial hours counted as full hours.

(f) *Good Samaritan credit.* Limited access vessels fishing under the DAS program and that spend time at sea assisting in a USCG search and rescue operation or assisting the USCG in

towing a disabled vessel, and that can document the occurrence through the USCG, will not accrue DAS for the time documented.

§ 648.54 State waters exemption.

(a) *DAS exemption.* Any vessel issued a limited access scallop permit is exempt from the DAS requirements specified in § 648.54(c) while fishing exclusively landward of the outer boundary of a state's waters, provided the vessel complies with paragraphs (c) through (f) of this section.

(b) *Gear restriction exemption*—(1) *Limited access permits.* Any vessel issued a limited access scallop permit that is exempt from the DAS requirements of § 648.53(c) under paragraph (a) of this section is also exempt from the gear restrictions specified in § 648.51 (a), (b), and (e) (1) and (2) while fishing exclusively landward of the outer boundary of the waters of a state that has been determined by the Regional Director under paragraph (b)(3) of this section to have a scallop fishery and a scallop conservation program that does not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP, provided the vessel complies with paragraphs (c) through (f) of this section.

(2) *General permits.* Any vessel issued a general scallop permit is exempt from the gear restrictions specified in § 648.51 (a), (b), and (e) (1) and (2) while fishing exclusively landward of the outer boundary of the waters of a state that has been determined by the Regional Director under paragraph (b)(3) of this section to have a scallop fishery and a scallop conservation program that does not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP, provided the vessel complies with paragraphs (d) through (f) of this section.

(3) *State eligibility for gear exemption.* (i) A state is eligible to have vessels fishing exclusively landward of the outer boundary of the waters of that state exempted from the gear requirements specified in § 648.51 (a), (b), and (e) (1) and (e)(2), if it has a scallop fishery and a scallop conservation program that does not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP.

(ii) The Regional Director shall determine which states have a scallop fishery and which of those states have a scallop conservation program that does not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP.

(iii) Maine, New Hampshire, and Massachusetts have been determined by the Regional Director to have scallop fisheries and scallop conservation programs that do not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP. These states must immediately notify the Regional Director of any changes in their respective scallop conservation program. The Regional Director will review these changes and, if a determination is made that the state's conservation program jeopardizes the fishing mortality/effort reduction objectives of the Scallop FMP, or that the state no longer has a scallop fishery, the Regional Director shall publish a final rule in the Federal Register amending this paragraph (b)(3)(iii) to eliminate the exemption for that state. The Regional Director may determine that other states have scallop fisheries and scallop conservation programs that do not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP. In such case, the Regional Director shall publish a final rule in the Federal Register amending this paragraph (b)(3)(iii) to provide the exemption for such states.

(c) *Notification requirements.* Vessels fishing under the exemptions provided by paragraphs (a) and/or (b) of this section must notify the Regional Director in accordance with the provisions of § 648.10(f).

(d) *Restriction on fishing in the EEZ.* A vessel fishing under a state water's exemption may not fish in the EEZ during that time.

(e) *Duration of exemption.* An exemption expires upon a change in the vessel's name or ownership.

(f) *Applicability of other provisions of this part.* A vessel fishing under the exemptions provided by paragraphs (a) and/or (b) of this section remains subject to all other requirements of this part.

§ 648.55 Framework adjustments to management measures.

(a) Annually, upon request from the NEFMC, but at a minimum in the years 1996 and 1999, the Regional Director will provide the NEFMC with information on the status of the scallop resource.

(b) Within 60 days of receipt of that information, the NEFMC PDT shall assess the condition of the scallop resource to determine the adequacy of the total allowable DAS reduction schedule, described in § 648.53(b), to achieve the target fishing mortality rate. In addition, the PDT shall make a determination whether other resource conservation issues exist that require a management response in order to meet the goals and objectives outlined in the Scallop FMP. The PDT shall report its findings and recommendations to the NEFMC. In its report to the NEFMC, the PDT shall provide the appropriate rationale and economic and biological analysis for its recommendation, utilizing the most current catch, effort, and other relevant data from the fishery.

(c) After receiving the PDT findings and recommendations, the NEFMC shall determine whether adjustments to, or additional management measures are necessary to meet the goals and objectives of the Scallop FMP. After considering the PDT's findings and recommendations, or at any other time, if the NEFMC determines that adjustments to, or additional management measures are necessary, it shall develop and analyze appropriate management actions over the span of at least two NEFMC meetings. The NEFMC shall provide the public with advance notice of the availability of both the proposals and the analyses, and opportunity to comment on them prior to and at the second NEFMC meeting. The NEFMC's recommendation on adjustments or additions to management measures must come from one or more of the following categories:

(1) DAS changes.
(2) Shell height.
(3) Offloading window reinstatement.
(4) Effort monitoring.
(5) Data reporting.
(6) Trip limits.
(7) Gear restrictions.
(8) Permitting restrictions.
(9) Crew limits.
(10) Small mesh line.
(11) Onboard observers.
(12) Any other management measures currently included in the FMP.

(d) After developing management actions and receiving public testimony, the NEFMC shall make a recommendation to the Regional Director. The NEFMC's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Director on whether to publish the management measures as a final rule. If the NEFMC recommends that the management measures should be published as a final rule, the NEFMC must consider at least the following factors and provide support and analysis for each factor considered:

(1) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(2) Whether there has been adequate notice and opportunity for participation by the public and members of the

affected industry in the development of the NEFMC's recommended management measures.

(3) Whether there is an immediate need to protect the resource.

(4) Whether there will be a continuing evaluation of management measures adopted following their promulgation as a final rule.

(e) If the NEFMC's recommendation includes adjustments or additions to management measures, and if, after reviewing the NEFMC's recommendation and supporting information:

(1) The Regional Director concurs with the NEFMC's recommended management measures and determines that the recommended management measures may be published as a final rule based on the factors specified in paragraph (d) of this section, the action will be published in the Federal Register as a final rule; or

(2) The Regional Director concurs with the NEFMC's recommendation and determines that the recommended management measures should be published first as a proposed rule, the action will be published as a proposed rule in the Federal Register. After additional public comment, if the Regional Director concurs with the NEFMC recommendation, the action will be published as a final rule in the Federal Register; or

(3) The Regional Director does not concur, the NEFMC will be notified, in writing, of the reasons for the non-concurrence.

(f) Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson Act.

Subpart E—Management Measures for the Atlantic Surf Clam and Ocean Quahog Fisheries

§ 648.70 Annual individual allocations.

(a) *General.* (1) For each fishing year, the Regional Director shall determine the allocation of surf clams and ocean quahogs for each vessel owner issued an allocation for the preceding fishing year, by multiplying the quotas specified for each species by the Regional Director under § 648.71 by the allocation percentage, specified for that owner on the allocation permit for the preceding fishing year, adjusted to account for any transfer pursuant to paragraph (b) of this section. These allocations shall be made in the form of an allocation permit specifying for each species the allocation percentage and the allocation in bushels. Such permits shall be issued on or before December 15, to the registered holders who were assigned an allocation by November 1. The total number of bushels of allocation shall be divided by 32 to determine the appropriate number of cage tags to be issued or acquired under § 648.75. Amounts of allocation 0.5 or smaller created by this division shall be rounded downward to the nearest whole number and amounts of allocation greater than 0.5 created by this division shall be rounded upward to the nearest whole number so that allocations are specified in whole cages. An allocation permit is only valid for the entity for which it is issued.

(2) The Regional Director may, after publication of a fee notification in the Federal Register, charge a permit fee before issuance of the permit to recover administrative expenses. Failure to pay the fee will preclude issuance of the permit.

(b) *Transfers*—(1) *Allocation percentage.* Subject to the approval of the Regional Director, part or all of an allocation percentage may be transferred, in amounts equivalent to not less than 160 bu (8,500 L) (i.e., 5 cages) in the year in which the transfer is made, to any person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a). Approval of a transfer by the Regional Director and for a new allocation permit reflecting that transfer may be requested by submitting a written application for approval of the transfer and for issuance of a new allocation permit to the Regional Director at least 10 days before the date on which the applicant desires the transfer to be effective, in the form of a completed transfer log supplied by the Regional Director. The transfer is not effective until the new holder receives a new or revised annual allocation permit from the Regional Director. An application for transfer may not be made between October 15 and December 31 of each year.

(2) *Cage tags.* Cage tags issued pursuant to § 648.75 may be transferred in quantities of not less than 5 tags at any one time, subject to the restrictions and procedure specified in paragraph (b)(1) of this section; provided that application for such cage tag transfers may be made at any time before December 10 of each year and the transfer is effective upon the receipt by the transferee of written authorization from the Regional Director.

(3) *Review.* If the Regional Director determines that the applicant has been issued a Notice of Permit Sanction for a violation of the Magnuson Act that has not been resolved, he/she may decline to approve such transfer pending resolution of the matter.

§ 648.71 Catch quotas.

(a) *Surf clams.* The amount of surf clams that may be caught annually by fishing vessels subject to these regulations will be specified by the Assistant Administrator, on or about December 1 of each year, within the range of 1.85 to 3.4 million bu (98.5 to 181 million L).

(1) *Establishing quotas.* (i) Prior to the beginning of each year, the MAFMC, following an opportunity for public comment, will recommend to the Assistant Administrator quotas and estimates of DAH and DAP within the ranges specified. In selecting the quota, the MAFMC shall consider current stock assessments, catch reports, and other relevant information concerning:

(A) Exploitable and spawning biomass relative to the OY.

(B) Fishing mortality rates relative to the OY.

(C) Magnitude of incoming recruitment.

(D) Projected effort and corresponding catches.

(E) Geographical distribution of the catch relative to the geographical distribution of the resource.

(F) Status of areas previously closed to surf clam fishing that are to be opened during the year and areas likely to be closed to fishing during the year.

(ii) The quota shall be set at that amount that is most consistent with the objectives of the Atlantic Surf Clam and Ocean Quahog FMP. The Assistant Administrator may set quotas at quantities different from the MAFMC's recommendations only if he/she can demonstrate that the MAFMC's recommendations violate the national standards of the Magnuson Act and the objectives of the Atlantic Surf Clam and Ocean Quahog FMP.

(2) *Report.* Prior to the beginning of each year, the Regional Director shall prepare a written report, based on the latest available stock assessment report prepared by NMFS, data reported by harvesters and processors according to these regulations, and other relevant data. The report will include consideration of:

(i) Exploitable biomass and spawning biomass relative to OY.

(ii) Fishing mortality rates relative to OY.

(iii) Magnitude of incoming recruitment.

(iv) Projected effort and corresponding catches.

(v) Status of areas previously closed to surf clams fishing that are to be opened during the year and areas likely to be closed to fishing during the year.

(vi) Geographical distribution of the catch relative to the geographical distribution of the resource.

(3) *Public review.* Based on the information presented in the report, and in consultation with the MAFMC, the Assistant Administrator shall propose an annual surf clam quota and an annual ocean quahog quota and shall publish them in the Federal Register. Comments on the proposed annual quotas may be submitted to the Regional Director within 30 days after publication. The Assistant Administrator shall consider all comments, determine the appropriate annual quotas, and publish the annual quotas in the Federal Register on or about December 1 of each year.

(b) *Ocean quahogs.* The amount of ocean quahogs that may be caught by fishing vessels subject to these regulations shall be specified annually by the Assistant Administrator, on or about December 1, within the range of 4 to 6 million bu (213 to 319.4 million L), following the same procedures set forth in paragraph (a) of this section for surf clams.

§ 648.72 Minimum surf clam size.

(a) *Minimum length.* The minimum length for surf clams is 4.75 inches (12.065 cm).

(b) *Determination of compliance.* No more than 50 surf clams in any cage may be less than 4.75 inches (12.065 cm) in length. If more than 50 surf clams in any inspected cage of surf clams are less than 4.75 inches (12.065 cm) in length, all cages landed by the same vessel from the same trip are deemed to be in violation of the minimum size restriction.

(c) *Suspension.* Upon the recommendation of the MAFMC, the Regional Director may suspend annually, by publication in the Federal Register, the minimum shell-height standard, unless discard, catch, and survey data indicate that 30 percent of the surf clams are smaller than 4.75 inches (12.065 cm) and the overall reduced shell height is not attributable to beds where the growth of individual surf clams has been reduced because of density dependent factors.

(d) *Measurement.* Length is measured at the longest dimension of the surf clam shell.

§ 648.73 Closed areas.

(a) *Areas closed because of environmental degradation.* Certain areas are closed to all surf clam and ocean quahog fishing because of adverse environmental conditions. These areas will remain closed until the Assistant Administrator determines that the adverse environmental conditions no longer exist. If additional areas are identified by the Assistant Administrator as being contaminated by the introduction or presence of hazardous materials or pollutants, they may be closed by the Assistant Administrator in accordance with paragraph (c) of this section. The areas closed are:

(1) *Boston Foul Ground.* The waste disposal site known as the ''Boston Foul Ground'' and located at 42°25′36 N. lat., 70°3500 W. long., with a radius of 1 nm in every direction from that point.

(2) *New York Bight.* The polluted area and waste disposal site known as the ''New York Bight Closure'' and located at 40°2504 N. lat., 73°4238 W. long., and with a radius of 6 nm in every direction from that point, extending farther northwestward, westward, and southwestward between a line from a point on the arc at 40°3100 N. lat., 73°4338 W. long., directly toward Atlantic Beach Light in New York to the limit of state territorial waters of New York; and a line from a point on the arc at 40°1948 N. lat., 73°4542 W. long., to a point at the limit of the state territorial waters of New Jersey at 40°1400 N. lat., 73°5542 W. long.

(3) *106 Dumpsite.* The toxic industrial dump site known as the ''106 Dumpsite'' and located between 38°4000 and 39°0000 N. lat. and between 72°0000 and 72°3000 W. long.

(b) *Areas closed because of small surf clams.* Areas may be closed because they contain small surf clams.

(1) *Closure.* The Assistant Administrator may close an area to surf clams and ocean quahog fishing if he/she determines, based on logbook entries, processors' reports, survey cruises, or other information, that the area contains surf clams of which:

(i) Sixty percent or more are smaller than the minimum size (4.5 inches (11.43 cm)); and

(ii) Not more than 15 percent are larger than 5.5 inches (13.97 cm) in size.

(2) *Reopening.* The Assistant Administrator may reopen areas or parts of areas closed under paragraph (b)(1) of this section if he/she determines, based on survey cruises or other information, that:

(i) The average length of the dominant (in terms of weight) size class in the area to be reopened is equal to or greater than 4.75 inches (12.065 cm); or

(ii) The yield or rate of growth of the dominant shell-height class in the area to be reopened would be significantly enhanced through selective, controlled, or limited harvest of surf clams in the area.

(c) *Procedure.* (1) The Regional Director may hold a public hearing on the proposed closure or reopening of any area under paragraph (a) or (b) of this section. The Assistant Administrator shall publish notification in the Federal Register of any proposed area closure or reopening, including any restrictions on harvest in a reopened area. Comments on the proposed closure or reopening may be submitted to the Regional Director within 30 days after publication. The Assistant Administrator shall consider all comments and publish the final notification of closure or reopening, and any restrictions on harvest, in the Federal Register. Any adjustment to harvest restrictions in a reopened area shall be made by notification in the Federal Register. The Regional Director shall send notice of any action under this paragraph (c)(1) to each surf clam and ocean quahog processor and to each surf clam and ocean quahog permit holder.

(2) If the Regional Director determines, as the result of testing by state, Federal, or private entities, that a closure of an area under paragraph (a) of this section is necessary to prevent any adverse effects fishing may have on the public health, he/she may close the area for 60 days by publication of notification in the Federal Register, without prior comment or public hearing. If an extension of the 60-day closure period is necessary to protect the public health, the hearing and notice requirements of paragraph (c)(1) of this section shall be followed.

§ 648.74 Shucking at sea.

(a) *Observers.* (1) The Regional Director may allow the shucking of surf clams or ocean quahogs at sea if he/she determines that an observer carried aboard the vessel can measure accurately the total amount of surf clams and ocean quahogs harvested in the shell prior to shucking.

(2) Any vessel owner may apply in writing to the Regional Director to shuck surf clams or ocean quahogs at sea. The application shall specify: Name and address of the applicant, permit number of the vessel, method of calculating the amount of surf clams or ocean quahogs harvested in the shell, vessel dimensions and accommodations, and length of fishing trip.

(3) The Regional Director shall provide an observer to any vessel owner whose application is approved. The owner shall pay all reasonable expenses of carrying the observer on board the vessel.

(4) Any observer shall certify at the end of each trip the amount of surf

clams or ocean quahogs harvested in the shell by the vessel. Such certification shall be made by the observer's signature on the daily fishing log required by § 648.7.

(b) *Conversion factor.* (1) Based on the recommendation of the MAFMC, the Regional Director may allow shucking at sea of surf clams or ocean quahogs, with or without an observer, if he/she determines a conversion factor for shucked meats to calculate accurately the amount of surf clams or ocean quahogs harvested in the shell.

(2) The Regional Director shall publish notification in the Federal Register specifying a conversion factor together with the data used in its calculation for a 30-day comment period. After consideration of the public comments and any other relevant data, the Regional Director may publish final notification in the Federal Register specifying the conversion factor.

(3) If the Regional Director makes the determination specified in paragraph (b)(1) of this section, he/she may authorize the vessel owner to shuck surf clams or ocean quahogs at sea. Such authorization shall be in writing and be carried aboard the vessel.

§ 648.75 Cage identification.

(a) *Tagging.* Before offloading, all cages that contain surf clams or ocean quahogs must be tagged with tags acquired annually under paragraph (b) of this section. A tag must be fixed on or as near as possible to the upper crossbar of the cage for every 60 ft^3 (1,700 L), or portion thereof, of the cage. A tag or tags must not be removed until the cage is emptied by the processor, at which time the processor must promptly remove and retain the tag(s) for collection or disposal as specified by the Regional Director.

(b) *Issuance.* The Regional Director will issue a supply of tags to each individual vessel owner qualifying for an allocation under § 648.70 prior to the beginning of each fishing year or he/she may specify, in the Federal Register, a vendor from whom the tags shall be purchased. The number of tags will be based on the owner's allocation. Each tag represents 32 bu (1,700 L) of allocation.

(c) *Expiration.* Tags will expire at the end of the fishing year for which they are issued, or if rendered null and void in accordance with 15 CFR part 904.

(d) *Return.* Tags that have been rendered null and void must be returned to the Regional Director, if possible.

(e) *Loss.* Loss or theft of tags must be reported by the owner, numerically identifying the tags to the Regional Director by telephone as soon as the loss or theft is discovered and in writing within 24 hours. Thereafter, the reported tags shall no longer be valid for use under this part.

(f) *Replacement.* Lost or stolen tags may be replaced by the Regional Director if proper notice of the loss is provided by the person to whom the tags were issued. Replacement tags may be purchased from the Regional Director or a vendor with a written authorization from the Regional Director.

(g) *Transfer.* See § 648.70(b)(2).

(h) *Presumptions.* Surf clams and ocean quahogs found in cages without a valid state tag are deemed to have been harvested in the EEZ and to be part of an individual's allocation, unless the individual demonstrates that he/she has surrendered his/her Federal vessel permit issued under § 648.4(a)(4) and conducted fishing operations exclusively within waters under the jurisdiction of any state. Surf clams and ocean quahogs in cages with a Federal tag or tags, issued and still valid pursuant to this section, affixed thereto are deemed to have been harvested by the individual allocation holder to whom the tags were issued under § 648.75(b) or transferred under § 648.70(b).

Subpart F—Management Measures for the NE Multispecies Fishery

§ 648.80 Regulated mesh areas and restrictions on gear and methods of fishing.

All vessels fishing for, harvesting, possessing, or landing NE multispecies in or from the EEZ and all vessels holding a multispecies permit must comply with the following minimum mesh size, gear, and methods of fishing requirements, unless otherwise exempted or prohibited.

(a) *Gulf of Maine/Georges Bank (GOM/GB) Regulated Mesh Area.*—(1) *Area definition.* The GOM/GB Regulated Mesh Area (copies of a map depicting the area are available from the Regional Director upon request) is that area:

(i) Bounded on the east by the U.S.-Canada maritime boundary, defined by straight lines connecting the following points in the order stated:

GULF OF MAINE/GEORGES BANK REGULATED MESH AREA

Point	N. Lat.	W. Long.
G1	(1)	(1)
G2	43°58′	67°22′
G3	42°53.1′	67°44.4′
G4	42°31′	67°28.1′
G5	41°18.6′	66°24.8′

[1] The intersection of the shoreline and the U.S.-Canada Maritime Boundary.

(ii) Bounded on the south by straight lines connecting the following points in the order stated:

Point	N. Lat.	W. Long.	Approximate loran C bearings
G6	40°55.5′	66°38′	5930–Y–30750 and 9960–Y–43500.
G7	40°45.5′	68°00′	9960–Y–43500 and 68°00′ W. lat.
G8	40°37′	68°00′	9960–Y–43450 and 68°00′ W. lat.
G9	40°30′	69°00′	
NL3	40°22.7′	69°00′	
NL2	40°18.7′	69°40′	
NL1	40°50′	69°40′	
G11	40°50′	70°00′	
G12		[1] 70°00′	

[1] Northward to its intersection with the shoreline of mainland Massachusetts.

(2) *Gear restrictions.* (i) *Minimum mesh size.* Except as provided in paragraphs (a)(2) (iii) and (i) of this section, and unless otherwise restricted under paragraphs (a) (2)(ii) and (5) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, midwater trawl, or purse seine on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GOM/GB Regulated Mesh Area is 6-inch (15.24-cm) square or diamond mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 ft^2 (0.81 m^2)), or to vessels that have not been issued a multispecies permit and that are fishing exclusively in state waters.

(ii) *Large-mesh vessels.* When fishing in the GOM/GB regulated mesh area, the

minimum mesh size for any sink gillnet on a vessel or used by a vessel fishing under a DAS in the large-mesh DAS program specified in § 648.82(b) (6) and (7) is 7-inch (17.78-cm) diamond mesh throughout the entire net. The minimum mesh size for any trawl net on a vessel or used by a vessel fishing under a DAS in the large-mesh DAS program is 8-inch (20.32-cm) diamond mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 ft^2 (0.81 m^2)), or to vessels that have not been issued a multispecies permit and that are fishing exclusively in state waters.

(iii) *Other gear and mesh exemptions.* The minimum mesh size for any trawl net, sink gillnet, Scottish seine, midwater trawl, or purse seine on a vessel or used by a vessel when fishing in the GOM/GB Regulated Mesh Area while not under the NE multispecies DAS program, but when under one of the exemptions specified in paragraphs (a)(3), (a)(4), (a)(6), (a)(8), (a)(9), (d), (e), (h), and (i) of this section, is set forth in the respective paragraph specifying the exemption. Vessels that are not fishing under one of these exemptions, under the scallop state waters exemption specified in § 648.54, or under a NE multispecies DAS, are prohibited from fishing in the GOM/GB regulated mesh area.

(3) *Small Mesh Northern Shrimp Fishery Exemption Area.* Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish for, harvest, possess, or land northern shrimp in the Small Mesh Northern Shrimp Fishery Exemption Area with nets with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements of paragraphs (a)(3) (i) through (iii) of this section. The Small Mesh Northern Shrimp Fishery Exemption Area is defined by straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Director upon request):

SMALL MESH NORTHERN SHRIMP FISHERY EXEMPTION AREA

Point	N. Lat.	W. Long.
SM1	41°35′	70°00′
SM2	41°35′	69°40′
SM3	42°49.5′	69°40′
SM4	43°12′	69°00′
SM5	43°41′	68°00′
G2	43°58′	67°22′; (the U.S.-Canada maritime Boundary).

SMALL MESH NORTHERN SHRIMP FISHERY EXEMPTION AREA—Continued

Point	N. Lat.	W. Long.
G1	(1)	(1)

1 Northward along the irregular U.S.-Canada maritime boundary to the shoreline.

(i) *Restrictions on fishing for, possessing, or landing fish other than shrimp.* A vessel fishing in the northern shrimp fishery described in this section under this exemption may not fish for, possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as allowable bycatch species: Longhorn sculpin; silver hake—up to two standard totes; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less.

(ii) *Requirement to use a finfish excluder device (FED).* A vessel must have a rigid or semi-rigid grate consisting of parallel bars of not more than 1-inch (2.54-cm) spacing that excludes all fish and other objects, except those that are small enough to pass between its bars into the codend of the trawl, secured in the trawl, forward of the codend, in such a manner that it precludes the passage of fish or other objects into the codend without the fish or objects having to first pass between the bars of the grate, in any net with mesh smaller than the minimum size specified in paragraph (a)(2) of this section. The net must have a outlet or hole to allow fish or other objects that are too large to pass between the bars of the grate to exit out of the net. The aftermost edge of this outlet or hole must be at least as wide as the grate at the point of attachment. The outlet or hole must extend forward from the grate toward the mouth of the net. A funnel of net material is allowed in the lengthening piece of the net forward of the grate to direct catch towards the grate. (Copies of a schematic example of a properly configured and installed FED are available from the Regional Director upon request.)

(iii) *Time restrictions.* A vessel may only fish under this exemption during the northern shrimp season, as established by the Commission. The northern shrimp season is December 1 through May 30, or as modified by the Commission.

(4) *Cultivator Shoal Whiting Fishery Exemption Area.* Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish with, use, or possess nets in the Cultivator Shoal Whiting Fishery Exemption Area with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (a)(4)(i) of this section. The Cultivator Shoal Whiting Fishery Exemption Area (copies of a map depicting the area are available from the Regional Director upon request) is defined by straight lines connecting the following points in the order stated:

CULTIVATOR SHOAL WHITING FISHERY EXEMPTION AREA

Point	N. Lat.	W. Long.
C1	42°10′	68°10′
C2	41°30′	68°41′
CI4	41°30′	68°30′
C3	41°12.8′	68°30′
C4	41°05′	68°20′
C5	41°55′	67°40′
C1	42°10′	68°10′

(i) *Requirements.* (A) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area under this exemption must have a letter of authorization issued by the Regional Director on board and may not fish for, possess on board, or land any species of fish other than whiting, except for the following, with the restrictions noted, as allowable bycatch species: Longhorn sculpin; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board; and American lobster—up to 10 percent by weight of all other species on board or 200 lobsters, whichever is less.

(B) All nets must comply with a minimum mesh size of 3-inch (7.62 cm) square or diamond mesh applied to the first 160 meshes counted from the terminus of the net.

(C) Fishing is confined to a season of June 15 through October 31, unless otherwise specified by notification in the Federal Register.

(D) When transiting through the GOM/GB Regulated Mesh Area specified under paragraph (a)(1) of this section, any nets with a mesh size smaller than the minimum mesh size specified in paragraph (a)(2) of this section must be stowed in accordance with one of the methods specified in § 648.23(b).

(ii) *Sea sampling.* The Regional Director shall conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species, especially haddock.

(iii) *Annual review.* The NEFMC shall conduct an annual review of data to determine if there are any changes in

area or season designation necessary, and to make appropriate recommendations to the Regional Director following the procedures specified in § 648.90 of this part.

(5) *Stellwagen Bank/Jeffreys Ledge (SB/JL) Juvenile Protection Area.* Except as provided in paragraphs (a)(3), (d), (e), and (h) of this section, the minimum mesh size for any trawl net, Scottish seine, purse seine, or midwater trawl in use, or available for immediate use as described in § 648.23(b) by a vessel fishing in the following area is 6-inch (15.24-cm) square or diamond mesh in the last 50 bars of the codend and extension piece for vessels 45 ft (13.7 m) in length and less, and in the last 100 bars of the codend and extension piece for vessels greater than 45 ft (13.7 m) in length.

(i) The SB/JL Juvenile Protection Area (copies of a map depicting the area are available from the Regional Director upon request) is defined by straight lines connecting the following points in the order stated:

STELLWAGEN BANK JUVENILE PROTECTION AREA

Point	N. Lat.	W. Long.	Approximate Loran coordinates	
SB1	42°34.0′	70°23.5′	13737	44295
SB2	42°28.8′	70°39.0′	13861	44295
SB3	42°18.6′	70°22.5′	13810	44209
SB4	42°05.5′	70°23.3′	13880	44135
SB5	42°11.0′	70°04.0′	13737	44135
SB1	42°34.0′	70°23.5′	13737	44295

JEFFREYS LEDGE JUVENILE PROTECTION AREA

Point	N. Lat.	W. Long.	Approximate Loran coordinates	
JL1	43°12.7′	70°00.0′	13369	44445
JL2	43°09.5′	70°08.0′	13437	44445
JL3	42°57.0′	70°08.0′	13512	44384
JL4	42°52.0′	70°21.0′	13631	44384
JL5	42°41.5′	70°32.5′	13752	44352
JL6	42°34.0′	70°26.2′	13752	44300
JL7	42°55.2′	70°00.0′	13474	44362
JL1	43°12.7′	70°00.0′	13369	44445

(ii) Fishing for northern shrimp in the SB/JL Juvenile Protection Area is allowed, subject to the requirements of paragraph (a)(3) of this section.

(6) *Transiting.* (i) Vessels fishing in the Small Mesh Northern Shrimp Fishery Exemption Area and in Small Mesh Area 1/Small Mesh Area 2, as specified in paragraphs (a) (3) and (8) of this section, may transit through the SB/JL Juvenile Protection Area defined in paragraph (a)(5) of this section with nets on board that do not conform to the requirements specified in paragraph (a)(2) or (a)(5) of this section, provided that the nets are stowed in accordance with one of the methods specified in § 648.23(b).

(ii) Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may transit through the Small Mesh Northern Shrimp Fishery Exemption Area defined in paragraph (a)(3) of this section with nets on board with a mesh size smaller than the minimum size specified, provided that the nets are stowed in accordance with one of the methods specified in § 648.23(b), and provided the vessel has no fish on board.

(iii) Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may transit through the GOM/GB Regulated Mesh Area defined in paragraph (a)(1) of this section with nets on board with a mesh size smaller than the minimum mesh size specified and with small mesh exempted species on board, provided that the following conditions are met:

(A) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (a)(2) of this section are stowed in accordance with one of the methods specified in § 648.23(b).

(B) A letter of authorization issued by the Regional Director is on board.

(C) Vessels do not fish for, possess on board, or land any fish, except when fishing in the areas specified in paragraphs (a)(4), (a)(9), (b), and (c) of this section. Vessels may retain exempted small mesh species as provided in paragraphs (a)(4)(i), (a)(9)(i), (b)(3), and (c)(3) of this section.

(7) *Addition or deletion of exemptions.* (i) An exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of regulated species bycatch, if the Regional Director, after consultation with the NEFMC, determines that the percentage of regulated species caught as bycatch is, or can be reduced to, less than 5 percent, by weight, of total catch and that such exemption will not jeopardize fishing mortality objectives. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Director may take into consideration factors such as, but not limited to, juvenile mortality. A fishery can be defined, restricted, or allowed by area, gear, season, or other means determined to be appropriate to reduce bycatch of regulated species. An existing exemption may be deleted or modified if the Regional Director determines that the catch of regulated species is equal to or greater than 5 percent, by weight, of total catch, or that continuing the exemption may jeopardize meeting fishing mortality objectives. Notification of additions, deletions or modifications will be made through issuance of a rule in the Federal Register.

(ii) The NEFMC may recommend to the Regional Director, through the framework procedure specified in § 648.90(b), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Director to determine, without

public comment, percentage catch of regulated species.

(iii) The Regional Director may, using the process described in either paragraph (a)(7)(i) or (ii) of this section, authorize an exemption for a white hake fishery by vessels using regulated mesh or hook gear. Determination of the percentage of regulated species caught in such fishery shall not include white hake.

(iv) Exempted fisheries authorized under this paragraph (a)(7) are subject, at minimum, to the following restrictions:

(A) With the exception of fisheries authorized under paragraph (a)(7)(iii) of this section, a prohibition on the possession of regulated species.

(B) A limit on the possession of monkfish or monkfish parts of 10 percent, by weight, of all other species on board.

(C) A limit on the possession of lobsters of 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less.

(D) A limit on the possession of skate or skate parts in the Southern New England regulated mesh area described in paragraph (a)(10) of this section of 10 percent, by weight, of all other species on board.

(8) *Small Mesh Area 1/Small Mesh Area 2.* Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish with or possess nets with a mesh size smaller than the minimum size specified from July 15 through October 31 when fishing in Small Mesh Area 1, and from January 1 through June 30 when fishing in Small Mesh Area 2. A vessel may not fish for, possess on board, or land any species of fish other than: Butterfish, dogfish, herring, mackerel, ocean pout, scup, squid, silver hake, and red hake, except for the following species, with the restrictions noted, as allowable bycatch species: Longhorn sculpin; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less. These areas are defined by straight lines connecting the following points in the order stated (copies of a map depicting these areas are available from the Regional Director upon request):

SMALL MESH AREA 1

Point	N. Lat.	W. Long.	Approximate Loran C bearings	
.				
SM1	43°03′	70°27′	13600	25910
SM2	42°57′	70°22′	13600	25840
SM3	42°47′	70°32′	13720	25840
SM4	42°45′	70°29′	13710	25810
SM5	42°43′	70°32′	(1)	25810
SM6	42°44′	70°39′	13780	(1)
SM7	42°49′	70°43′	13780	25910
SM8	42°50′	70°41′	13760	25910
SM9	42°53′	70°43′	13760	25935
SM10	42°55′	70°40′	25935	(1)
SM11	42°59′	70°32′	(1)	25910
SM1	43°03′	70°27′	13600	25910

[1] 3-mile line

SMALL MESH AREA 2

Point	N. Lat.	W. Long.	Approximate Loran C bearings	
SM13	43°20.3′	69°59.4′	13320	44480
SM14	43°25.9′	69°45.6′	13200	44480
SM15	42°49.5′	69°40′	13387.5	44298
SM16	42°41.5′	69°40′	13430	44260
SM17	42°34.9′	70°00′	13587	44260
SM13	43°20.3′	69°59.4′	13320	44480

(9) *Nantucket Shoals dogfish fishery exemption area.* Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish with, use, or possess nets of mesh smaller than the minimum size specified in the Nantucket Shoals Dogfish Fishery Exemption Area, if the vessel complies with the requirements specified in paragraph (a)(9)(i) of this section. The Nantucket Shoals Dogfish Fishery Exemption Area (copies of a map depicting this area are available from the Regional Director upon request) is defined by straight lines connecting the following points in the order stated:

NANTUCKET SHOALS DOGFISH EXEMPTION AREA

Point	N. Lat.	W. Long.
NS1	41°45′	70°00′
NS2	41°45′	69°20′
NS3	41°30′	69°20′
CI1	41°30′	69°23′
NS5	41°26.5′	69°20′
NS6	40°50′	69°20′
NS7	40°50′	70°00′
NS1	41°45′	70°00′

(i) *Requirements.* (A) A vessel fishing in the Nantucket Shoals Dogfish Fishery Exemption Area under the exemption must have on board a letter of authorization issued by the Regional Director and may not fish for, possess on board, or land any species of fish other than dogfish, except as provided under paragraph (a)(9)(i)(D) of this section.

(B) Fishing is confined to June 1 through October 15.

(C) When transitting the GOM/GB regulated mesh area, specified under paragraph (a)(1) of this section, any nets with a mesh size smaller than the

minimum mesh size specified in paragraph (a)(2) of this section must be stowed and unavailable for immediate use in accordance with § 648.23(b).

(D) The following species may be retained, with the restrictions noted, as allowable bycatch species in the Nantucket Shoals Dogfish Fishery Exemption Area: Longhorn sculpin; silver hake—up to two standard totes; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and skate or skate parts—up to 10 percent, by weight, of all other species on board.

(E) A vessel fishing in the Nantucket Shoals Dogfish Fishery Exemption Area under the exemption must comply with any additional gear restrictions specified in the letter of authorization issued by the Regional Director.

(ii) *Sea sampling.* The Regional Director may conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species.

(b) *Southern New England (SNE) Regulated Mesh Area*—(1) *Area definition.* The SNE Regulated Mesh Area (copies of a map depicting this area are available from the Regional Director upon request) is that area:

(i) bounded on the east by straight lines connecting the following points in the order stated:

SOUTHERN NEW ENGLAND REGULATED MESH AREA

Point	N. Lat.	W. Long.
G5	41°18.6′	66°24.8′
G6	40°55.5′	66°38′
G7	40°45.5′	68°00′
G8	40°37′	68°00′
G9	40°30.5′	69°00′
NL3	40°22.7′	69°00′
NL2	40°18.7′	69°40′
NL1	40°50′	69°40′
G11	40°50′	70°00′
G12		[1] 70°00′

[1] Northward to its intersection with the shoreline of mainland Massachusetts.

(ii) bounded on the west by the eastern boundary of the Mid-Atlantic Regulated Mesh Area.

(2) *Gear restrictions*—(i) *Minimum mesh size.* Except as provided in paragraphs (b)(2) (iii) and (i) of this section, and unless otherwise restricted under paragraph (b)(2)(ii) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, purse seine or midwater trawl, not stowed and not unavailable in use or available for immediate use in accordance with § 648.23(b) by a vessel fishing under a DAS in the multispecies DAS program in the SNE regulated mesh area, is 6-inch (15.24-cm) square or diamond mesh throughout the entire net. This restriction does not apply to vessels that have not been issued a multispecies permit and that are fishing exclusively in state waters.

(ii) *Large Mesh vessels.* When fishing in the SNE regulated mesh area, the minimum mesh size for any sink gillnet on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program specified in § 648.82(b) (6) and (7) is 7-inch (17.78-cm) diamond mesh throughout the entire net. The minimum mesh size for any trawl net on a vessel or used by a vessel fishing under a DAS in the Large Mesh DAS program is 8-inch (20.32-cm) diamond mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 ft^2 (0.81 m^2)), or to vessels that have not been issued a multispecies permit and that are fishing exclusively in state waters.

(iii) *Other gear and mesh exemptions.* The minimum mesh size for any trawl net, sink gillnet, Scottish seine, midwater trawl, or purse seine in use or available for immediate use, as described under § 648.23(b), by a vessel when not fishing under the NE multispecies DAS program and when fishing in the SNE regulated mesh area is specified under the exemptions set forth in paragraphs (b)(3), (c), (e), (h), and (i) of this section. Vessels that are not fishing in one of these exemption programs, with exempted gear (as defined under this part), or under the scallop state waters exemption specified in § 648.54, or under a NE multispecies DAS, are prohibited from fishing in the SNE regulated mesh area.

(3) *Exemptions*—(i) *Species exemptions.* Vessels subject to the minimum mesh size restrictions specified in paragraph (b)(2) of this section may fish for, harvest, possess, or land butterfish, dogfish, herring, mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake, and weakfish with nets with a mesh size smaller than the minimum size specified in the SNE Regulated Mesh Area, provided such vessels comply with the requirements specified in paragraph (b)(3)(ii) of this section.

(ii) *Possession and net stowage requirements.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraph (b)(2)(i) of this section, provided that such nets are stowed and are not available for immediate use in accordance with § 648.23(b), and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (b)(2)(i) of this section. Vessels fishing for the exempted species identified in paragraph (b)(3)(i) of this section may also possess and retain the following species, with the restrictions noted, as incidental take to these exempted fisheries: Conger eels; searobins; black sea bass; red hake; tautog (blackfish); blowfish; cunner; John Dory; mullet; bluefish; tilefish; longhorn sculpin; fourspot flounder; alewife; hickory shad; American shad; blueback herring; sea ravens; Atlantic croaker; spot; swordfish; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and skate and skate parts—up to 10 percent, by weight, of all other species on board.

(4) *Addition or deletion of exemptions.* Same as paragraph (a)(7) of this section.

(c) *Mid-Atlantic (MA) Regulated Mesh Area*—(1) *Area definition.* The MA Regulated Mesh Area (copies of a map depicting this area are available from the Regional Director upon request) is that area bounded on the east by a line running from the Rhode Island shoreline along 71°47.5′ W. long. to its intersection with the 3-nm line, south along the 3-nm line to Montauk Point, southwesterly along the 3-nm line to the intersection of 72°30′ W. long., and south along that line to the intersection of the outer boundary of the EEZ.

(2) *Gear restrictions*—(i) *Minimum mesh size.* Except as provided in paragraphs (c)(3) and (i) of this section, and unless otherwise restricted under paragraph (c)(2)(ii) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, purse seine or midwater trawl not stowed or not unavailable for immediate use as described in § 648.23(b), by a vessel fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area shall be that specified at § 648.104(a). This restriction does not apply to vessels that have not been issued a multispecies permit and that are fishing exclusively in state waters.

(ii) *Large mesh vessels.* When fishing in the MA Regulated Mesh Area, the minimum mesh size for any sink gillnet on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program specified in § 648.82(b) (6) and (7) is 7-inch (17.78-cm) diamond mesh throughout the entire net. The minimum

mesh size for any trawl net on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program is 8-inch (20.32-cm) diamond mesh throughout the net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 ft^2 (0.81 m^2)), or to vessels that have not been issued a multispecies permit and that are fishing exclusively in state waters.

(3) *Net stowage exemption.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraph (c)(2)(i) of this section, provided that such nets are stowed and are not available for immediate use in accordance with § 648.23(b), and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (c)(2)(i) of this section.

(4) *Additional exemptions.* The Regional Director may, using the process described in either paragraph (a)(7) (i) or (ii) of this section, authorize an exemption for a white hake fishery by vessels using regulated mesh or hook gear. Determination of the percentage of regulated species caught in such a fishery shall not include white hake.

(d) *Midwater trawl gear exemption.* Fishing may take place throughout the fishing year with midwater trawl gear of mesh size less than the applicable minimum size specified in this section, provided that:

(1) Midwater trawl gear is used exclusively;

(2) When fishing under this exemption in the GOM/GB and SB/JL Areas, the vessel has on board a letter of authorization issued by the Regional Director;

(3) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, mackerel, or squid in areas south of 42°20′ N. lat.; and Atlantic herring, blueback herring, or mackerel in areas north of 42°20′ N. lat; and

(4) The vessel does not fish for, possess, or land NE multispecies.

(e) *Purse seine gear exemption.* Fishing may take place throughout the fishing year with purse seine gear of mesh size smaller than the applicable minimum size specified in this section, provided that:

(1) The vessel uses purse seine gear exclusively;

(2) When fishing under this exemption in the GOM/GB and SB/JL areas, the vessel has on board an authorizing letter issued by the Regional Director;

(3) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, mackerel, or menhaden; and

(4) The vessel does not fish for, possess, or land NE multispecies.

(f) *Mesh measurements*—(1) *Gillnets.* Beginning October 15, 1996, mesh size of gillnet gear shall be measured by lining up five consecutive knots perpendicular to the float line and, with a ruler or tape measure, measuring ten consecutive measures on the diamond, inside knot to inside knot. The mesh shall be the average of the measurements of ten consecutive measures.

(2) *All other nets.* With the exception of gillnets, mesh size shall be measured by a wedged-shaped gauge having a taper of 2 cm in 8 cm and a thickness of 2.3 mm, inserted into the meshes under a pressure or pull of 5 kg.

(i) *Square-mesh measurement.* Square mesh in the regulated portion of the net is measured by placing the net gauge along the diagonal line that connects the largest opening between opposite corners of the square. The square mesh size is the average of the measurements of 20 consecutive adjacent meshes from the terminus forward along the long axis of the net. The square mesh is measured at least five meshes away from the lacings of the net.

(ii) *Diamond-mesh measurement.* Diamond mesh in the regulated portion of the net is measured running parallel to the long axis of the net. The mesh size is the average of the measurements of any series of 20 consecutive meshes. The mesh is measured at least five meshes away from the lacings of the net.

(g) *Restrictions on gear and methods of fishing*—(1) *Net obstruction or constriction.* A fishing vessel shall not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net, except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 inches (7.62 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the trawl net. ''The top of the trawl net'' means the 50 percent of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph (g)(1), head ropes are not considered part of the top of the trawl net.

(2) *Mesh obstruction or constriction.* (i) A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (g)(1) of this section, if it obstructs the meshes of the net in any manner.

(ii) A fishing vessel may not use a net capable of catching multispecies if the bars entering or exiting the knots twist around each other.

(3) *Pair trawl prohibition.* No vessel may fish for NE multispecies while pair trawling, or possess or land NE multispecies that have been harvested by means of pair trawling.

(h) *Scallop vessels.* (1) Except as provided in paragraph (h)(2) of this section, a scallop vessel that possesses a limited access scallop permit and either a multispecies combination vessel permit or a scallop multispecies possession limit permit, and that is fishing under a scallop DAS allocated under § 648.53, may possess and land up to 300 lb (136.1 kg) of regulated species, provided it has at least one standard tote on board, unless otherwise restricted by § 648.86(a)(2).

(2) Combination vessels fishing under a NE multispecies DAS are subject to the gear restrictions specified in § 648.80 and may possess and land unlimited amounts of regulated species. Such vessels may simultaneously fish under a scallop DAS.

(i) *State waters winter flounder exemption.* Any vessel issued a multispecies permit may fish for, possess, or land winter flounder while fishing with nets of mesh smaller than the minimum size specified in paragraphs (a)(2), (b)(2), and (c)(2) of this section, provided that:

(1) The vessel has on board a certificate approved by the Regional Director and issued by the state agency authorizing the vessel's participation in the state's winter flounder fishing program and is in compliance with the applicable state laws pertaining to minimum mesh size for winter flounder.

(2) Fishing is conducted exclusively in the waters of the state from which the certificate was obtained.

(3) The state's winter flounder plan has been approved by the Commission as being in compliance with the Commission's winter flounder fishery management plan.

(4) The state elects, by a letter to the Regional Director, to participate in the exemption program described by this section.

(5) The vessel does not enter or transit the EEZ.

(6) The vessel does not enter or transit the waters of another state, unless such other state is participating in the exemption program described by this section and the vessel is enrolled in that state's program.

(7) The vessel, when not fishing under the DAS program, does not fish for, possess, or land more than 500 lb (226.8

kg) of winter flounder, and has at least one standard tote on board.

(8) The vessel does not fish for, possess, or land any species of fish other than winter flounder and the exempted small mesh species specified under paragraphs (a)(3)(i), (a)(8)(iii), (b)(3), and (c)(3) of this section when fishing in the areas specified under paragraphs (a)(3), (a)(8), (b)(1), and (c)(1) of this section, respectively. Vessels fishing under this exemption in New York and Connecticut state waters may also possess and retain skate as incidental take in this fishery.

(9) The vessel complies with all other applicable requirements.

§ 648.81 Closed areas.

(a) *Closed Area I.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area I (copies of a map depicting this area are available from the Regional Director upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (a)(2) and (d) of this section:

CLOSED AREA I

Point	N. Lat.	W. Long.
CI1	41°30′	69°23′
CI2	40°45′	68°45′
CI3	40°45′	68°30′
CI4	41°30′	68°30′
CI1	41°30′	69°23′

(2) Paragraph (a)(1) of this section does not apply to persons on fishing vessels or fishing vessels—

(i) Fishing with or using pot gear designed and used to take lobsters, or pot gear designed and used to take hagfish, and that have no other gear on board capable of catching NE multispecies; or

(ii) Fishing with or using pelagic hook or longline gear or harpoon gear, provided that there is no retention of regulated species, and provided that there is no other gear on board capable of catching NE multispecies.

(b) *Closed Area II.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area II (copies of a map depicting this area is available from the Regional Director upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraph (b)(2) of this section:

CLOSED AREA II

Point	N. Lat.	W. Long.
CII1	41°00′	67°20′
CII2	41°00′	66°35.8′
G5	41°18.6′	66°24.8′ (the U.S.-Canada Maritime Boundary)
CII3	42°22′	67°20′ (the U.S.-Canada Maritime Boundary)
CII1	41°00′	67°20′

(2) Paragraph (b)(1) of this section does not apply to persons on fishing vessels or fishing vessels fishing with gears as in paragraph (a)(2) (i) or (ii) of this section, or that are transitting the area, provided—

(i) The operator has determined that there is a compelling safety reason; and

(ii) The vessel's fishing gear is stowed in accordance with the requirements of paragraph (e) of this section.

(c) *Nantucket Lightship Closed Area.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as the Nantucket Lightship Closed Area (copies of a map depicting this area are available from the Regional Director upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (c)(2) and (d) of this section:

NANTUCKET LIGHTSHIP CLOSED AREA

Point	N. Lat.	W. Long.
G10	40°50′	69°00′
CN1	40°20′	69°00′
CN2	40°20′	70°20′
CN3	40°50′	70°20′
G10	40°50′	69°00′

(2) Paragraph (c)(1) of this section does not apply to persons on fishing vessels or fishing vessels—

(i) Fishing with gear as in paragraph (a)(2) (i) or (ii) of this section;

(ii) Fishing with or using dredge gear designed and used to take surf clams or ocean quahogs, and that have no other gear on board capable of catching NE multispecies; or

(iii) Classified as charter, party or recreational vessel, provided that—

(A) If the vessel is a party or charter vessel, it has a letter of authorization issued by the Regional Director on board;

(B) Fish harvested or possessed by the vessel are not sold or intended for trade, barter or sale, regardless of where the fish are caught; and

(C) The vessel has no gear other than rod and reel or handline gear on board.

(d) *Transitting.* Vessels may transit Closed Area I, the Nantucket Lightship Closed Area, the NE Closure Area, the Mid-coast Closure Area, and the Massachusetts Bay Closure Area, as defined in paragraphs (a)(1), (c)(1), (f)(1), (g)(1), and (h)(1), respectively, of this section, provided that their gear is stowed in accordance with the provisions of paragraph (e) of this section.

(e) *Gear stowage requirements.* Vessels transitting the closed areas must stow their gear as follows:

(1) *Nets.* In accordance with one of the methods specified in § 648.23(b) and capable of being shown not to have been in recent use.

(2) *Scallop dredges.* The towing wire is detached from the scallop dredge, the towing wire is reeled up onto the winch, and the dredge is secured and covered so that it is rendered unusable for fishing.

(3) *Hook gear (other than pelagic).* All anchors and buoys are secured and all hook gear, including jigging machines, is covered.

(4) *Sink gillnet gear.* All nets are covered with canvas or other similar material and lashed or otherwise securely fastened to the deck or rail, and all buoys larger than 6 inches (15.24 cm) in diameter, high flyers, and anchors are disconnected.

(f) *NE Closure Area.* (1) From August 15 through September 13, no fishing vessel or person on a fishing vessel may enter, fish, or be, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part may be, in the area known as the NE Closure Area (copies of a map depicting this area are available from the Regional Director upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (f)(2) of this section:

NORTHEAST CLOSURE AREA

Point	N. Lat.	W. Long.
NE1	(1)	68°55.0′
NE2	43°29.6′	68°55.0′
NE3	44°04.4′	67°48.7′
NE4	44°06.9′	67°52.8′
NE5	44°31.2′	67°02.7′
NE6	(1)	67°02.7′

[1] Maine shoreline.

(2) Paragraph (f)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) That have not been issued a multispecies permit and that are fishing exclusively in state waters;

(ii) That are fishing with or using exempted gear as defined under this part, excluding midwater trawl gear, provided that there is no other gear on board capable of catching NE multispecies; or

(iii) That are classified as charter, party, or recreational.

(g) *Mid-coast Closure Area.* (1) From November 1 through December 31, no fishing vessel or person on a fishing vessel may enter, fish, or be, and no fishing gear capable of catching multispecies, unless otherwise allowed in this part, may be in the area known as the Mid-coast Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (g)(2) of this section (copies of a map depicting this area are available from the Regional Director upon request):

MID-COAST CLOSURE AREA

Point	N. Lat.	W. Long.
MC1	42°30′	(1)
MC2	42°30′	70°15′
MC3	42°40′	70°15′
MC4	42°40′	70°00′
MC5	43°00′	70°00′
MC6	43°00′	69°30′
MC7	43°15′	69°30′
MC8	43°15′	69°00′
MC9	(2)	69°00'W

[1] Massachusetts shoreline.
[2] Maine shoreline.

(2) Paragraph (g)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraph (f)(2)(i), (ii), or (iii) of this section.

(h) *Massachusetts Bay Closure Area.* (1) During the period March 1 through March 30, no fishing vessel or person on a fishing vessel may enter, fish, or be in; and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in the area known as the Massachusetts Bay Closure Area (copies of a map depicting this area are available from the Regional Director upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (h)(2) of this section:

MASSACHUSETTS BAY CLOSURE AREA

Point	N. Lat.	W. Long.
MB1	42°30′	(1)
MB2	42°30′	70°30′
MB3	42°12′	70°30′
MB4	42°12′	70°00′
MB5	(2)	70°00′
MB6	42°00′	(2)
MB7	42°00′	(1)

MASSACHUSETTS BAY CLOSURE AREA—Continued

[1] Massachusetts shoreline.
[2] Cape Cod shoreline.

(2) Paragraph (h)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraph (f)(2)(i), (ii), or (iii) of this section.

§ 648.82 Effort-control program for limited access vessels.

(a) *General.* A vessel issued an limited access multispecies permit may not fish for, possess, or land regulated species, except during a DAS as allocated under and in accordance with the applicable DAS program described in this section, unless otherwise provided in these regulations.

(b) *DAS program—permit categories, allocations and initial assignments to categories.* Beginning with the 1996 fishing year, all limited access multispecies permit holders shall be assigned to one of the following DAS permit categories according to the criteria specified. Permit holders may request a change in permit category for the 1996 fishing year and all fishing years thereafter, as specified in § 648.4(a)(1)(i)(I)(*2*). Each fishing year shall begin on May 1 and extend through April 30 of the following year.

(1) *Individual DAS category*—(i) *DAS allocation.* A vessel fishing under the individual DAS category shall be allocated 65 percent of its initial 1994 allocation baseline, as established under Amendment 5 to the NE Multispecies FMP, for the 1996 fishing year and 50 percent of its initial allocation baseline for the 1997 fishing year and beyond, as calculated under paragraph (d)(1) of this section.

(ii) *Initial assignment.* Any vessel issued a valid limited access multispecies individual DAS permit, including any vessel also issued a limited access multispecies gillnet permit, as of July 1, 1996, shall be initially assigned to the individual DAS category.

(2) *Fleet DAS category*—(i) *DAS allocation.* A vessel fishing under the fleet DAS category shall be allocated 116 DAS (139 DAS multiplied by the proration factor of 0.83) for the 1996 fishing year and 88 DAS for the 1997 fishing year and beyond.

(ii) *Initial assignment.* Any vessel issued a valid fleet DAS permit, including any vessel also issued a limited access multispecies gillnet permit; limited access multispecies hook-gear permit; limited access multispecies gillnet permit that has not also been issued a DAS permit; or a limited access multispecies small vessel (less than or equal to 45 ft (13.7 m)) permit and that is larger than 20 ft (6.1 m) in length as determined by its most recent permit application, as of July 1, 1996, shall be initially assigned to the fleet DAS category.

(3) *Small vessel category*—(i) *DAS allocation.* A vessel qualified and electing to fish under the small vessel category may retain cod, haddock, and yellowtail flounder, combined up to 300 lb (136.1 kg) per trip without being subject to DAS restrictions. Such a vessel is not subject to a possession limit for other NE multispecies.

(ii) *Initial assignment.* A vessel issued a valid limited access multispecies permit and fishing under the small vessel category (less than or equal to 45 ft (13.7 m)) permit as of July 1, 1996, and that is 20 ft (6.1 m) or less in length as determined by the vessel's last application for a permit, shall be initially assigned to the small vessel category. Any other vessel may elect to switch into this category, as provided for in § 648.4(a)(1)(i)(I)(*2*), if such vessel meets or complies with the following:

(A) The vessel is 30 ft (9.1 m) or less in length overall as determined by measuring along a horizontal line drawn from a perpendicular raised from the outside of the most forward portion of the stem of the vessel to a perpendicular raised from the after most portion of the stern.

(B) If construction of the vessel was begun after May 1, 1994, the vessel must be constructed such that the quotient of the overall length divided by the beam is not less than 2.5.

(C) Acceptable verification for vessels 20 ft (6.1 m) or less in length shall be USCG documentation or state registration papers. For vessels over 20 ft (6.1 m) in length, the measurement of length must be verified in writing by a qualified marine surveyor, or the builder, based on the vessel's construction plans, or by other means determined acceptable by the Regional Director. A copy of the verification must accompany an application for a multispecies permit.

(D) Adjustments to the small vessel category requirements, including changes to the length requirement, if required to meet fishing mortality goals, may be made by the Regional Director following framework procedures of § 648.90.

(4) *Hook-gear category*—(i) *DAS allocation.* Any vessel issued a valid limited access multispecies hook-gear

permit shall be allocated 116 DAS (139 DAS multiplied by the proration factor of 0.83) for the 1996 fishing year and 88 DAS for the 1997 fishing year, and beyond. A vessel fishing under this category in the DAS program must meet or comply with the following while fishing for, in possession of, or landing, regulated species:

(A) Vessels, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel.

(B) Vessels, and persons on such vessels, are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 4,500 rigged hooks. An unbaited hook and gangion that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 4,500-hook limit. A ''snap-on'' hook is deemed to be a replacement hook if it is not rigged or baited.

(ii) *Initial assignment.* No vessel shall be initially assigned to the hook-gear category. Any vessel that meets the qualifications specified in § 648.4(a)(1)(ii) may apply for and obtain a permit to fish under this category.

(5) *Combination vessel category*—(i) *DAS allocation.* A vessel fishing under the combination vessel category shall be allocated 65 percent of its initial 1994 allocation baseline, as established under Amendment 5 to the FMP, for the 1996 fishing year and 50 percent of its initial allocation baseline for the 1997 fishing year and beyond, as calculated under paragraph (d)(1) of this section.

(ii) *Initial assignment.* A vessel issued a valid limited access multispecies permit qualified to fish as a combination vessel as of July 1, 1996, shall be assigned to the combination vessel category.

(6) *Large Mesh Individual DAS category*—(i) *DAS allocation.* A vessel fishing under the large mesh individual DAS category shall be allocated a DAS increase of 12 percent in year one and of 36 percent in year two beyond the DAS allocations specified in paragraph (b)(1)(i) of this section (this includes the proration factor for 1996). To be eligible to fish under the large mesh individual DAS category, a vessel while fishing under this category must fish with gillnet gear with a minimum mesh size of 7-inch (17.78-cm) diamond mesh or with trawl gear with a minimum mesh size of 8-inch (20.32-cm) diamond mesh, as described under § 648.80 (a)(2)(ii), (b)(2)(ii), and (c)(2)(ii).

(ii) *Initial assignment.* No vessel shall be initially assigned to the large mesh individual DAS category. Any vessel that is initially assigned to the individual DAS, fleet DAS, or small vessel category may request and be granted a switch into this category as specified in § 648.4(a)(1)(i)(I)(*2*).

(7) *Large Mesh Fleet DAS category*—(i) *DAS allocation.* A vessel fishing under the large mesh fleet DAS category shall be allocated 129 DAS (155 DAS multiplied by the proration factor of 0.83) for the 1996 fishing year and 120 DAS for the 1997 fishing year, and beyond. To be eligible to fish under the large mesh fleet DAS category, a vessel while fishing under this category must fish with gillnet gear with a minimum mesh size of 7-inch (17.78-cm) diamond mesh or with trawl gear with a minimum mesh size of 8-inch (20.32-cm) diamond mesh, as described under § 648.80 (a)(2)(ii), (b)(2)(ii), and (c)(2)(ii).

(ii) *Initial assignment.* No vessel shall be initially assigned to the large mesh fleet DAS category. Any vessel that is initially assigned to the individual DAS, fleet DAS, or small vessel category may request and be granted a switch into this category as specified in § 648.4(a)(1)(i)(I)(*2*).

(c) *1996 DAS appeals.* (1) *Previously exempted vessels.* A vessel that was issued a valid 1995 limited access multispecies permit, and that has been fishing under the small vessel (less than or equal to 45 ft (13.7 m)), hook-gear, or gillnet categories, is eligible to appeal its allocation of DAS, if it has not previously done so, as described under paragraph (d)(2) of this section. Each vessel's initial allocation of DAS will be considered to be 176 DAS for purposes of this appeal (i.e., the fleet DAS category baseline prior to the 1996–1997 reductions).

(2) *Exempted gillnet vessels that held an individual DAS permit.* A vessel that was issued a valid 1995 limited access multispecies permit and that has been fishing under both the gillnet and individual DAS categories, is eligible to appeal its allocation of gillnet DAS, as described under paragraph (d)(2) of this section. Each vessel's initial allocation of DAS will be considered to be 176 DAS for purposes of this appeal (i.e., the fleet DAS category baseline prior to the 1996–1997 reductions).

(d) *Individual DAS allocations*—(1) *Calculation of a vessel's individual DAS.* The DAS assigned to a vessel for purposes of determining that vessel's annual allocation under the individual DAS program is calculated as follows:

(i) Count the total number of the vessel's NE multispecies DAS for the years 1988, 1989, and 1990. NE multispecies DAS are deemed to be the total number of days the vessel was absent from port for a trip where greater than 10 percent of the vessel's total landings were comprised of regulated species, minus any days for such trips in which a scallop dredge was used;

(ii) Exclude the year of least NE multispecies DAS; and

(iii) If 2 years of multispecies DAS are remaining, average those years' DAS; or

(iv) If only 1 year remains, use that year's DAS.

(2) *Appeal of DAS allocation.* (i) Initial allocations of individual DAS to those vessels authorized to appeal under paragraph (c) of this section may be appealed to the Regional Director if a request to appeal is received by the Regional Director no later than July 31, 1996, or 30 days after the initial allocation is made, whichever is later. Any such appeal must be in writing and be based on one or more of the following grounds:

(A) The information used by the Regional Director was based on mistaken or incorrect data.

(B) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria.

(C) The applicant has new or additional information.

(ii) The Regional Director will appoint a designee who will make an initial decision on the written appeal.

(iii) If the applicant is not satisfied with the initial decision, the applicant may request that the appeal be presented at a hearing before an officer appointed by the Regional Director.

(iv) The hearing officer shall present his/her findings to the Regional Director and the Regional Director will make a decision on the appeal. The Regional Director's decision on this appeal is the final administrative decision of the Department of Commerce.

(3) *Status of vessels pending appeal of DAS allocations.* While a vessel's individual DAS allocation is under appeal, the vessel may fish under the fleet DAS category until the Regional Director has made a final determination on the appeal. Any DAS spent fishing for regulated species by a vessel while that vessel's initial DAS allocation is under appeal, shall be counted against any DAS allocation that the vessel may ultimately receive.

(e) *Accrual of DAS.* Same as § 648.53(e).

(f) *Good Samaritan credit.* Same as § 648.53(f).

(g) *Spawning season restrictions.* A vessel issued a valid small vessel permit under paragraph (b)(3) of this section may not fish for, possess, or land regulated species from March 1 through March 20 of each year. Any other vessel issued a limited access multispecies permit must declare out and be out of

the regulated NE multispecies for a 20-day period between March 1 and May 31 of each fishing year using the notification requirements specified in § 648.10. If a vessel owner has not declared and been out for a 20-day period between March 1 and May 31 of each fishing year on or before May 12 of each such year, the vessel is prohibited from fishing for, possessing or landing any regulated species after May 11 of such year for the number of days needed to fulfill the 20-day requirement.

(h) *Declaring DAS and 20-day blocks.* A vessel's owner or authorized representative shall notify the Regional Director of a vessel's participation in the DAS program and declaration of its 20-day out period of the NE multispecies fishery, using the notification requirements specified in § 648.10.

(i) *Adjustments in annual DAS allocations.* Adjustments in annual DAS allocations, if required to meet fishing mortality goals, may be made by the Regional Director following the framework procedures of § 648.90.

§ 648.83 Minimum fish sizes.

(a) *Minimum fish sizes.* (1) Minimum fish sizes for recreational vessels and charter/party vessels that are not fishing under a NE multispecies DAS are specified in § 648.89. All other vessels are subject to the following minimum fish sizes (TL):

MINIMUM FISH SIZES (TL)

Species	Size (Inches)
Cod	19 (48.3 cm)
Haddock	19 (48.3 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
American plaice (dab)	14 (35.6 cm)
Winter flounder (blackback)	12 (30.48 cm)
Redfish	9 (22.9 cm)

(2) The minimum fish size applies to the whole fish or to any part of a fish while possessed on board a vessel, except as provided in paragraph (b) of this section, and to whole fish only, after landing. Fish or parts of fish must have skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. ''Skin on'' means the entire portion of the skin normally attached to the portion of the fish or fish parts possessed.

(b) *Exceptions.* (1) Each person aboard a vessel issued a limited access permit and fishing under the DAS program may possess up to 25 lb (11.3 kg) of fillets that measure less than the minimum size, if such fillets are from legal-sized fish and are not offered or intended for sale, trade, or barter.

(2) Recreational, party, and charter vessels may possess fillets less than the minimum size specified, if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade or barter.

(c) *Adjustments.* (1) At any time when information is available, the NEFMC will review the best available mesh selectivity information to determine the appropriate minimum size for the species listed in paragraph (a) of this section, except winter flounder, according to the length at which 25 percent of the regulated species would be retained by the applicable minimum mesh size.

(2) Upon determination of the appropriate minimum sizes, the NEFMC shall propose the minimum fish sizes to be implemented following the procedures specified in § 648.90.

(3) Additional adjustments or changes to the minimum fish sizes specified in paragraph (a) of this section, and exemptions as specified in paragraph (b) of this section, may be made at any time after implementation of the final rule as specified under § 648.90.

§ 648.84 Gear-marking requirements and gear restrictions.

(a) Bottom-tending fixed gear, including, but not limited to gillnets and longlines, designed for, capable of, or fishing for NE multispecies must have the name of the owner or vessel, or the official number of that vessel permanently affixed to any buoys, gillnets, longlines, or other appropriate gear so that the name of the owner or vessel or official number of the vessel is visible on the surface of the water.

(b) Bottom-tending fixed gear, including, but not limited to gillnets or longline gear, must be marked so that the westernmost end (measuring the half compass circle from magnetic south through west to, and including, north) of the gear displays a standard 12-inch (30.5-cm) tetrahedral corner radar reflector and a pennant positioned on a staff at least 6 ft (1.8 m) above the buoy. The easternmost end (meaning the half compass circle from magnetic north through east to, and including, south) of the gear need display only the standard 12-inch (30.5-cm) tetrahedral radar reflector positioned in the same way.

(c) Continuous gillnets must not exceed 6,600 ft (2,011.7 m) between the end buoys.

(d) In the GOM/GB regulated mesh area specified in § 648.80(a), gillnet gear set in an irregular pattern or in any way that deviates more than 30° from the original course of the set must be marked at the extremity of the deviation with an additional marker, which must display two or more visible streamers and may either be attached to or independent of the gear.

§ 648.85 Flexible Area Action System.

(a) The Chair of the Multispecies Oversight Committee, upon learning of the presence of discard problems associated with large concentrations of juvenile, sublegal, or spawning multispecies, shall determine if the situation warrants further investigation and possible action. In making this determination, the Committee Chair shall consider the amount of discard of regulated species, the species targeted, the number and types of vessels operating in the area, the location and size of the area, and the resource condition of the impacted species. If he/she determines it is necessary, the Committee Chair will request the Regional Director to initiate a fact finding investigation to verify the situation and publish notification in the Federal Register requesting public comments in accordance with the procedures therefor in Amendment 3 to the NE Multispecies FMP.

(b) After examining the facts, the Regional Director shall, within the deadlines specified in Amendment 3, provide the technical analysis required by Amendment 3.

(c) The NEFMC shall prepare an economic impact analysis of the potential management options under consideration within the deadlines specified in Amendment 3.

(d) Copies of the analysis and reports prepared by the Regional Director and the NEFMC shall be made available for public review at the NEFMC's office and the Committee shall hold a meeting/public hearing, at which time it shall review the analysis and reports and request public comments. Upon review of all available sources of information, the Committee shall determine what course of action is warranted by the facts and make a recommendation, consistent with the provisions of Amendment 3 to the Regional Director.

(e) By the deadline set in Amendment 3 the Regional Director shall either accept or reject the Committee's recommendation. If the recommended action is consistent with the record established by the fact-finding report, impact analysis, and comments received at the public hearing, he/she shall accept the Committee's recommendation and implement it through notification in the Federal Register and by notice sent to all vessel owners holding multispecies permits. The Regional Director shall also use

other appropriate media, including, but not limited to, mailings to the news media, fishing industry associations and radio broadcasts, to disseminate information on the action to be implemented.

(f) Once implemented, the Regional Director shall monitor the affected area to determine if the action is still warranted. If the Regional Director determines that the circumstances under which the action was taken, based on the Regional Director's report, the NEFMC's report, and the public comments, are no longer in existence, he/she shall terminate the action by notification in the Federal Register.

(g) Actions taken under this section will ordinarily become effective upon the date of filing with the Office of the Federal Register. The Regional Director may determine that facts warrant a delayed effective date.

§ 648.86 Possession restrictions.

(a) *Haddock*—(1) *NE multispecies DAS vessels.* A vessel issued a limited access multispecies permit that is fishing under a NE multispecies DAS may land or possess on board up to 1,000 lb (453.6 kg) of haddock provided it has at least one standard tote on board. Haddock on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(2) *Scallop dredge vessels.* (i) No person owning or operating a scallop dredge vessel issued a multispecies permit may land haddock from, or possess haddock on board, a scallop dredge vessel, from January 1 through June 30.

(ii) No person owning or operating a scallop dredge vessel without a multispecies permit may possess haddock in, or harvested from, the EEZ, from January 1 through June 30.

(iii) From July 1 through December 31, scallop dredge vessel or persons owning or operating a scallop dredge vessel that is fishing under a scallop DAS allocated under § 648.53 may land or possess on board up to 300 lb (136.1 kg) of haddock provided the vessel has at least one standard tote on board. Haddock on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(b) *Winter flounder.* A vessel issued a limited access multispecies permit that is fishing in the MA regulated mesh area and is not fishing under a NE multispecies DAS, may land, or possess on board, winter flounder up to 10 percent, by weight, of all other species on board, or 200 lb (90.7 kg), whichever is less. Winter flounder on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection in standard totes.

(c) *Other possession restrictions.* Vessels are subject to any other applicable possession limit restrictions of this part.

§ 648.87 Sink gillnet requirements to reduce harbor porpoise takes.

(a) *Areas closed to sink gillnets.* Section 648.81(f) through (h) sets forth closed area restrictions to reduce the take of harbor porpoise consistent with the harbor porpoise mortality reduction goals.

(b) *Additional areas closed to sink gillnets.* All persons owning or operating vessels must remove all of their sink gillnet gear from, and may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of § 648.23(b), a sink gillnet in the EEZ portion of the areas and for the times specified in paragraphs (b)(1) and (2) of this section, and all persons owning or operating vessels issued a limited access multispecies permit must remove all of their sink gillnet gear from, and may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of § 648.23(b), a sink gillnet in the EEZ portion of the areas and for the times specified in paragraphs (b)(1) and (2) of this section.

(1) *Mid-coast Closure Area.* From March 25 through April 25 of each fishing year, the restrictions and requirements specified in paragraph (a)(2) of this section apply to the Mid-coast Closure area, as defined under § 648.81(g)(1).

(2) *Cape Cod South Area Closure.* From March 1 through March 10 of each fishing year, the restrictions and requirements specified under paragraph (a)(2) of this section shall apply to the area known as the Cape Cod South Closure Area (copies of a map depicting this area are available from the Regional Director upon request), which is the area bounded by straight lines connecting the following points in the order stated.

CAPE COD SOUTH CLOSURE AREA

Point	N. Lat.	W. Long.
CCS1	(1)	71°45′ W
CCS2	40°40′ N	71°45′ W
CCS3	40°40′ N	70°30′ W
CCS4	(2)	70°30′ W

1 RI shoreline.
2 MA shoreline.

(c) *Framework adjustment.* (1) At least annually, the Regional Director will provide the NEFMC with the best available information on the status of Gulf of Maine harbor porpoise, including estimates of abundance and estimates of bycatch in the sink gillnet fishery. Within 60 days of receipt of that information, the NEFMC's HPRT shall complete a review of the data, assess the adequacy of existing regulations, evaluate the impacts of other measures that reduce harbor porpoise take and, if necessary, recommend additional measures in light of the NEFMC's harbor porpoise mortality reduction goals. In addition, the HPRT shall make a determination on whether other conservation issues exist that require a management response to meet the goals and objectives outlined in the NE Multispecies FMP. The HPRT shall report its findings and recommendations to the NEFMC.

(2) After receiving and reviewing the HPRT's findings and recommendations, the NEFMC shall determine whether adjustments or additional management measures are necessary to meet the goals and objectives of the NE Multispecies FMP. If the NEFMC determines that adjustments or additional management measures are necessary, or at any other time in consultation with the HPRT, it shall develop and analyze appropriate management actions over the span of at least two NEFMC meetings.

(3) The NEFMC may request, at any time, that the HPRT review and make recommendations on any harbor porpoise take reduction measures or develop additional take reduction proposals.

(4) The NEFMC shall provide the public with advance notice of the availability of the proposals, appropriate rationale, economic and biological analyses, and opportunity to comment on them prior to and at the second NEFMC meeting. The NEFMC's recommendation on adjustments or additions to management measures must come from one or more of the categories specified under § 648.90(b)(1).

(5) If the NEFMC recommends that the management measures should be issued as a final rule, the NEFMC must consider at least the factors specified in § 648.90(b)(2).

(6) The Regional Director may accept, reject, or with NEFMC approval, modify the NEFMC's recommendation, including the NEFMC's recommendation to issue a final rule, as specified under § 648.90(b)(3).

§ 648.88 Open access permit restrictions.

(a) *Handgear permit.* A vessel issued a valid open access multispecies handgear permit is subject to the following restrictions:

(1) The vessel may possess and land up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, per trip, and unlimited amounts of the other NE multispecies, provided that it does not use or possess on board gear other than rod and reel or handlines while in possession of, fishing for, or landing NE multispecies, and provided it has at least one standard tote on board.

(2) A vessel may not fish for, possess, or land regulated species from March 1 through March 20 of each year.

(b) *Charter/party permit.* A vessel that has been issued a valid open access multispecies charter/party permit is subject to the restrictions on gear, recreational minimum fish sizes and prohibitions on sale specified in § 648.89, and any other applicable provisions of this part.

(c) *Scallop multispecies possession limit permit.* A vessel that has been issued a valid open access scallop multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated species when fishing under a scallop DAS allocated under § 648.53, provided the vessel does not fish for, possess, or land haddock from January 1 through June 30 as specified under § 648.86(a)(2)(i), and provided the vessel has at least one standard tote on board.

§ 648.89 Recreational and charter/party restrictions.

(a) *Recreational gear restrictions.* Persons aboard charter or party vessels permitted under this part and not fishing under the DAS program, and recreational fishing vessels in the EEZ, are prohibited from fishing with more than two hooks per line and one line per angler and must stow all other fishing gear on board the vessel as specified under §§ 648.23(b) and 648.81(e) (2), (3), and (4).

(b) *Recreational minimum fish sizes*—(1) *Minimum fish sizes.* Persons aboard charter or party vessels permitted under this part and not fishing under the DAS program, and recreational fishing vessels in the EEZ, are subject to minimum fish sizes (TL) as follows:

MINIMUM FISH SIZES (TL)

Species	Inches	
	1996	1997+
Cod	20 (50.8 cm)	21 (53.3 cm)
Haddock	20 (50.8 cm)	21 (53.3 cm)
Pollock	19 (48.3 cm)	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)	13 (33.0 cm)
American plaice (dab)	14 (35.6 cm)	14 (35.6 cm)
Winter flounder (blackback)	12 (30.5 cm)	12 (30.5 cm)
Redfish	9 (22.9 cm)	9 (22.9 cm)

(2) *Exception.* Vessels may possess fillets less than the minimum size specified, if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade or barter.

(c) *Possession restrictions.* Each person on a recreational vessel may not possess more than 10 cod and/or haddock, combined, in or harvested from the EEZ.

(1) For purposes of counting fish, fillets will be converted to whole fish at the place of landing by dividing fillet number by two. If fish are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole fish.

(2) Cod and haddock harvested by recreational vessels with more than one person aboard may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of fish on board by the number of persons aboard. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator.

(3) Cod and haddock must be stored so as to be readily available for inspection.

(d) *Restrictions on sale.* It is unlawful to sell, barter, trade, or otherwise transfer for a commercial purpose, or to attempt to sell, barter, trade, or otherwise transfer for a commercial purpose, NE multispecies caught or landed by charter or party vessels permitted under this part not fishing under a DAS or a recreational fishing vessels fishing in the EEZ.

§ 648.90 Framework specifications.

(a) *Annual review.* The Multispecies Monitoring Committee (MSMC) shall meet on or before November 15 of each year to develop target TACs for the upcoming fishing year and options for NEFMC consideration on any changes, adjustment or additions to DAS allocations, closed areas, or other measures necessary to achieve the NE Multispecies FMP goals and objectives.

(1) The MSMC shall review available data pertaining to: Catch and landings, DAS and other measures of fishing effort, survey results, stock status, current estimates of fishing mortality, and any other relevant information.

(2) Based on this review, the MSMC shall recommend target TACs and develop options necessary to achieve the FMP goals and objectives, which may include a preferred option. The MSMC must demonstrate through analysis and documentation that the options it develops are expected to meet the NE Multispecies FMP goals and objectives. The MSMC may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the MSMC may include any of the management measures in the NE Multispecies FMP, including, but not limited to: Annual target TACs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the NE Multispecies FMP for the 10 regulated species; DAS changes; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; and any other management measures currently included in the NE Multispecies FMP.

(3) The NEFMC shall review the recommended target TACs and all of the options developed by the MSMC and other relevant information, consider public comment, and develop a recommendation to meet the NE Multispecies FMP objective that is consistent with other applicable law. If the NEFMC does not submit a recommendation that meets the NE Multispecies FMP objectives and is

consistent with other applicable law, the Regional Director may adopt any option developed by the MSMC, unless rejected by the NEFMC, as specified in paragraph (a)(5) of this section, provided that the option meets the NE Multispecies FMP objective and is consistent with other applicable law.

(4) Based on this review, the NEFMC shall submit a recommendation to the Regional Director of any changes, adjustments or additions to DAS allocations, closed areas or other measures necessary to achieve the NE Multispecies FMP's goals and objectives. Included in the NEFMC's recommendation will be supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the NEFMC.

(5) If the NEFMC submits, on or before January 7, a recommendation to the Regional Director after one NEFMC meeting, and the Regional Director concurs with the recommendation, the Regional Director shall publish the NEFMC's recommendation in the Federal Register as a proposed rule. The Federal Register notification of the proposed action will provide a 30-day public comment period. The NEFMC may instead submit its recommendation on or before February 1, if it chooses to follow the framework process outlined in paragraph (b) of this section and requests that the Regional Director publish the recommendation as a final rule. If the Regional Director concurs that the NEFMC's recommendation meets the NE Multispecies FMP objective and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action will be published as a final rule in the Federal Register. If the Regional Director concurs that the recommendation meets the FMP objective and is consistent with other applicable law and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year on May 1, fishing may continue. However, DAS used by a vessel on or after May 1 will be counted against any DAS allocation the vessel ultimately receives for that year.

(6) If the Regional Director concurs in the NEFMC's recommendation, a final rule shall be published in the Federal Register on or about April 1 of each year, with the exception noted in paragraph (a)(5) of this section. If the NEFMC fails to submit a recommendation to the Regional Director by February 1 that meets the FMP goals and objectives, the Regional Director may publish as a proposed rule one of the options reviewed and not rejected by the NEFMC, provided that the option meets the FMP objective and is consistent with other applicable law. If, after considering public comment, the Regional Director decides to approve the option published as a proposed rule, the action will be published as a final rule in the Federal Register.

(b) *Within season management action.* The NEFMC may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the NE Multispecies FMP.

(1) *Adjustment process.* After a management action has been initiated, the NEFMC shall develop and analyze appropriate management actions over the span of at least two NEFMC meetings. The NEFMC shall provide the public with advance notice of the availability of both the proposals and the analysis, and opportunity to comment on them prior to and at the second NEFMC meeting. The NEFMC's recommendation on adjustments or additions to management measures must come from one or more of the following categories: DAS changes, effort monitoring, data reporting, possession limits, gear restrictions, closed areas, permitting restrictions, crew limits, minimum fish sizes, onboard observers, minimum hook size and hook style, the use of crucifiers in the hook-gear fishery, fleet sector shares, recreational fishing measures, area closures and other appropriate measures to mitigate marine mammal entanglements and interactions, and any other management measures currently included in the FMP.

(2) *NEFMC recommendation.* After developing management actions and receiving public testimony, the NEFMC shall make a recommendation to the Regional Director. The NEFMC's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Director on whether to issue the management measures as a final rule. If the NEFMC recommends that the management measures should be issued as a final rule, the NEFMC must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the NEFMC's recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *Regional Director action.* If the NEFMC's recommendation includes adjustments or additions to management measures and, after reviewing the NEFMC's recommendation and supporting information:

(i) If the Regional Director concurs with the NEFMC's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (b)(2) of this section, the measures will be issued as a final rule in the Federal Register.

(ii) If the Regional Director concurs with the NEFMC's recommendation and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the Federal Register. After additional public comment, if the Regional Director concurs with the NEFMC recommendation, the measures will be issued as a final rule in the Federal Register.

(iii) If the Regional Director does not concur, the NEFMC will be notified in writing of the reasons for the non-concurrence.

(c) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson Act.

Subpart G—Management Measures for the Summer Flounder Fisheries

§ 648.100 Catch quotas and other restrictions.

(a) *Annual review.* The Summer Flounder Monitoring Committee shall review the following data on or before August 15 of each year to determine the allowable levels of fishing and other restrictions necessary to achieve a fishing mortality rate (F) of 0.41 in 1996, 0.30 in 1997, and 0.23 in 1998 and thereafter, provided the allowable levels of fishing in 1996 and 1997 may not exceed 18,518,830 lb (8,400 mt), unless such fishing levels have an associated F of 0.23: Commercial and recreational catch data; current estimates of fishing mortality; stock status; recent estimates

of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling and winter trawl survey data or, if sea sampling data are unavailable, length frequency information from the winter trawl survey and mesh selectivity analyses; impact of gear other than otter trawls on the mortality of summer flounder; and any other relevant information.

(b) *Recommended measures.* Based on this review, the Summer Flounder Monitoring Committee shall recommend to the Demersal Species Committee of the MAFMC and the Commission the following measures to assure that the F specified in paragraph (a) of this section will not be exceeded:

(1) Commercial quota set from a range of 0 to the maximum allowed to achieve the specified F.

(2) Commercial minimum fish size.

(3) Minimum mesh size.

(4) Recreational possession limit set from a range of 0 to 15 summer flounder to achieve the specified F.

(5) Recreational minimum fish size.

(6) Recreational season.

(7) Restrictions on gear other than otter trawls.

(8) Adjustments to the exempted area boundary and season specified in § 648.104(b)(1) by 30-minute intervals of latitude and longitude and 2-week intervals, respectively, based on data specified in paragraphs (a) (8) and (10) of this section to prevent discarding of sublegal sized summer flounder in excess of 10 percent, by weight.

(c) *Annual fishing measures.* The Demersal Species Committee shall review the recommendations of the Summer Flounder Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC measures necessary to assure that the applicable specified F will not be exceeded. The MAFMC shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Director measures necessary to assure that the applicable specified F will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Director shall review these recommendations and any recommendations of the Commission. After such review, the Regional Director will publish a proposed rule in the Federal Register by October 15 to implement a coastwide commercial quota and recreational harvest limit and additional management measures for the commercial fishery, and will publish a proposed rule in the Federal Register by February 15 to implement additional management measures for the recreational fishery, if he/she determines that such measures are necessary to assure that the applicable specified F will not be exceeded. After considering public comment, the Regional Director will publish a final rule in the Federal Register to implement the measures necessary to assure that the applicable specified F will not be exceeded.

(d) *Distribution of annual quota.* (1) The annual commercial quota will be distributed to the states, based upon the following percentages:

ANNUAL COMMERCIAL QUOTA SHARES

State	Share (percent)
Maine	0.04756
New Hampshire	0.00046
Massachusetts	6.82046
Rhode Island	15.68298
Connecticut	2.25708
New York	7.64699
New Jersey	16.72499
Delaware	0.01779
Maryland	2.03910
Virginia	21.31676
North Carolina	27.44584

(2) All summer flounder landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the summer flounder were harvested. Any overages of the commercial quota landed in any state will be deducted from that state's annual quota for the following year.

(e) *Quota transfers and combinations.* Any state implementing a state commercial quota for summer flounder may request approval from the Regional Director to transfer part or all of its annual quota to one or more states. Two or more states implementing a state commercial quota for summer flounder may request approval from the Regional Director to combine their quotas, or part of their quotas, into an overall regional quota. Requests for transfer or combination of commercial quotas for summer flounder must be made by individual or joint letter(s) signed by the principal state official with marine fishery management responsibility and expertise, or his/her previously named designee, for each state involved. The letter(s) must certify that all pertinent state requirements have been met and identify the states involved and the amount of quota to be transferred or combined.

(1) Within 10 working days following the receipt of the letter(s) from the states involved, the Regional Director shall notify the appropriate state officials of the disposition of the request. In evaluating requests to transfer a quota or combine quotas, the Regional Director shall consider whether:

(i) The transfer or combination would preclude the overall annual quota from being fully harvested.

(ii) The transfer addresses an unforeseen variation or contingency in the fishery.

(iii) The transfer is consistent with the objectives of the Summer Flounder FMP and Magnuson Act.

(2) The transfer of quota or the combination of quotas will be valid only for the calendar year for which the request was made and will be effective upon the filing by NMFS of a notice of the approval of the transfer or combination with the Office of the Federal Register.

(3) A state may not submit a request to transfer quota or combine quotas if a request to which it is party is pending before the Regional Director. A state may submit a new request when it receives notice that the Regional Director has disapproved the previous request or when notice of the approval of the transfer or combination has been filed at the Office of the Federal Register.

(4) If there is a quota overage among states involved in the combination of quotas at the end of the fishing year, the overage will be deducted from the following year's quota for each of the states involved in the combined quota. The deduction will be proportional, based on each state's relative share of the combined quota for the previous year. A transfer of quota or combination of quotas does not alter any state's percentage share of the overall quota specified in paragraph (d) of this section.

§ 648.101 Closures.

(a) *EEZ closure.* The Regional Director shall close the EEZ to fishing for summer flounder by commercial vessels for the remainder of the calendar year by publishing notification in the Federal Register if he/she determines that the inaction of one or more states will cause the applicable F specified in § 648.100(a) to be exceeded, or if the commercial fisheries in all states have been closed. The Regional Director may reopen the EEZ if earlier inaction by a state has been remedied by that state, or if commercial fisheries in one or more states have been reopened without

causing the applicable specified F to be exceeded.

(b) *State quotas.* The Regional Director will monitor state commercial quotas based on dealer reports and other available information and shall determine the date when a state commercial quota will be harvested. The Regional Director shall publish notification in the Federal Register advising a state that, effective upon a specific date, its commercial quota has been harvested and notifying vessel and dealer permit holders that no commercial quota is available for landing summer flounder in that state.

§ 648.102 Time restrictions.

Vessels that are not eligible for a moratorium permit under § 648.4(a)(3) and fishermen subject to the possession limit may fish for summer flounder from January 1 through December 31. This time period may be adjusted pursuant to the procedures in § 648.100.

§ 648.103 Minimum fish sizes.

(a) The minimum size for summer flounder is 13 inches (33 cm) TL for all vessels issued a moratorium permit under § 648.4(a)(3), except on board party and charter boats carrying passengers for hire or carrying more than three crew members, if a charter boat, or more than five crew members, if a party boat;

(b) The minimum size for summer flounder is 14 inches (35.6 cm) TL for all vessels that do not qualify for a moratorium permit, or party and charter boats holding moratorium permits, but fishing with passengers for hire or carrying more than three crew members, if a charter boat, or more than five crew members, if a party boat.

(c) The minimum sizes in this section apply to whole fish or to any part of a fish found in possession, e.g., fillets. These minimum sizes may be adjusted pursuant to the procedures in § 648.100.

§ 648.104 Gear restrictions.

(a) *General.* (1) Otter trawlers whose owners are issued a summer flounder permit and that land or possess 100 or more lb (45.4 or more kg) of summer flounder from May 1 through October 31, or 200 lb or more (90.8 kg or more) of summer flounder from November 1 through April 30, per trip, must fish with nets that have a minimum mesh size of 5.5-inch (14.0-cm) diamond mesh or 6-inch (15.2-cm) square mesh applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or, for codends with less than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the head rope, excluding any turtle excluded device extension.

(2) Mesh sizes are measured by a wedge-shaped gauge having a taper of 2 cm in 8 cm and a thickness of 2.3 mm inserted into the meshes under a pressure or pull of 5 kg. The mesh size is the average of the measurement of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes. The mesh in the regulated portion of the net is measured at least five meshes away from the lacings, running parallel to the long axis of the net.

(b) *Exemptions.* The minimum mesh-size requirements specified in paragraph (a)(1) of this section do not apply to:

(1) Vessels issued a summer flounder moratorium permit and fishing from November 1 through April 30 in the ''exemption area,'' which is east of the line that follows 72°30.0' W. long. until it intersects the outer boundary of the EEZ. Vessels fishing with a summer flounder exemption permit shall not fish west of the line. Vessels issued a permit under § 648.4(a)(3)(iii) may transit the area west or south of the line, if the vessel's fishing gear is stowed in a manner prescribed under § 648.100(e), so that it is not ''available for immediate use'' outside the exempted area. The Regional Director may terminate this exemption if he/she determines, after a review of sea sampling data, that vessels fishing under the exemption are discarding more than 10 percent, by weight, of their entire catch of summer flounder per trip. If the Regional Director makes such a determination, he/she shall publish notification in the Federal Register terminating the exemption for the remainder of the exemption season.

(2) Vessels fishing with a two-seam otter trawl fly net with the following configuration, provided that no other nets or netting with mesh smaller than 5.5 inches (14.0 cm) are on board:

(i) The net has large mesh in the wings that measures 8 inches (20.3 cm) to 64 inches (162.6 cm).

(ii) The first body section (belly) of the net has 35 or more meshes that are at least 8 inches (20.3 cm).

(iii) The mesh decreases in size throughout the body of the net to 2 inches (5 cm) or smaller towards the terminus of the net.

(3) The Regional Director may terminate this exemption if he/she determines, after a review of sea sampling data, that vessels fishing under the exemption, on average, are discarding more than 1 percent of their entire catch of summer flounder per trip. If the Regional Director makes such a determination, he/she shall publish a notice in the Federal Register terminating the exemption for the remainder of the calendar year.

(c) *Net modifications.* No vessel subject to this part shall use any device, gear, or material, including, but not limited to nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net; except that, one splitting strap and one bull rope (if present) consisting of line or rope no more than 3 inches (7.2 cm) in diameter may be used if such splitting strap and/or bull rope does not constrict, in any manner, the top of the regulated portion of the net, and one rope no greater than 0.75 inches (1.9 cm) in diameter extending the length of the net from the belly to the terminus of the codend along the top, bottom, and each side of the net. ''Top of the regulated portion of the net'' means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) will not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph (c), head ropes shall not be considered part of the top of the regulated portion of a trawl net. A vessel shall not use any means or mesh configuration on the top of the regulated portion of the net, as defined in § 648.104(e), if it obstructs the meshes of the net or otherwise causes the size of the meshes of the net while in use to diminish to a size smaller than the minimum specified in § 648.100(a).

(d) *Mesh obstruction or constriction.* (1) A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (c) of this section, that obstructs the meshes of the net in any manner.

(2) No person on any vessel may possess or fish with a net capable of catching summer flounder in which the bars entering or exiting the knots twist around each other.

(e) *Stowage of nets.* Otter trawl vessels retaining 100 lb (45.3 kg) or more of summer flounder from May 1 through October 31, or 200 lb (90.6 kg) or more of summer flounder from November 1 through April 30, and subject to the minimum mesh size requirement of paragraph (a)(1) of this section may not have ''available for immediate use'' any net or any piece of net that does not meet the minimum mesh size requirement, or any net, or any piece of net, with mesh that is rigged in a manner that is inconsistent with the minimum mesh size requirement. A net that is stowed in conformance with one

of the methods specified in § 648.23(b) and that can be shown not to have been in recent use is considered to be not ''available for immediate use.''

§ 648.105 Possession restrictions.

(a) No person shall possess more than eight summer flounder in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a summer flounder moratorium permit. Persons aboard a commercial vessel that is not eligible for a summer flounder moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a summer flounder moratorium permit are not subject to the possession limit when not carrying passengers for hire and when the crew size does not exceed five for a party boat and three for a charter boat.

(b) If whole summer flounder are processed into fillets, the number of fillets will be converted to whole summer flounder at the place of landing by dividing the fillet number by two. If summer flounder are filleted into single (butterfly) fillets, each fillet is deemed to be from one whole summer flounder.

(c) Summer flounder harvested by vessels subject to the possession limit with more than one person on board may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of summer flounder on board by the number of persons on board, other than the captain and the crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator.

(d) Owners and operators of otter trawl vessels issued a permit under § 648.4(a)(3) that fish with or possess nets or pieces of net on board that do not meet the minimum mesh requirements and that are not stowed in accordance with § 648.104(f), may not retain 100 lb (45.3 kg) or more of summer flounder from May 1 through October 31, or 200 lb (90.6 kg) or more of summer flounder from November 1 through April 30. Summer flounder on board these vessels must be stored so as to be readily available for inspection in standard 100-lb (45.3-kg) totes or fish boxes having a liquid capacity of 18.2 gal (70 L), or a volume of not more than 4,320 in^3 (2.5 ft^3 or 70.79 cm^3).

§ 648.106 Sea turtle conservation.

This section will be suspended during the effectiveness of any temporary regulations issued to regulate incidental take of sea turtles in the summer flounder under authority of the ESA under parts 217, 222, and 227 of this title. Such suspensions and temporary regulations will be issued by publication in the Federal Register and will be effective for a specified period of time, not to exceed 1 year.

(a) *Sea turtle handling and resuscitation.* The sea turtle handling and resuscitation requirements specified in § 227.72(e)(1) (i) and (ii) of this title apply with respect to sea turtles incidentally taken by a vessel fishing for summer flounder.

(b) *Sea turtle monitoring and assessment program.* (1) The Regional Director will establish a monitoring and assessment program, in cooperation with the MAFMC and the State of North Carolina, to measure the incidental take of sea turtles in the summer flounder fishery, monitor compliance with required conservation measures by trawlers, and predict interactions between the fishery and sea turtles to prevent turtle mortalities.

(2) A scientifically designed, observer-based monitoring program in accordance with § 648.11 may be used to gather scientific data measuring the incidental take of turtles by trawlers in the summer flounder fishery and to report turtle distribution and abundance.

(3) A cooperative sea turtle monitoring and assessment program utilizing a variety of information, including aerial and vessel surveys; onboard observers; individually tagged turtles; physical parameters, such as sea surface temperatures, and reports from the sea turtle stranding network; and other relevant and reliable information, will assess and predict turtle distribution, abundance, movement patterns, and timing to provide information to NMFS to prevent turtle mortality caused by the summer flounder fishery.

(c) *Required use of Turtle Excluder Devices (TED).* The Regional Director will require the use of a NMFS-approved TED by any vessels engaged in summer flounder fishing operations and utilizing trawl gear on or after October 15 as necessary to protect sea turtles. The Regional Director will publish notification in the Federal Register with the specific time period. Descriptions of NMFS-approved TEDs can be found in § 227.72(e)(4) of this title. This requirement applies to vessels within the EEZ bounded on the north by a line along 37°05′ N. lat., bounded on the south by a line along 33°35′ N. lat., and bounded on the east by a line 7 nm from the shoreward boundary of the EEZ.

(d) *Closure of the fishery.* The Regional Director may close the summer flounder fishery in the EEZ, or any part thereof, after consultation with the MAFMC, the Director of the State of North Carolina Division of Marine Fisheries, and the marine fisheries agency of any other affected state, by publishing notification in the Federal Register. The Regional Director shall take such action if he/she determines a closure is necessary to avoid jeopardizing the continued existence of any species listed under the ESA. The determination of the impact on sea turtles must be based on turtle mortalities and projections of turtle mortality by the NMFS monitoring and assessment program. A closure will be applicable to those areas specified in the notification and for the period specified in the notification. The Regional Director will provide as much advance notice as possible, consistent with the requirements of the ESA, and will have the closure announced on channel 16 of the marine VHF radio. A closure may prohibit all fishing operations, may prohibit the use of certain gear, may require that gear be stowed, or may impose similar types of restrictions on fishing activities. The prohibitions, restrictions, and duration of the closure will be specified in the notification.

(e) *Reopening of the fishery.* (1) The Regional Director may reopen the summer flounder fishery in the EEZ, or any part thereof, after consultation with the MAFMC, the Director of the State of North Carolina Division of Marine Fisheries, and the marine fisheries agency of any other affected state, by publishing notification in the Federal Register. The Regional Director may reopen the summer flounder fishery in the EEZ, or any part thereof, if additional sea turtle conservation measures are implemented and if projections of NMFS' sea turtle monitoring program indicate that such measures will ensure that continued operation of the summer flounder fishery is not likely to jeopardize the continued existence of any species listed under the ESA.

(2) The Regional Director may reopen the summer flounder fishery in the EEZ, or any part thereof, if the sea turtle monitoring program indicates changed conditions and if projections of the sea turtle monitoring program indicate that NMFS can ensure that continued operation of the summer flounder fishery is not likely to jeopardize the continued existence of any species listed under the ESA.

(f) *Additional sea turtle conservation measures.* (1) The Regional Director may impose additional sea turtle conservation measures, including tow-time requirements, in the EEZ, after consultation with the MAFMC, the

Director of the State of North Carolina Division of Marine Fisheries, and the marine fisheries agency of any other affected state, by publishing notification in the Federal Register. The Regional Director shall take such action if he/she determines further measures are necessary to avoid jeopardizing the continued existence of any species listed under the ESA or if such action would allow reopening of the summer flounder fishery in the EEZ. The determination of the impact on sea turtles must be based on turtle mortalities and projections of turtle mortality by the NMFS monitoring and assessment program.

(2) Consistent with the procedures specified in § 648.10, the Regional Director may require that all or a certain portion of the vessels engaged in fishing for summer flounder carry observers, consistent with the requirements of § 648.10, to gather data on incidental capture of sea turtles and to monitor compliance with required conservation measures. This requirement may apply to certain types of vessels, certain areas, or during certain times of the year.

(g) *Experimental projects.* Notwithstanding paragraphs (a) through (f) of this section, the Regional Director may authorize summer flounder fishing, as a part of experimental projects to measure turtle capture rates, to monitor turtle abundance, to test alternative gear or equipment, or for other research purposes. Research must be approved by the Regional Director, and it must not be likely to jeopardize the continued existence of any species listed under the ESA. The Regional Director will impose such conditions as he/she determines necessary to ensure adequate turtle protection during experimental projects. Individual authorizations may be issued in writing. Authorizations applying to multiple vessels will be published in the Federal Register.

Subpart H—Management Measures for the Scup Fishery

§ 648.124 Gear restrictions.

(a) *General.* Otter trawl vessels that land or possess 4,000 lb or more (1,814.4 kg or more) of scup harvested in or from the EEZ must fish with nets that have a minimum mesh size of 4 inches (10.2 cm) applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or, for codends with less than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the center of the head rope, excluding any turtle excluder device extension.

(b) *Mesh-size measurement.* Mesh sizes will be measured according to the procedure described in § 648.104(a)(2).

(c) *Net modification and mesh obstruction and constriction.* Same as § 648.104 (c) and (d) except substitute the word ''scup'' for the words ''summer flounder.''

(d) *Stowage of nets.* Otter trawl vessels retaining 4,000 pounds or more (1,814.4 or more kg) of scup harvested in or from the EEZ, and subject to the minimum mesh requirement specified in paragraph (a) of this section may not have available for immediate use any net, or any piece of net, not meeting the minimum mesh size requirement, or mesh that is rigged in a manner that is inconsistent with the minimum mesh size. A net that conforms to the specifications specified in § 648.23(b) and that can be shown not to have been in recent use is considered to be not ''available for immediate use.''

§ 648.125 Minimum fish sizes.

(a) The minimum size for scup is 9 inches (22.9 cm) TL for all vessels engaged in commercial fishing.

(b) The minimum size for scup is 7 inches (17.8 cm) TL for all vessels that are engaged in recreational fishing.

(c) The minimum size applies to whole fish or any part of a fish found in possession, e.g., fillets.

PARTS 625, 650, 651, 652, 655, AND 657—[REMOVED]

4. Parts 625, 650, 651, 652, 655, and 657 are removed.

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Federal Register

Wednesday
July 3, 1996

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Single Family Mortgage Insurance; Loss Mitigation Procedures; Interim Rule

24 CFR Parts 203 and 206

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Single Family Mortgage Insurance—Loss Mitigation Procedures

24 CFR Parts 203 and 206

[Docket No. FR–4032–I–01]

RIN 2502–AG72

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule amends 24 CFR part 203 to eliminate the Mortgage Assignment Program and to provide that HUD may: recompense mortgagees for using mortgage foreclosure alternatives, such as special forbearance, loan modifications, and deeds in lieu of foreclosure; pay the mortgagee a partial claim which would be applied to the arrearage of a defaulted mortgage; and accept assignment of a mortgage which the mortgagee has modified to cure the default.

DATES: Effective Date: August 2, 1996. Comments due date: September 3, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. FAXED comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Joseph McCloskey, Director, Single Family Servicing Division, Room 9178, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, (202) 708–1672, or, TTY for hearing and speech impaired, (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The Department is seeking approval of the information collection requirements contained in § 203.605 by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The OMB control number will be published in the Federal Register upon approval. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

II. Background

Summary of Legislative Changes

This interim rule implements section 407 of The Balanced Budget Downpayment Act, I (Pub. L. 104–99, approved January 26, 1996) (Downpayment Act), which amended sections 204 and 230 of the National Housing Act. The amendment of section 230 eliminated the current HUD programs for Temporary Mortgage Assistance Payments and Assignment of Mortgages at §§ 203.640 - 203.660 of 24 CFR. This amendment did not become effective until the passage of The Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134, approved April 26, 1996). However, this Appropriations Act provided that mortgagors who had applied for relief under the Assignment Program before April 26, 1996 will be governed by the requirements of section 230 before the amendments made by the Downpayment Act.

To continue to provide foreclosure alternatives for mortgagors, the Downpayment Act amended sections 204 and 230 of the National Housing Act to promote foreclosure alternatives and loss mitigation tools to be used by mortgagees. Section 204 was amended to provide that the Secretary may recompense mortgagees for their actions to provide mortgage foreclosure alternatives, such as special forbearance, loan modifications, and deeds in lieu of foreclosure. Section 230 was amended to provide that the Secretary may pay the mortgagee a partial claim which would be applied to the arrearage of a defaulted mortgage. In addition, Section 230 was amended to provide that the Secretary may accept assignment of a mortgage which the mortgagee has modified to cure the default and where repooling of the loan is not possible. This procedure is to be distinguished from forbearance relief for defaulted loans, as well as from the former Mortgage Assignment Program. It should be noted that the Downpayment Act permitted, but did not require, the Secretary to establish these partial claim and assignment procedures. Further, the Downpayment Act provided that no decision by the Secretary to exercise or forego exercising his authority under section 230 and the new authority under section 204 shall be subject to judicial review.

Overview of HUD's Approach

The techniques to be employed under HUD's new foreclosure alternatives/loss mitigation approach implemented by this rule will include special forbearance plans, loan modifications, partial claims, preforeclosure sales, deeds in lieu of foreclosure, and similar tools. These approaches generally fall into two broad categories—(a) those which (if utilized successfully) would result in curing the default and retaining homeownership, and (b) those which would result in the relinquishment of homeownership, by means of a sale to a third party or by a voluntary conveyance of the property by deed in lieu of foreclosure.

The Department has decided to implement a comprehensive approach toward promoting alternatives to foreclosure, as well as loss mitigation, which enhances lender flexibility in dealing with the circumstances in which homeowners find themselves. This approach describes a series of servicing actions and strategies that may be used singly or in combination to meet those objectives; provides insurance benefits to lenders that evaluate mortgagors with delinquent and defaulted loans and choose appropriate steps which—when successful—result in outcomes other than foreclosure of the mortgage; and establishes the groundwork for Departmental monitoring of lenders' efforts.

End of Assignment Program

In October, 1995, the General Accounting Office (GAO) issued a report to Congress regarding HUD's Mortgage Assignment Program. After analyzing over 68,000 mortgages assigned to HUD since 1989, the GAO estimated that the loss to FHA per assigned mortgage would be $49,000, compared to the estimated $27,000 FHA would have lost had the loan not entered the Assignment Program. The GAO noted that to offset these losses, FHA was required to charge higher mortgage insurance premiums to new mortgagors. As a result of the GAO report, Congress, as discussed above, has amended section 230 of the National Housing Act to end the Mortgage Assignment Program with respect to the intake of new applicants into that program. Therefore, references to the Assignment Program are amended or removed accordingly in the following sections: 203.350, 203.355, 203.402a, 203.438, 203.500, 203.604, 203.606, 203.640–203.660, and 203.664–203.666.

Early Default Counseling

The Department emphasizes that early intervention coupled with the use of default counseling are effective techniques for curing defaulted mortgages. A successful servicing strategy by a mortgagee takes into consideration each defaulted mortgage individually. Based on the circumstances involved, the mortgagee executes a plan which will eliminate the default and prevent a foreclosure. In an effort to clarify misunderstandings of various alternatives available to homeowners whose mortgages are in a defaulted status, and to reduce delays in obtaining assistance, HUD Handbook 4330.1 REV–5, Administration of Insured Home Mortgages, continues to require lenders to refer those homeowners to HUD-approved housing counseling agencies early in the default period.

Actions To Promote Foreclosure Alternatives/Loss Mitigation

Section 407(a) of the Downpayment Act amended section 204(a) of the National Housing Act to provide that HUD may pay insurance benefits to the mortgagee to recompense the mortgagee for its actions to provide an alternative to the foreclosure of a mortgage that is in default. These actions may include special forbearance, loan modification, and/or deeds in lieu of foreclosure, all upon terms and conditions as the mortgagee shall determine in the mortgagee's sole discretion, within guidelines provided by HUD.

The current regulations already provide for most of these foreclosure alternative or loss mitigation actions. Therefore, § 203.501 of the regulations, governing loss mitigation, is amended to provide cross references to these various foreclosure alternative actions available to mortgagees. To clarify that the claim file requirements at § 203.365(c) include claims involving these loss mitigation actions, a new § 203.605 is added to specify that mortgagees must document that they have considered—beginning no later than when three full monthly installments due on the mortgage are unpaid, and continuing with monthly reevaluations while the loan remains in default—all loss mitigation options to determine which, if any, are appropriate before initiating foreclosure. In addition, a new § 203.412 is added to the regulations to provide that the Secretary may pay insurance benefits to encourage mortgagees to pursue these loss mitigation techniques.

Some of the provisions to promote loss mitigation are given a delayed implementation date in the text of this interim rule to enable the Department to consider any comments before making them effective in a final rule. Thus, the reduction from nine to six months for taking action upon default of a mortgage in § 203.355, and the amendment to the provision in § 203.402(f) for varying the percentage of foreclosure costs or the costs of acquiring a property that are reimbursed, are made to apply only after March 1, 1997. Each of these changes is discussed below in this preamble.

In certain cases foreclosure may be avoided where the mortgagor's sale of the property is facilitated by the assumption of the mortgage by a credit-worthy, owner-occupant purchaser. Although not included in this interim rule, procedures to facilitate the use of assumptions as a type of ''preforeclosure sale'' are being considered by HUD for future implementation. Finally, this rule amends the regulations to provide for the increased flexibility in the use of these foreclosure alternative tools, as described below.

Reduction of Time for Taking Action

Concerning the reduction of the foreclosure initiation time frame from nine months to six months, in 1991 the Department proposed to reduce the time frame for lenders to initiate foreclosure from twelve months to six months (56 Fed. Reg. 19212, April 25, 1991). Public comments received indicated that the six-month deadline could not reasonably be met due to several reasons including compliance with the HUD Assignment Program, administrative matters, State law requirements regarding notice, and the desire to encourage workout or forbearance agreements with mortgagors.

The Department believes that the biggest obstacle to initiating foreclosure within six months was the requirement to process borrower applications for acceptance into the HUD Assignment Program. Since the Assignment Program is no longer an option for those mortgagors who did not apply for assignment relief on or before April 25, 1996, HUD now believes that a shortened time frame is workable. As evidenced by this rule, HUD also desires to encourage workout and forbearance agreements with mortgagors. However, HUD believes that early intervention is necessary for effective loss mitigation and that a workout must be established before six months of arrearage has accumulated, wherever possible.

With regard to State legal notice requirements, there should not be a problem meeting the six month time frame, because under the new procedures, HUD will generally permit mortgagees to make timely preparations to initiate foreclosure, even while simultaneously considering the various loss mitigation tools. Also, under current regulations the foreclosure initiation time frame is stayed when the mortgagor has entered into a special forbearance agreement or has commenced participation in the pre-foreclosure sales procedure.

The Department specifically requests public comments on this proposed time frame. The rule expressly provides for a delayed implementation of the six-month time limit to permit notice and comment on this change.

Varying the Percentage of Costs Reimbursed

Section 203.402(f) currently provides for ⅔ reimbursement of foreclosure and acquisition costs on mortgage insurance claims. This regulation would amend that section to allow HUD to vary the percentage of reimbursement by administrative issuance such as a Mortgagee Letter. The percentage may be based on individual mortgagee performance in mitigating loss. The Department specifically requests public comments on this proposed change in reimbursement for foreclosure costs. The rule has expressly provided for a delayed implementation of the amendment in order to provide for notice and comment on this change. The same change has also been incorporated into the Home Equity Conversion Mortgage (HECM) rule at § 206.129(d)(2)(ii).

1. Special Forbearance

Section 203.614 currently provides the conditions under which mortgagees may enter into special forbearance agreements with mortgagors. This interim rule amends § 203.614 to provide lenders with more flexibility in administering special forbearance, with the exception that partial claims will not be permitted when forbearance is extended for more than 18 months. Rather than including requirements in the rule, HUD will provide special forbearance guidelines in Mortgagee Letters and handbooks. A statutory requirement remains, pursuant to section 204(a) of the National Housing Act, that a default must be due to circumstances beyond the mortgagor's control for additional note rate interest to be paid should a mortgage insurance claim be filed after an unsuccessful special forbearance agreement.

In addition, § 203.471, which provides for the conditions under which mortgagees may enter into special forbearance agreements in the case of 203(k) rehabilitation loans, is amended to be consistent with the amendment to

§ 203.614. Finally, as noted above, a new § 203.412 is added to the regulations to provide, among other things, that HUD may pay the mortgagee for its actions in entering into special forbearance agreements under § 203.614. At this time, HUD intends to issue a Mortgagee Letter specifying that this amount will be $100.

2. Partial Claims

Section 407(b) of the Downpayment Act amended section 230(a) of the National Housing Act to provide that the Secretary may establish a program for payment of a partial claim to a mortgagee that agrees to apply the claim amount to payment of a defaulted single family mortgage. The amended section 230(a) provides that such payment shall be in an amount determined by the Secretary, and shall not exceed an amount equivalent to 12 monthly mortgage payments plus any costs related to the default that are approved by the Secretary. In addition, the amended section 230(a) provides that the mortgagor shall agree to repay this amount to the Secretary, and that the Secretary may pay the mortgagee in connection with any activities that the mortgagee is required to undertake concerning repayment by the mortgagor of the amount owed to the Secretary.

New §§ 203.371 and 203.414 are added to the regulations to provide that the mortgagee may apply for a partial claim after a period of forbearance. The partial claim will be in the amount of the arrearage accumulated during the forbearance period. The lender shall apply this amount to the mortgage to bring it current and the mortgagor shall be required to execute a subordinate mortgage in favor of the Secretary in the amount of the partial claim. The forbearance period may be extended until the arrearage equals the equivalent of 12 monthly mortgage payments. The equivalent of twelve monthly payments for mortgages with varying monthly payments, such as adjustable rate mortgages (ARMS), graduated payment mortgages (GPMS) and growing equity mortgages (GEMS), will be calculated by multiplying 12 times the monthly mortgage payment due on the date of default. The Department expects to issue guidelines to assure that such forbearances do not extend beyond 18 calendar months. Similarly, guidelines will provide that mortgagees may file a partial claim only after the borrower has been delinquent for at least 4 months. Mitigation of losses through forbearance with a subordinate mortgage would not be available to borrowers who had the financial capacity to modify the mortgage or obtain a new refinanced mortgage. Nor would this approach be available to a mortgagor who could not make at least a full monthly mortgage payment after the forbearance period.

It is expected that repayment terms of the subordinate mortgage will vary depending on the income and debts of the mortgagor. The subordinate mortgage may call for repayment commencing at a future date before maturity of the insured mortgage, or may not require repayment until a transfer of ownership of the property or payoff of the insured mortgage. HUD guidelines will likely specify that subordinate mortgages must be interest free.

Mortgagees can file for a partial claim under the new § 203.414 if the mortgagor is able to resume full monthly payments, but not pay off the arrearage. The claim amount will be the amount of the payments in arrears, including costs related to the default as established by HUD. The new regulation also permits the Secretary to require the mortgagee to be responsible for servicing the subordinate mortgage and provides that servicing mortgagees may be compensated for activities that they perform on behalf of the Secretary.

3. Modifications/Recastings

Mortgagees currently have the authority under § 203.616 of the regulations to modify defaulted mortgages, in certain cases, for the purpose of changing the amortization provisions by recasting the total unpaid amount due over the remaining term of the mortgage, or over a term extending not more than 10 years beyond the original maturity date. In most cases, mortgagees cannot utilize this authority because of secondary mortgage market restrictions. Approximately 95% of FHA-insured mortgages are pooled in Government National Mortgage Association (Ginnie Mae) mortgage backed securities. The pool requirements prevent the mortgagee from keeping the mortgage in the pool if the terms of the mortgage are modified. Thus, to modify the terms of the mortgage, Ginnie Mae issuers must buy the mortgage out of the Ginnie Mae pool.

Ginnie Mae requirements generally have prevented the repooling of a modified mortgage if more than 24 months have elapsed since the date of the first scheduled payment under the mortgage. To facilitate FHA's loss mitigation efforts, Ginnie Mae has agreed to permit the removal of mortgages that are 90 days or more past due from Ginnie Mae pools so that the mortgages can be modified and repooled using the date of modification of the mortgages as the origination date. Ginnie Mae will provide its issuers with specific instructions and requirements for this process. Therefore, HUD encourages mortgagees to make increased use of loan modifications or recastings to avoid foreclosure and will shortly provide detailed guidance in a Mortgagee Letter. A new § 203.412 is added to the regulations to provide, among other things, that HUD may pay the mortgagee for its actions in modifying or recasting the mortgage and repooling it. The payment would include reimbursement for any necessary title examination and/or title insurance policy endorsement.

In addition, § 203.616 of the regulations is being amended to allow recasting of mortgages even where the mortgage is not in default, by agreement of the parties, although loss mitigation claims are permitted only with respect to mortgages in default. This amendment will allow willing mortgagees, especially state or local housing authorities or portfolio lenders, to recast a mortgage where there may be an imminent default if the mortgage is not recast, but where no default has yet occurred. This procedure, in turn, can prevent adverse impacts on mortgagors' credit ratings. A conforming amendment is made to § 203.342. The authority to allow recasting of mortgages where the mortgage is not in default is based on the Secretary's inherent broad authority to operate the insurance programs, and is not based on the authority contained in sections 204 or 230 of the National Housing Act, as amended. Those two sections generally refer only to mortgages in default. It should be noted that, pursuant to the National Housing Act, if a mortgage insurance claim is eventually filed, the unpaid principal balance paid on the claim will be based on the modified amount only where there had been a default caused by circumstances beyond the mortgagor's control, as defined by the Secretary.

In rare circumstances, the mortgagee may not be able to repool the modified or recast mortgage. In such situations, HUD will now be able to approve the assignment to HUD of a mortgage modified after default. Section 407(b) of the Downpayment Act amended section 230(b) of the National Housing Act to provide that HUD may accept assignment of a mortgage if the mortgage was in default and the mortgagee has modified the mortgage to cure the default and to provide for mortgage payments within the reasonable ability of the mortgagor to pay, at interest rates not exceeding current market interest rates. HUD is also required to arrange for servicing of the assigned mortgage by

a mortgagee, which may include the assigning mortgagee.

Section 203.350 of the regulations is amended to provide for assignment of mortgages under the requirements just noted, and § 203.404 of the regulations is amended to provide for the amounts the mortgagee will be reimbursed on such an assignment claim.

4. Pre-foreclosure Sales

Section 203.370 of the regulations, which provides for pre-foreclosure sales, is amended to remove the reference to the now obsolete Assignment Program. Section 203.402 of the regulations currently provides in paragraphs (l) and (s) that HUD will reimburse the mortgagee for the costs of an appraisal and a title search. Section 203.402(t) provides HUD will pay the mortgagee an administrative fee, as authorized by the Secretary, for the mortgagee's role in facilitating a successful pre-foreclosure sale. Presently, HUD is reimbursing mortgagees for reasonable and customary costs of the appraisal and title search, and $1,000 as the administrative fee for each successful pre-foreclosure sale. The selling mortgagor is also paid a consideration from gross sales proceeds of up to $1,000, depending on the length of time it takes to close the sale. HUD intends to continue these reimbursement amounts for the present, although they are subject to change in the future.

5. Deeds in Lieu of Foreclosure

Section 203.402(p) of the regulations currently provides that in a conveyance claim the Secretary will reimburse the mortgagee an amount approved by the Secretary that was paid to the mortgagor as consideration for the execution of a deed in lieu of foreclosure. This amount is currently a maximum of $500. This interim rule amends § 203.402(p) to provide that the Secretary may also pay the mortgagee an administrative fee for its role in facilitating a successful deed in lieu of foreclosure. HUD intends to issue a Mortgagee Letter specifying that this amount shall not exceed $250. Also, this rule amends § 203.402(s) to clarify that, as part of a conveyance claim, HUD will reimburse the mortgagee for the cost of a title search involved in determining whether it is feasible to accept a deed in lieu of foreclosure. HUD intends to issue a Mortgagee Letter specifying that this amount shall not exceed $250. This rule also amends the Home Equity Conversion Mortgage (HECM) rule at § 206.129(d)(2)(i) to conform to the revised language of § 203.402(s).

III. Other Matters

Regulatory Planning and Review

This interim rule has been reviewed in accordance with Executive Order 12866, issued by the President on September 30, 1993 (58 FR 51735, October 4, 1993). Any changes to the rule resulting from this review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been 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. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Regulatory Flexibility Act

The Secretary, in accordance with provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this interim rule before publication and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. Most of the economic impact of the interim rule will affect the Department, which stands to benefit from the successful implementation of the loss mitigation techniques addressed by the interim rule.

Executive Order 12612, Federalism

HUD has determined, in accordance with Executive Order 12612, *Federalism,* that this interim rule will not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government, since the interim rule involves primarily relationships between the Department and private entities.

Executive Order 12606, The Family

HUD has determined that this interim rule would have only an indirect impact on family formation, maintenance, and general well-being within the meaning of Executive Order 12606, *The Family,* because it would assist mortgagors in maintaining ownership of their properties. To the extent such mortgagors consist of families, the impact would be beneficial. As such, no further review is necessary.

Justification for Interim Rulemaking

The Omnibus Consolidated Rescissions and Appropriations Act of 1996 (the Act) directs the Department to issue interim regulations to implement section 407 of the Downpayment Act within 30 days of the date of enactment of the Act.

List of Subjects

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, parts 203 and 206 of title 24 of the Code of Federal Regulations are amended as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for part 203 is revised to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

2. Section 203.342 is revised to read as follows:

§ 203.342 Recasting of mortgage.

If a mortgage is recast pursuant to § 203.616 subsequent to a finding by the mortgagee that the default was due to circumstances beyond the mortgagor's control, as defined by HUD, the principal amount of the mortgage, as modified, shall be considered to be the ''original principal balance of the mortgage'' as that term is used in § 203.401.

§ 203.350 [Removed]

3. In § 203.350, the following are removed:

a. The ''Effective Date Note (1);

b. The ''Effective Date Note (2)'';

c. The second undesignated center heading ''ASSIGNMENT OF MORTGAGE'';

d. The ''Effective Date Note (3);

e. All text of the second version of § 203.350, which includes paragraphs (a) through (d) and the information collection parenthetical; and

f. The FR source ''[52 FR 6914, Mar. 5, 1987].

3a. In the remaining § 203.350, the section heading and paragraph (a) are revised, to read as follows:

§ 203.350 Assignment of mortgage.

(a) *Assignment of modified mortgages pursuant to section 230, National Housing Act.* HUD may accept an assignment of any mortgage covering a one-to-four family residence if the following requirements are met:

(1) The mortgage was in default;

(2) The mortgagee has modified the mortgage under § 203.616 to cure the default and to provide for mortgage payments within the reasonable ability of the mortgagor to pay, at an interest rate not exceeding current market interest rates; and

(3) Such other conditions that HUD may prescribe, which may include the requirement that the mortgagee continue to be responsible for servicing the mortgage.

* * * * *

4. In § 203.355:

a. The introductory text of paragraph (a) and paragraph (a)(2) are revised;

b. Paragraphs (a)(3) through (a)(6) are added; and

c. Paragraphs (b), the introductory text of paragraph (c) and the introductory text of paragraph (g) are revised; and

d. Paragraph (h) is added, to read as follows:

§ 203.355 Acquisition of property.

(a) *In general.* Upon default of a mortgage, except as provided in paragraphs (b) through (h) of this section, the mortgagee shall take one of the following actions within nine months from the date of default, or within any additional time approved by the Secretary or authorized by §§ 203.345 or 203.346. For mortgages where the date of default is on or after March 1, 1997, the mortgagee shall take one of the following actions within six months of the date of default or within such additional time approved by HUD or authorized by §§ 203.345 or 203.346:

* * * * *

(2) Enter into a special forbearance agreement under § 203.614;

(3) Complete a refinance of the mortgage under § 203.43(c);

(4) Complete a modification of the mortgage under § 203.616;

(5) Complete an assumption under § 203.512; or

(6) Commence foreclosure.

(b) *Vacant or abandoned property.* With respect to defaulted mortgages on vacant or abandoned property, if the mortgagee discovers, or should have discovered, that the property is vacant or abandoned, the mortgagee must commence foreclosure within the later of 120 days after the date the property became vacant, or 60 days after the date the property is discovered, or should have been discovered, to be vacant or abandoned; but no later than the number of months from the date of default as provided in paragraph (a) of this section. The mortgagee must not delay foreclosure on vacant or abandoned property because of the requirements of § 203.606.

(c) *Prohibition of foreclosure within time limits.* If the laws of the State in which the mortgaged property is located, or Federal bankruptcy law:

* * * * *

(g) *Pre-foreclosure sale procedure.* Within 60 days of the end of a mortgagor's participation in the pre-foreclosure sale procedure, or within the time limit described in paragraph (a) of this section, whichever is later, if no closing of an approved pre-foreclosure sale has occurred, the mortgagee must obtain a deed in lieu of foreclosure, with title being taken in the name of the mortgagee or the Secretary, or commence foreclosure. The end-of-participation date is defined as:

* * * * *

(h) *Special forbearance.* If the mortgagor fails to meet the requirements of a special forbearance under § 203.614 and the failure continues for 60 days, the mortgagee must commence foreclosure within the time limit described in paragraph (a) of this section or 90 days after the mortgagor's failure to meet the special forbearance requirements.

§ 203.370 [Amended]

5. In § 203.370, paragraph (c)(3) is removed, and paragraphs (c)(4) and (c)(5) are redesignated as paragraphs (c)(3) and (c)(4).

6. A new § 203.371 is added before the undesignated center heading ''CONDITION OF PROPERTY'', to read as follows:

§ 203.371 Partial claim.

(a) *General.* Notwithstanding the conveyance, sale or assignment requirements for payment of a claim elsewhere in this part, HUD will pay partial FHA insurance benefits to mortgagees after a period of forbearance, the maximum length of which HUD will prescribe, and in accordance with this section.

(b) *Requirements.* The following conditions must be met for payment of a partial claim:

(1) The mortgage has been delinquent for at least 4 months or such other time prescribed by HUD;

(2) The amount of the arrearage has not exceeded the equivalent of 12 monthly mortgage payments;

(3) The mortgagor is able to resume making full monthly mortgage payments;

(4) The mortgagor is not financially able to make sufficient additional payments to repay the arrearage within a time specified by HUD; and

(5) The mortgagor is not financially able to support monthly mortgage payments on a modified mortgage or on a refinanced mortgage in which the total arrearage is included.

(c) *Repayment of the subordinate lien.* The mortgagor must execute a mortgage in favor of HUD with terms and conditions acceptable to HUD for the amount of the partial claim under § 203.414(a). HUD may require the mortgagee to be responsible for servicing the subordinate mortgage on behalf of HUD.

(d) *Application for insurance benefits.* Along with the prescribed application for partial claim insurance benefits, the mortgagee shall forward to HUD the original credit and security instruments required by paragraph (c) of this section.

7. In § 203.402, paragraphs (f), (p) and (s) are revised to read as follows:

§ 203.402 Items included in payment—conveyed and non-conveyed properties.

* * * * *

(f) Foreclosure costs or costs of acquiring the property otherwise (including costs of acquiring the property by the mortgagee and of conveying and evidencing title to the property to HUD, but not including any costs borne by the mortgagee to correct title defects) actually paid by the mortgagee and approved by HUD, in an amount not in excess of two-thirds of such costs or $75, whichever is the greater. For mortgages insured on or after March 1, 1997, the Secretary will reimburse a percentage of foreclosure costs or costs of acquiring the property, which percentage shall be determined in accordance with such conditions as the Secretary shall prescribe. Where the foreclosure involves a mortgage sold by the Secretary on or after August 1, 1969, or a mortgage executed in connection with the sale of property by the Secretary on or after such date, the mortgagee shall be reimbursed (in addition to the amount determined under the foregoing) for any extra costs incurred in the foreclosure as a result of a defect in the mortgage instrument, or a defect in the mortgage transaction or a defect in title which existed at or prior to the time the mortgage (or its assignment by the Secretary) was filed for record, if the mortgagee establishes to the satisfaction of the Commissioner

that such extra costs are over and above those customarily incurred in the area.

* * * * *

(p) An amount approved by HUD and paid to the mortgagor as consideration for the execution of a deed in lieu of foreclosure and, if authorized by HUD, an administrative fee approved by HUD paid to the mortgagee for its role in facilitating a successful deed in lieu of foreclosure, not to be subject to the payment of debenture interest thereon.

* * * * *

(s) Reasonable costs of the title search ordered by the mortgagee, in accordance with procedures prescribed by HUD, to determine the status of a mortgagor meeting all other criteria for approval to participate in the pre-foreclosure sale procedure, or to determine if a mortgagor meets the criteria for approval of the mortgagee's acceptance of a deed in lieu of foreclosure.

* * * * *

§ 203.402a [Amended]

8. In § 203.402a, paragraph (b)(1) is removed and paragraphs (b)(2) and (b)(3) are redesignated as paragraphs (b)(1) and (b)(2).

9. In § 203.404, paragraph (a)(3) is revised, and new paragraphs (a)(5) and (a)(6) are added, to read as follows:

§ 203.404 Amount of payment—assigned mortgages.

* * * * *

(a) * * *

(3) Reimbursement for such costs and attorney's fees as HUD finds were properly incurred in connection with the defaulted mortgage and its modification and assignment to HUD.

* * * * *

(5) An administrative fee to the mortgagee for modifying the mortgage.

(6) A fee for servicing the mortgage assigned to HUD, if HUD requires such servicing.

* * * * *

10–11. New §§ 203.412 and 203.414 are added before the undesignated center heading ''CERTIFICATE OF CLAIM'', and § 203.413 is reserved, to read as follows:

§ 203.412 Payment for foreclosure alternative actions.

Notwithstanding the conveyance, sale, or assignment requirements for payment of a claim elsewhere in this part, HUD may pay the mortgagee, in accordance with procedures prescribed by HUD, for the following foreclosure alternative actions, in such amounts as HUD determines:

(a) Assumptions under § 203.512;

(b) Special forbearance under §§ 203.471 and 203.614;

(c) Recasting or modification of defaulted mortgages under § 203.616, where the mortgagee is not reimbursed under § 203.405(a);

(d) Refinancing under § 203.43(c).

§ 203.413 [Reserved]

§ 203.414 Amount of payment—partial claims.

(a) *Claim amount.* Where a claim for partial insurance benefits is filed in accordance with § 203.371, the amount of the insurance benefits shall consist of the arrearage accumulated during the forbearance period, not to exceed an amount equivalent to 12 monthly mortgage payments, and any costs prescribed by HUD related to the default.

(b) *Servicing fee.* The claim may also include a payment for activities, such as servicing the subordinate mortgage, which HUD may require.

12. In § 203.438, paragraph (c) is revised to read as follows:

§ 203.438 Mortgages on Indian land insured pursuant to section 248 of the National Housing Act.

* * * * *

(c) *Foreclosure by HUD.* HUD may initiate foreclosure proceedings with respect to any mortgage acquired under this section in a tribal court, a court of competent jurisdiction or Federal district court. If the mortgagor remains on the property following foreclosure, HUD may seek an eviction order from the court hearing the foreclosure action.

13. Section 203.471 is revised to read as follows:

§ 203.471 Special forbearance.

If the mortgagee finds that a default is due to circumstances beyond the mortgagor's control, as defined by the Secretary, the mortgagee may grant special forbearance relief to the mortgagor in accordance with the conditions prescribed by the Secretary.

14. In § 203.473 paragraph (a) is revised to read as follows:

§ 203.473 Claim procedure.

(a) A claim for insurance benefits on a loan secured by a first mortgage shall be made, and insurance benefits shall be paid, as provided in §§ 203.350 through 203.414.

* * * * *

15. Section 203.500 is revised to read as follows:

§ 203.500 Mortgage servicing generally.

This subpart identifies servicing practices of lending institutions that HUD considers acceptable for mortgages insured by HUD. Failure to comply with this subpart shall not be a basis for denial of insurance benefits, but a pattern of refusal or failure to comply will be cause for withdrawal of HUD's approval of a mortgagee. It is the intent of the Department that no mortgagee commence foreclosure or acquisition of a property until the requirements of this subpart have been followed.

16. Section 203.501 is amended by adding at the end of the section the following two sentences:

§ 203.501 Loss mitigation.

* * * Such actions include, but are not limited to, deeds in lieu of foreclosure under § 203.357, pre-foreclosure sales under § 203.370, partial claims under § 203.414, assumptions under § 203.512, special forbearance under §§ 203.471 and 203.614, and recasting of mortgages under § 203.616. HUD may prescribe conditions and requirements for the appropriate use of these loss mitigation actions, concerning such matters as owner-occupancy, extent of previous defaults, prior use of loss mitigation, and evaluation of the mortgagor's income, credit and property.

17. In § 203.552, paragraph (a) introductory text is revised to read as follows:

§ 203.552 Fees and charges after endorsement.

(a) The mortgagee may collect reasonable and customary fees and charges from the mortgagor after insurance endorsement only as provided in this paragraph (a). The mortgagee may not collect these fees or charges from the mortgagor if the mortgagee has been or will be reimbursed by the Secretary for the services for which the fees or charges are assessed.

* * * * *

§ 203.604 [Amended]

18. In § 203.604, paragraphs (e)(2) (iii) and (iv) are removed, and paragraph (e)(2)(v) is redesignated as paragraph (e)(2)(iii).

19. A new § 203.605 is added to read as follows:

§ 203.605 Loss mitigation evaluation.

No later than when three full monthly installments due on the mortgage are unpaid, the mortgagee shall evaluate all of the loss mitigation techniques provided at § 203.501 to determine which, if any, are appropriate, and shall reevaluate monthly thereafter. The mortgagee shall maintain documentation of such evaluations. Should a claim for mortgage insurance benefits later be filed, the mortgagee shall maintain this documentation in

the claim file under the requirements of § 203.365(c).

20. In § 203.606, paragraph (a) is amended by adding at the end the following sentence, and the introductory text of paragraph (b) is revised, to read as follows:

§ 203.606 Pre-foreclosure review.

(a) * * * In addition, prior to initiating any action required by law to foreclose the mortgage, the mortgagee shall notify the mortgagor in a format prescribed by the Secretary that the mortgagor is in default and the mortgagee intends to foreclose unless the mortgagor cures the default.

(b) If the mortgagee determines that any of the following conditions has been met, the mortgagee may initiate foreclosure without the delay in foreclosure required by paragraph (a) of this section:

* * * * *

21. Section 203.614 is revised to read as follows:

§ 203.614 Special forbearance.

If the mortgagee finds that a default is due to circumstances beyond the mortgagor's control, as defined by HUD, the mortgagee may grant special forbearance relief to the mortgagor in accordance with the conditions prescribed by HUD.

22. Section 203.616 is revised to read as follows:

§ 203.616 Recasting of mortgage.

The mortgagee may modify a mortgage for the purpose of changing the amortization provisions by recasting the total unpaid amount due over the remaining term of the mortgage or a term not exceeding 360 months. The mortgagee must notify HUD of such modification in a format prescribed by HUD within 30 days of the execution of the modification agreement.

§§ 203.640 through 203.660 [Removed]

23. All versions of §§ 203.640 through 203.660 are removed.

24. Section 203.664 is revised to read as follows:

§ 203.664 Processing defaulted mortgages on property located on Indian land.

Before a mortgagee requests that the Secretary accept assignment under § 203.350(b) of a mortgage insured pursuant to section 248 of the National Housing Act (§ 203.43h), the mortgagee must submit documents showing that the requirements of § 203.604 have been met.

25. Section 203.665 is revised to read as follows:

§ 203.665 Processing defaulted mortgages on property located on Hawaiian home lands.

Before a mortgagee requests the Secretary to accept assignment under § 203.350(c) of a mortgage insured pursuant to section 247 of the National Housing Act (§ 203.43i), the mortgagee must submit documents showing that the requirements of § 203.604 have been met.

26. In § 203.666 paragraph (b) is revised, and paragraphs (c) and (d) are removed, to read as follows:

§ 203.666 Processing defaulted mortgages on property in Allegany Reservation of Seneca Nation of Indians.

* * * * *

(b) *Claims through assignment.* Before a mortgagee requests the Secretary to accept assignment under § 203.350(d) the mortgagee must submit documents showing that the requirements of § 203.604 have been met.

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

27. The authority citation for part 206 continues to read as follows:

Authority: 12 U.S. C. 1715b, 1715z–1720; 42 U.S.C. 3535(d).

28. In § 206.129, paragraphs (d)(2)(i) and (d)(2)(ii) are revised to read as follows:

§ 206.129 Payment of claim.

* * * * *

(d) * * *

(2)(i) Items listed in § 203.402 (a), (b), (c), (d), (e), (g), (j), and (s), and § 204.322(l) of this chapter.

(ii) Foreclosure costs or costs of acquiring the property actually paid by the mortgagee and approved by HUD, in an amount not in excess of two-thirds of such costs or $75, whichever is the greater. For mortgages insured after March 1, 1997, HUD may reimburse a percentage of foreclosure costs or costs of acquiring the property, which percentage shall be determined in accordance with such conditions as HUD shall prescribe.

* * * * *

Dated: June 5, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 96–16869 Filed 7–2–96; 8:45 am]

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July 3, 1996

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing: Funding Availability for FY 1996 for the Public and Indian Housing Tenant Opportunities Program Technical Assistance; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4066–N–01]

Office of the Assistant Secretary for Public and Indian Housing; NOFA for FY 1996 for the Public and Indian Housing Tenant Opportunities Program Technical Assistance

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

ACTION: Notice of funding availability for FY 1996.

SUMMARY: HUD is announcing the availability of $15 million for Fiscal Year 1996 under the Public and Indian Housing Tenant Opportunities Program (TOP). HUD reinvented resident management and created the TOP to expand the range of the resident-managed activities, so that resident organizations can set priorities based on the needs in their communities. The program provides assistance to Resident Councils (RCs), Resident Management Corporations (RMCs) Resident Organizations (ROs) and National Resident Organizations (NROs), Regional Resident Organizations (RROs), and Statewide Resident Organizations (SROs), to fund training and other tenant opportunities, such as the formation of such entities, identification of the relevant social support needs, and securing of such support for residents of public and Indian housing. The NOFA discusses eligibility, funding amounts, selection criteria, how to apply for funding, and the selection process, and includes an appendix setting out the Consultant/Trainer Checklist.

DATES: Application kits may be requested beginning July 3, 1996. The application deadline will be specified in the application kit, and will be firm as to date and time. Applicants will have at least 30 days from today's publication of the NOFA to prepare and submit their applications.

The separate deadline for comments on the information collection requirements is September 3, 1996.

ADDRESSES: To obtain a copy of the application kit, please write the Resident Initiatives Clearinghouse, Post Office Box 6424, Rockville, MD 20850, or call the toll free number 1–800–955–2232. Requests for application kits must include your name, mailing address (including zip code), telephone number (including area code), and should refer to document FR–4066. Applicants may access the TOP Application Kit through HUD's World Wide Web site at http://www.hud.gov/pih. This NOFA cannot be used as the application.

Comments on the proposed information collection requirements must refer to the NOFA for FY 1996 for the Public and Indian Housing Tenant Opportunities Program Technical Assistance (FR–4066), and must be sent to: Reports Liaison Officer, Office of Community Relations and Involvement, Department of Housing and Urban Development, 451 7th Street, SW, Room 4112, Washington, DC 20410–3600.

FOR FURTHER INFORMATION CONTACT: Christine Jenkins or Barbara J. Armstrong, Office of Community Relations and Involvement, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4112, Washington, D.C. 20410; telephone: (202) 708–3611. All Indian Housing applicants may contact Tracy Outlaw, Office of Native American Programs, Department of Housing and Urban Development, 451 Seventh Street, SW, Room B–133, Washington, D.C. 20410; telephone: (202) 755–0088. For hearing- and speech-impaired persons, these numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339. (Other than the ''800'' TTY number, telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and have been assigned OMB control number 2577–0087. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. Because this OMB control number will be expiring later this year, the Department is soliciting comments, as required under 5 CFR 1320.8(d), before submitting the information collection requirements contained in this NOFA to OMB for renewal of the control number in accordance with 5 CFR 1320.10. Information on the estimated information collection burden is provided under the heading, *Other Matters,* at the end of this notice.

I. Purpose and Description

A. Authority

Section 20, United States Housing Act of 1937 (42 U.S.C. 1437r); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). The amount of funding provided under this NOFA was appropriated for the program in the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134, 110 Stat. 1321; approved April 26, 1996).

B. Statutory Background

Section 122 of the Housing and Community Development Act of 1987 (Pub. L. 100–42, approved February 5, 1988) amended the United States Housing Act of 1937 (1937 Act) by adding a new section 20 (42 U.S.C. 1437r) (section 20). Section 20 states as part of its purpose the encouragement of ''increased resident management of public housing projects [and the provision of funding] . . . to promote formation and development of resident management entities'' (Sec. 20(a)). Under Section 20(f)(1):

> . . . [T]he Secretary shall provide financial assistance to resident management corporations or resident councils that obtain, by contract or otherwise, technical assistance for the development of resident management entities, including the formation of such entities, the development of the management capability of newly formed or existing entities, the identification of the social support needs of residents of public housing projects, and the securing of such support.

Under Section 20(f)(2), this financial assistance may not exceed $100,000 with respect to any public housing project. Section 20 is implemented in 24 CFR part 950, subpart O (for Indian housing), and part 964 (for public housing). The rules set forth, among other things, the policies, procedures, and requirements of resident participation and management of public and Indian housing.

The TOP meets the need in many communities for business development, education, job training and development, social services, and opportunities for other self-help initiatives. The program enables resident entities to establish priorities, based on the efforts in their public and Indian housing communities, that are aimed at furthering economic lift and independence. Financial assistance in the form of technical assistance grants is provided by the Secretary to resident grantees to prepare for management activities in their housing development (hereinafter referred to as TOP technical assistance grants). The TOP technical assistance grants are available for ''the development of resident management entities, including the formation of such entities, the development of the management capability of newly formed or existing entities, the identification of the social support needs of residents of

public housing projects and the securing of such support.''

Residents may use TOP technical assistance grants for training related to any TOP initiative. The results from organizations in training have been significant and multifaceted. For example, resident-managed activities have resulted in economic development, resident self-sufficiency, improved living conditions, and enhanced social services for residents (i.e., child care and other youth projects). TOP will provide public and Indian housing residents the opportunity to be trained and move toward responsible roles in their communities. The training will aim to enhance the functioning of the resident council as well as develop skills to engage in resident-managed activities in its community. The Department strongly encourages resident entities to develop a partnership with their public housing agency or Indian housing authority (hereafter jointly referred to as ''HA''). The Department is committed to building a real partnership among HAs, residents, and HUD.

In FY 1996, $15 million is available to public and Indian housing RCs/RMCs/ROs, of which $500,000 is set-aside for NROs/RROs/SROs to provide technical assistance and training activities under the TOP program.

Today, approximately 905 resident groups throughout the country are in training under this program. HUD supports the tenant opportunities movement, as well as other self-sufficiency and improvement programs designed to benefit public and Indian housing residents. HUD's Office of Community Relations and Involvement has the responsibility of delivering a variety of resident initiative programs, with assistance from a network of Community Relations and Involvement Specialists (CRIs) in HUD's field structure. The CRIs are available to provide direct assistance to residents and resident groups interested in resident initiatives programs.

C. Termination and Enforcement of Grant Award

All grant awards may be terminated if a recipient materially fails to comply with the terms and conditions of an award in accordance with Revised OMB Circular A–110 and 24 CFR part 84 (§§ 84.60, 84.61, and 84.62).

D. New Features of This NOFA

(1) All applicants are required to submit a TOP Work Plan that includes TOP-specific training programs/performance standards for implementing the TOP grant. The purpose of the training programs/performance standards is to facilitate positive outcomes, products or deliverables such as jobs, businesses, and services. The applicant must select and implement the training programs/performance standards of choice in accordance with the needs of the community. The training programs/performance standards are not all-inclusive, and grantees may work with the HUD Field Offices to establish other training programs/performance standards to meet their needs, provided that the results would be measurable. (See Section I.Q of this NOFA).

(2) All TOP grantees must adhere to the new travel policy established by HUD. The policy ensures that all travel funded under TOP is directed toward the successful completion of the required TOP Work Plan/Performance Standards and time frames as explained in Section I.Q of this NOFA. The travel policy sets a maximum amount of $5,000 over the 3- to 5-year period of the grant. Requests for funds beyond the limit of $5,000 must be approved by the local HUD Office. All grantees must attend a HUD-sponsored TOP orientation training prior to expending TOP funds, with the exception of funds needed to attend the training. If the grantee's grant agreement is executed and the organization is properly established in the Line of Credit Control System/Voice Response System (LOCCS/VRS), the grantee must draw down the total amount needed to attend the training. If the grantee's grant agreement is not executed and the organization is not properly established in the LOCCS/VRS, the grantee may request the HA to advance the organization the total amount needed to attend the HUD orientation training. The grantee must reimburse the HA when the organization is properly established in the LOCCs/VRS.

This travel policy is not applicable to NROs/RROs/SROs. HUD will be developing a travel policy that establishes guidelines for NROs/RROs/SROs in the near future.

(3) To ensure the successful implementation of the TOP Work plan activities, RCs/RMCs/ROs are required to determine the need to contract for outside consulting/training services, after considering their own capacity. Each RC/RMC/RO is encouraged to make maximum use of its HA; nonprofits; or other Federal, State, or local government resources for technical assistance and training needs. All Basic Grantees may use up to $15,000 to obtain a consultant/trainer from the TOP database of registered consultant/trainers for assistance in implementing Tasks 1 through 4 of the TOP Work Plan. (The TOP Work Plan is included in the TOP Application Kit).

The HA; other nonprofits; and Federal, State, or local government resources may serve as the consultant/trainer; however, the identified source that intends to establish a contract with the RC/RMC/RO must register with HUD prior to executing a contract.

(4) HUD encourages all interested consultants/trainers to register to participate in the TOP by completing the Consultant/Trainer Checklist included as an Appendix to this NOFA and mailing it to the following address: Department of Housing and Urban Development, Office of Public and Indian Housing, Office of Resident Involvement, 451 7th Street, SW, Room 4112, Washington, D.C. 20410.

The TOP grantee may select the HA as the consultant/trainer, however, the HA must register to be included in the TOP database. Grantees may invite other familiar consultants/trainers to register in the TOP database.

(5) After completion of Tasks 1 through 4 of the TOP Work Plan, the RC/RMO/RO may hire a consultant/trainer to assist in the implementation of Tasks 5 through 7 of the TOP Work Plan. The grantees must follow 24 CFR 84, which implements OMB Circular A–110 and prescribes standards and policies essential to ensure open and free competition for the proper execution of procurement transactions when selecting a consultant/trainer. HUD will make available the source list of registered consultant/trainers upon request, for use in a competitive solicitation for consultant services to assist the RC/RMC/RO in implementing TOP Work Plan Tasks 5 through 7 of the TOP Work Plan. The amount allowed for hiring an individual consultant for this purpose shall not exceed 50 percent of the total grant award or $50,000, whichever is less. HUD Field Offices will monitor this process to ensure compliance with these requirements.

(6) *Applicants shall not solicit any proposals for application preparation or a training and technical assistance contract prior to receiving a TOP grant award.* This year HUD is eliminating the ''full-service'' and ''separation of application preparation'' approaches to be used by grantees for obtaining consultant services. The full-service approach allowed RCs/RMCs/ROs to solicit competitive proposals for consultants to assist in the preparation of the application and included provisions for a training and technical assistance contract without another competitive process if the RCs/RMCs/ROs were selected to receive a grant.

The separation of application preparation from consultant work to be performed after the award of a grant approach allowed an applicant to solicit competitive proposals and contract with a Consultant-Trainer/Housing Management specialist for the development of an application for technical assistance. If the applicant was selected for funding, the Consultant/Trainer/Housing Management Specialist had to compete again through an open and free procurement process for a training and technical assistance contract.

(7) All NROs/RROs/SROs must be registered as a nonprofit organization at the time of application submission. NROs/RROs/SROs must list in the application the name of the RCs/RMCs/ROs that the organization will train or provide technical assistance and must provide letters of support from each entity identified in the application. The NROs/RROs/SROs cannot list RCs/RMC/ROs that have received a maximum of $100,000.

(8) HUD no longer allows the formation of Partnership Paradigm Technical Assistance (PPTA) organizations or the Technical Assistance Organizations (TAOs). Therefore, no PPTA or TAO applications will be considered for a TOP grant.

(9) HUD has included eligible activities for the elderly or disabled persons. (See section I.K(5) of this NOFA).

(10) All RCs/RMCs/ROs, city-wide/jurisdiction-wide organizations and NROs/RROs/SROs previously funded the maximum of $100,000 under the TOP cannot reapply for funding under this NOFA. This decision was made in accordance with section 20(f)(2), which states ''the financial assistance provided under this subsection with respect to any public housing project may not exceed $100,000.'' This section would also prohibit an award to NROs/RROs/SROs if the resident organizations being served have received the maximum amount of $100,000.

E. Other Features of This NOFA

(1) RCs/RMCs/ROs that have duly elected boards may receive up to $100,000.

(2) All applicants that are selected for funding (including NROs/RROs/SROs) will access the grant funds through the LOCCS/VRS as explained in Section I.F, ''Funding,'' of this NOFA.

(3) An application kit is required as the formal submission to apply for funding. The kit includes information on the preparation of a TOP Work Plan/Performance Standards and Budget for activities proposed by the applicant. This process facilitates the expeditious execution of a TOP Technical Assistance Grant (TOP TAG) for those applicants that are selected to receive funding (see Section I.H., TOP Technical Assistance Grant Agreement). The kit also includes narratives, certifications, and forms.

(4) A specific certification form is included in the application kit that requires each RC/RMC/RO to certify that it has held a democratic election. The certification must be signed by an authorized representative of the local HA and/or an independent third party monitor. (Not applicable to Indian ROs or NROs/RROs/SROs).

(5) The information listed below is regarding *all HOPE I (lead or joint) applicants:*

All applications that are submitted by HOPE I (lead or joint) grantees will be screened. A cross-check will be made against the HOPE I Planning grants and HOPE I Implementation grants, to assure compliance with section 20(f)(4) of the 1937 Act, which states: ''The Secretary may not provide financial assistance under this subsection to any resident management corporation or resident council with respect to which assistance for the development or formation of such entity is provided under title III.'' HOPE I Planning and Implementation grantees were required to propose plans to establish a RC, RMC, or cooperative association where one did not exist for the proposed homeownership site, including the development or formation of that entity. In addition, HOPE I Full Planning and Implementation grant applicants were expected to include in their applications all eligible activities necessary to make their proposed homeownership program feasible (even if some of the proposed activities were to be carried out with non-HOPE I funds, such as resident management funds). Consequently, in reviewing TOP grant applications, for all applicants who are HOPE I (lead or joint) grantees the following rules apply:

Rule 1. An applicant for TOP funds that has received a HOPE I Full Planning or Implementation grant (as a lead or joint applicant) may not also receive a TOP grant, unless the applicant proposed in its HOPE I application to use TOP funding to carry out those activities.

Rule 2. An applicant for TOP funds that has received a HOPE I Mini Planning grant (as a lead or joint applicant) may not receive a TOP grant for any activity proposed for funding in the HOPE I grant. Mini Planning grant applicants may apply for a TOP grant if the activities proposed in the TOP application are not duplicative.

(6) All applicants will have an opportunity to correct technical deficiencies that are curable in this application submission as provided for in this NOFA.

F. Funding

As noted, $15 million was appropriated in FY 1996 for the TOP. Of this amount, $25,000 has been allocated to one RC not funded in the FY 1995 funding cycle because of a HUD technical error. The remainder of the funds is being made available on a competitive basis under this NOFA to applicants that submit timely applications and are selected for funding. Under section 20(f)(2), this financial assistance may not exceed $100,000 with respect to any public housing project.

Of the remaining $14,975,000 in funds, $500,000 will be awarded to NROs, RROs, and SROs. The purpose of these grants is to provide technical assistance to public and Indian housing residents desiring either to establish a RC/RMC/RO where one does not exist or to organize an inactive RC/RMC/RO.

With the remaining $14,475,000, the Department will provide two types of grants to RCs/RMCs/ROs: (1) Basic Grants; and (2) Additional Grants.

Basic Grants

All RCs/RMCs/ROs that have been in existence for several years, and new emerging groups that meet eligibility requirements (see Definitions, Section I.I of the NOFA), may apply for a Basic Grant for up to $100,000. All grantees will access the TOP grant funds through the LOCCS/VRS.

To ensure the progress of the grantees, each grantee will be allowed to draw down through LOCCS/VRS only the specific amount of funding needed to complete the tasks and subtasks specified in the TOP Work Plan. The grantee must complete all activities under Tasks 1 through 4 in the TOP Work Plan prior to advancing to TOP Work Plan Tasks 5 through 7 and receiving additional funds.

The local HUD Field Office or Area Office of Native American Programs (ONAP) will be responsible for approving the TOP Work Plan and permitting grantees access to the LOCCS/VRS.

Additional Grants

Any RC/RMC/RO selected for a Resident Management(RM)/TOP grant in FYs 1988–1995 (including a mini grant for start-up activities) that received less than a total of $100,000

may apply for an Additional Grant not to exceed (including previous grants) the total statutory maximum of $100,000.

To ensure the progress of the grantees, each grantee will be allowed to draw down from LOCCS/VRS only the specific amount of funding needed to complete the tasks and subtasks specified in the TOP Work Plan. Each Additional Grant grantee must provide a progress report that will indicate accomplishments and the remaining tasks to be completed. The local HUD Field Office or Area ONAP will be responsible for approving the TOP Work Plan and permitting grantees access to the LOCCS/VRS.

Each Additional Grant applicant must demonstrate the need for additional funding by submitting evidence of completing specific activities. An Additional Grant applicant may receive a higher score if most of the activities listed in Section I.O(1) of this NOFA are completed and documentation is included as evidence.

NROs/SROs/RROs Grants

The purpose of this grant is to provide technical assistance to public and Indian housing residents desiring either to establish a RC/RMC/RO where one does not exist or to organize an inactive RC/RMC/RO. The awards will be competitive, using the Rating Factors in Section I.P of this NOFA, and applicants must meet eligibility requirements. The local HUD Field Office or Area ONAP will be responsible for approving the TOP Work Plan and determining the ability of the grantee to access the LOCCS/VRS.

Each NRO/RRO/SRO must be registered as a nonprofit organization at the time of application submission. NROs/RROs/SROs must list in the application the name of the RCs/RMCs/ROs that the organization will train or provide technical assistance, and provide letters of support from each entity identified in the application. The NROs/RROs/SROs cannot list RCs/RMC/ROs that have already received the maximum of $100,000.

G. Fair Housing Act Requirement

No grantee may discriminate based on race, national origin, religion, color, familial status, disability, or sex in the provision of any benefits or services.

H. TOP Technical Assistance Grant Agreement

Grant awards will be made through a TOP Technical Assistance Grant Agreement which defines the legal framework for the relationship between HUD and a resident grantee for the proposed activities approved for funding. The grant agreement will contain all administrative documents and forms needed to execute the grant. No funds can be drawn down by a grantee until the grant agreement is executed by the local HUD Field Office or Area ONAP.

I. Definitions

The following definitions apply to public housing, as provided in 24 CFR 964.115 and 964.120:

Resident Council (RC). An incorporated or unincorporated nonprofit organization or association that shall consist of persons residing in public housing and must meet each of the following requirements in order to receive official recognition from the HA/HUD, and be eligible to receive funds for resident council activities, and stipends for officers for their related costs for volunteer work in public housing:

(1) It may represent residents residing in scattered site buildings, in areas of contiguous row houses; or in one or more contiguous buildings; in a development; or in a combination of these buildings or developments.

(2) It must adopt written procedures such as by-laws, or a constitution which provides for the election of residents to the governing board by the voting membership of the residents residing in public housing on a regular basis but at least once every 3 years. The written procedures must provide for the recall of the resident board by the voting membership. These provisions shall allow for a petition or other expression of the voting membership's desire for a recall election, and set the number of percentage of voting membership (''threshold'') who must be in agreement in order to hold a recall election. This threshold shall not be less than 10 percent of the voting membership.

(3) It must have a democratically elected governing board that is elected by the voting membership. At a minimum, the governing board should consist of five elected board members. The voting membership must consist of heads of households (any age) and other residents at least 18 years of age or older and whose name appears on a lease for the unit in the public housing that the resident council represents.

Resident Management Corporation (RMC). An entity that consists of residents residing in public housing must have each of the following characteristics in order to receive official recognition by the HA and HUD:

(1) It shall be a nonprofit organization that is validly incorporated under the laws of the State in which it is located;

(2) It may be established by more than one resident council, so long as each such council:

(a) Approves the establishment of the corporation; and

(b) Has representation on the Board of Directors of the corporation.

(3) It shall have an elected Board of Directors, and elections must be held at least once every 3 years;

(4) Its by-laws shall require the Board of Directors to include resident representatives of each resident council involved in establishing the corporation; include qualifications to run for office, frequency of elections, procedures for recall, and term limits if desired;

(5) Its voting members shall be heads of households (any age) and other residents at least 18 years of age and whose name appears on the lease of a unit in public housing represented by the resident management corporation;

(6) Where a resident council already exists for the development, or a portion of the development, the resident management corporation shall be approved by the resident council board and a majority of the residents. If there is no resident council, a majority of the residents of the public housing development it will represent must approve the establishment of such a corporation for the purposes of managing the project; and

(7) It may serve as both the resident management corporation and the resident council, so long as the corporation meets the requirements of this part for a resident council.

The following definitions apply to Indian Housing, as defined in 24 CFR part 950:

Resident Management Corporation (RMC). An entity that proposes to enter into, or enters into, a contract to manage IHA property. The corporation shall have each of the following characteristics:

(1) It shall be a nonprofit organization that is incorporated under the laws of the State or Indian tribe in which it is located;

(2) It may be established by more than one resident organization, so long as each such organization both approves the establishment of the corporation and has representation on the Board of Directors of the corporation;

(3) It shall have an elected Board of Directors;

(4) Its by-laws shall require the Board of Directors to include representatives of each resident organization involved in establishing the corporation;

(5) Its voting members are required to be residents of the project or projects it manages; and

(6) It shall be approved by the resident organization. If there is no organization, a majority of the households of the project or projects shall approve the establishment of such an organization.

Resident Organization (RO). A Resident Organization (or ''Resident Council'' as defined in Section 20 of the Act) is an incorporated or unincorporated nonprofit organization or association that meets each of the following criteria:

(1) It shall consist of residents only, and only residents may vote;

(2) If it represents residents in more than one development or in all of the developments of an IHA, it shall fairly represent residents from each development that it represents;

(3) It shall adopt written procedures providing for the election of specific officers on a regular basis; and

(4) It shall have a democratically elected governing board. The voting membership of the board shall consist solely of the residents of the development or developments that the RO represents.

The following definitions apply to NROs/RROs/SROs applicants:

(Note: A NRO/RRO/SRO must be incorporated as a nonprofit organization at the time of application submission to be eligible for funding under this NOFA.)

National Resident Organization (NRO). An incorporated nonprofit organization or association for public and Indian housing that meets each of the following requirements:

(1) It is national (i.e., conducts activities or provides services in at least two HUD Areas or two States);

(2) It has experience in providing start-up and capacity-building training to residents and resident organizations; and

(3) Public or Indian housing residents representing different geographical locations in the country must comprise the majority of the board of directors.

Regional Resident Organization (RRO). An incorporated nonprofit organization or association for public or Indian housing that meets each of the following requirements:

(1) It is regional (i.e., not limited by HUD Areas, including Tribal Areas); and

(2) It has experience in providing start-up and capacity-building training to residents and resident organizations; and

(3) Public or Indian housing residents representing different geographical locations in the region must comprise the majority of the board of directors.

Statewide Resident Organization (SRO). An incorporated nonprofit organization or association for public or Indian housing that meets the following requirements:

(1) It is Statewide;

(2) It has experience in providing start-up and capacity-building training to residents and resident organizations; and

(3) Public or Indian housing residents representing different geographical locations in the State must comprise the majority of the board of directors.

J. Eligibility

Only organizations that meet the definition of a RC/RMC/RO or a NRO/RRO/SRO, as set forth under the Section I.I, ''Definitions,'' of this NOFA will be eligible for funding under this NOFA. The local HUD Field Office or Area ONAP will screen applications to determine compliance with the following:

(1) Only public and Indian housing RCs/RMCs/ROs and NROs/SROs/RROs are eligible to apply for this grant. The local HAs, Section 8 developments, or other federally subsidized housing communities are not eligible to apply.

(2) An RC/RMC/RO must have a democratically elected governing board to be eligible for funding. The applicant will be required to complete a certification of resident council board election, which must be notarized and signed by the local HA or an independent third-party monitor. (Not applicable to Indian ROs and NROs/RROs/SROs.)

(3) A RC/RMC/RO will receive consideration for a Basic Grant based on the rating factors contained in Section I.N of this NOFA.

(4) A RC/RMC/RO selected for funding in FYs 1988–1995 that received less than the statutory maximum of $100,000 may apply for an Additional Grant not to exceed (including previous grants) the total statutory maximum of $100,000. Grantees that were awarded the maximum total amount of $100,000 in FYs 1988–1995 are not eligible to apply.

(5) A RC/RMC/RO will receive consideration for an Additional Grant based on the rating factors contained in Section I.O of this NOFA.

(6) Only one application will be considered for funding from an individual development. If more than one application is received from a development, only the application from the duly elected RC/RMC/RO will be considered. All other applications will be rejected.

(7) A city-wide organization (consisting of members from RCs/RMCs/ROs who reside in housing developments that are owned and operated by the same HA within the city) may represent more than one RC/RMC/RO within an HA and apply jointly for a TOP grant. However, the city-wide organization cannot represent any RC/RMC/RO that has received Resident Management (RM)/TOP technical assistance funding totalling $100,000 in previous years. The individual developments under the umbrella of the city-wide organization may apply for a separate grant only if the activities that are included in the individual development's application are not the same activities that are included in the city-wide organization's application, and as long as no public housing development receives more than $100,000. All applications will be screened for duplicative activities.

(8) A jurisdiction-wide organization (consisting of members from RCs/RMCs/ROs who reside in housing developments that are owned and operated by the same HA within that HA's jurisdiction, other than a city-wide organization making an application in accordance with paragraph (7) in this Section I.I) may be formed for the purpose of advising the HA Board of Commissioners or Executive Directors in all areas of HA operations. In that case, the jurisdiction-wide organization may apply for a grant to carry out jurisdiction-wide programs. Jurisdiction-wide organization applicants may receive up to the maximum total of $100,000, provided no public housing development included in its application receives more than a total of $100,000 of TOP funding.

(9) An NRO/SRO/RRO that is organized to provide technical assistance to RCs/RMCs/ROs may receive grants up to the maximum total of $100,000, provided no public housing development included in its application receives more than a total of $100,000 of TOP funding. An NRO/SRO/RRO previously funded for $100,000 cannot reapply for funding under this NOFA, because of the statutory limitation of $100,000.

K. Eligible Activities

Activities for which funding under this NOFA may be provided to an eligible RC/RMC/RO or NRO/RRO/SRO include any combination of, but are not limited to, the following:

(1) Resident Capacity Building:

- Training board members in community organizing, board development, and leadership training; and
- Determining the feasibility of the TOP initiatives for a specific development.

(2) Resident Management:

- Building and strengthening its capacity as an organization (e.g., establishing operating/planning committees and block/building captains to carry out specific organizational tasks, developing by-laws, etc.); developing a cohesive relationship between the residents and the local community; and building a partnership with the HA;
- Training residents, as potential employees of an RMC, in skills directly related to the operation, management, maintenance and financial systems of a project;
- Training of residents with respect to fair housing and equal opportunity requirements, including the residents' rights under the housing program, procedures for reporting violations, all civil rights-related program requirements, requirements for reasonable accommodation, and alleviating architectural barriers.
- Gaining assistance in negotiating management contracts and in related contract monitoring and management procedures, and designing a long-range planning system related to contracts; and
- Assisting in the actual creation of a RC/RMC/RO, such as consulting and acquiring legal assistance to incorporate, prepare by-laws, draft a corporate charter, and apply for nonprofit status.

(3) Resident Management Business Development:

- Economic development training related to resident management and technical assistance for job training and placement in RC/RMC/RO developments;
- Technical assistance and training in business development related to resident management, through feasibility and market studies; development of business plans; affirmative outreach activities; and innovative financing methods, including revolving loan funds; and
- Legal advice in establishing resident management-required business entities.

(4) Partnerships:

- Training that is required to establish a partnership between the HA and the residents. RCs/RMCs/ROs under the same HA's jurisdiction may wish to come together jointly, pool grant funds, and hire a consultant who will provide technical assistance and training related to building a partnership with the HA and assist in implementing activities in the TOP program.
- Other partnerships developed by the local residents/HA in the community.

(5) Social Support Services (such as self-sufficiency; youth initiatives; and elderly/handicapped activities):

- Conducting feasibility studies to determine training and social services needs;
- Coordinating support services;
- Training for programs such as child care, early childhood development, parent involvement, volunteer services, parenting skills, and before- and after-school programs;
- Training programs on health, nutrition, and safety;
- Conducting workshops for youth services, child abuse and neglect prevention, and tutorial services, in partnership with community-based organizations, such as local Boys and Girls Clubs, YMCA/YWCA, Boys/Girls Scouts, Campfire, Big Brothers/Big Sisters, 4–H Clubs, etc.; and
- Training in the development of strategies to implement youth programs successfully. For example, assessing the needs and problems of the youth; improving youth initiatives that are currently active; and training youth, housing authority staff, and RCs/RMCs/ROs on youth initiatives and program activities.
- Developing a plan to establish a congregate meal program for seniors, including seniors living in a family project;
- Developing a plan to establish a transportation system that would provide transportation of residents to senior and youth activities and activities for persons with disabilities; and
- Training programs in developing a resident newspaper that would be written by and for residents.

(6) General:

- Training required on HUD regulations and policies governing the operation of low-income public and Indian housing, financial management, capacity building to develop the necessary skills to assume management responsibilities at the project, and property management;
- Training in accessing other funding sources;
- Developing training programs/performance standards and assessment procedures to measure the success of the RC/RMC/RO;
- Gaining assistance in acquiring fidelity bonding and insurance, but not the cost of the bonding and insurance;
- Assessing potential management functions or tasks that the RC/RMC/RO might undertake;
- Training in resident management-related skills, such as computer and clerical (payroll clerk/records management) skills;
- Resident management-related employment training and counseling;
- Hiring trainers or other experts. By law, resident grantees must ensure that all training is provided by a qualified public housing management specialist (Consultant/Trainer) or the local HA. To ensure the successful implementation of the TOP Work Plan activities, the RCs/RMCs/ROs are required to determine the need to contract for outside consulting/training services, after considering their own capacity. The RCs/RMCs/ROs are encouraged to make maximum use of their HA, nonprofits, or other Federal, State, or local government resources for technical assistance and training needs. All Basic Grantees may use up to $15,000 to obtain a consultant/trainer from the TOP database of registered consultant/trainers for assistance in implementing Tasks 1 through 4 of the TOP Work Plan. (The TOP Work Plan is included in the TOP Application Kit.)

The HA, other nonprofits, Federal, State or local government resources may serve as the consultant/trainer; however, the identified source that intends to establish a contract with the RC/RMC/RO must register with HUD prior to executing a contract.

After completion of Tasks 1 through 4 of the TOP Work Plan, the RC/RMO/RO may hire a consultant/trainer to assist in the implementation of Tasks 5 through 7 of the TOP Work Plan. The grantees must follow 24 CFR 84, which implements OMB Circular A–110 and prescribes standards and policies essential to ensure open and free competition for the proper execution of procurement transactions when selecting a consultant/trainer. HUD will make available the source list of registered consultant/trainers upon request, for use in a competitive solicitation for consultant services to assist the RC/RMC/RO in implementing TOP Work Plan Tasks 5 through 7 of the TOP Work Plan. The amount allowed for hiring an individual consultant for this purpose shall not exceed 50 percent of the total grant award or $50,000, whichever is less. HUD Field Offices will monitor this process to ensure compliance with these requirements.

- Rental or lease of a car, van, or bus by resident grantees to attend training related to the TOP initiatives; and
- Stipends, as provided in this paragraph. Officers and members of a RC/RMC/RO will only receive stipends for participating in or receiving training under the TOP, subject to the availability of funds, if the following applies:

(i) The RCs/RMCs/ROs have completed at least two training programs/performance standards, one of which must be the training program/performance standard listed as number

one in the Work Plan/Training Programs/Performance Standards section (see Work Plan/Training Programs/Performance Standards, Section I.Q of this NOFA). The stipends should be used for additional costs incurred during the training programs, such as childcare and transportation costs; or

(ii) RCs/RMCs/ROs are being trained to implement resident management activities only, and the officers and members of the resident entity are within 3 to 6 months of establishing a dual/full management contract with the PHA/IHA. Generally, no more than 10 percent of the grant funds should be used for this purpose.

(7) Capacity building and training to facilitate resident participation in the Comprehensive Grant Program.

(8) Implementation of activities by a RC/RMC/RO associated with the operation and maintenance of the public and Indian housing project. Examples of eligible activities in this category that have not been mentioned previously are:

- Designing and implementing financial management systems that include provisions for budgeting, accounting, and auditing;
- Designing and implementing the TOP travel policy and personnel policies; performance standards for measuring staff productivity; policies and procedures covering organizational structure, such as recordkeeping, maintenance, insurance, occupancy, and management information systems; any other recognized functional responsibilities relating to property management, in general, and public and Indian housing management, in particular; and responsibilities relating to any TOP initiative;
- Identifying the social support needs of residents, and the securing of that support by hiring a services coordinator. The services coordinator should identify a plan to provide short-term technical assistance, assess, coordinate, and assist in implementing the services needed by the residents, such as health clinics, day care, and security; and
- Assessing potential homeownership opportunities for residents within public and Indian housing or anywhere in the community.

(9) *Administrative costs* necessary for the implementation of activities outlined in paragraphs (1) through (8) of this Section I.K, ''Eligible Activities,'' of the NOFA. Appropriate administrative costs include, but are not limited to, the following items or activities:

- Telephone, telegraph, printing, and sundry nondwelling equipment (such as office supplies, computer software, and furniture). In addition, a reasonable portion of funds may be applied to the acquisition of equipment, such as computer hardware and copying machines. A grantee must justify the need for this equipment in relationship to implementing the TOP initiatives.
- Travel directly related to the successful completion of the required TOP Work Plan. All grantees must adhere to the travel policy established by HUD and must have received TOP orientation training prior to spending any TOP funds, with the exception of funds needed to attend a HUD-sponsored TOP orientation training. The policy sets travel costs at a maximum amount of $5,000 per RC/RMC/RO (not applicable to NROs/RROs/SROs).
- Child care expenses for individual staff and board members, in cases where staff or board members who need child care are involved in training-related activities associated with the development of resident management entities. Not more than 2 percent of the total grant amount (0.02 times the grant award amount) may be used for expenses to support child care needs.

(10) *For NROs/RROs/SROs only:* Organizing and establishing democratically elected and effective RCs/RMCs/ROs:

- Identify inactive RCs/RMCs/ROs that have RM/TOP grants and provide local training and technical assistance to enable the organizations to implement the RM/TOP Work Plan;
- Assist residents in organizing a RC/RMC/RO and provide appropriate training and technical assistance (i.e., incorporation, nonprofit status, by-laws, elections; buildings, floor, and block captains; leadership training; form a partnership with the HA; develop and implement a needs assessment survey). This list is not inclusive.
- Provide training and technical assistance to the resident organizations in accomplishing any of the eligible activities related to the TOP initiatives.
- Provision of training must be performed within the jurisdiction of the resident organization. This will require the trainer to be a local person or entity.

All NROs/RROs/SROs must be knowledgeable and adhere to all policies that relate to the RC/RMC/RO.

L. Ineligible Activities

Ineligible items or activities include, but are not limited to, the following:

(1) Entertainment, including associated costs such as food and beverages, except normal per diem for meals related to travel performed in connection with implementing the TOP Work Plan. (See TOP Travel Notice for more specific guidance.)

(2) Purchase or rental of land or buildings or any improvements to land or buildings;

(3) Activities not directly related to the TOP initiatives, e.g., lead-based paint testing and abatement and operating capital for economic development activities;

(4) Purchase of any vehicle (car, van, bus, etc.) or any other property, other than as described under paragraph (9) of Section I.K, ''Eligible Activities,'' of this NOFA, unless approved by HUD Headquarters or the local HUD Field Office;

(5) Architectural and engineering fees;

(6) Payment of salaries for routine project operations, such as security and maintenance, or for RC/RMC/RO staff, except that a reasonable amount of grant funds may be used to hire a person to coordinate the TOP grant activities or coordinate on-site social services;

(7) Payment of fees for lobbying services;

(8) Any fraudulent or wasteful expenditures or expenditures otherwise incurred contrary to HUD program regulations or directives will be considered ineligible expenditures, upon appropriate determination by an audit by HUD Field Office staff, and HUD will reduce the grantee's grant for the amount expended; and

(9) Any activity otherwise eligible under this NOFA for which funds are being provided from any other source.

M. Selection Process

Each application for a grant award that is submitted in a timely manner, as specified in the application kit, to the appropriate local HUD field office or Area Office of Native American Programs (ONAP) (see Appendix to this NOFA) and that otherwise meets the requirements of this NOFA, will be evaluated. An application for either a Basic Grant or an Additional Grant must receive a minimum score of 50 points (out of the maximum of 110 points) to be eligible for funding. NROs/RROs/SROs must receive a minimum score of 50 points (out of a maximum of 110) to be considered for funding. The local Field Office or Area ONAP will transfer all RC/RMC/RO applications to a grant review site for processing by a Grants Management Team. Upon completion of the review, all applications will be placed in an overall nationwide ranking order and funded until all funds are exhausted.

N. Rating Factors—Basic Grants

An application for funding for a Basic Grant will be reviewed based on the following Rating Factors (maximum of 110 points, including 10 bonus points).

(1) DESCRIBE THE ACTIVITIES AND GOALS OF THE RC/RMC/RO AND THE COMMUNITY (Maximum Points: 25):

- A high score (Maximum Points: 25) is received where the RC/RMC/RO identifies activities and describes the goals of the community. The applicant includes a detailed and structured plan for addressing the needs and accomplishing the overall goals of the RC/RMC/RO.
- A medium score (Maximum Points: 12) is received where the RC/RMC/RO identifies activities and describes the goals of the community, but the plan to address the needs and accomplish the goals is general.
- A low score (Maximum Points: 5) is received where the RC/RMC/RO does not identify any activities and the plan to address the needs and accomplish the goals of the community is unclear.
- A score of zero (0 points) will be given if the applicant fails to respond to this factor.

(2) EVIDENCE OF SUPPORT BY DEVELOPMENT'S RESIDENTS AND RESIDENT INVOLVEMENT IN THE RC's/RMC's/RO's ACTIVITIES (Maximum Points: 25):

- A high score (Maximum Points: 25) is received where the RC/RMC/RO describes support by the residents and provides documentation that shows support and the involvement of the residents in the RC's/RMC's/RO's activities. An applicant must submit a copy of a petition or other documentation (e.g., membership list) showing 75–100 percent of support and involvement of the residents, minutes of the RC's/RMC's/RO's recent monthly meeting, and the attendance log.
- A medium score (Maximum Points: 12) is received where the RC/RMC/RO describes support by the residents and the documentation of support includes a petition or other documentation (e.g., membership list) showing 50 percent of support and involvement of the residents.
- A low score (5 points) is received where the RC/RMC/RO describes support by the residents and the documentation of support includes documentation (e.g., petition, membership list) showing less than 50 percent of support and involvement of the residents.
- A score of zero (0 points) is received where the RC/RMC/RO fails to provide documentation of support by the development's residents and support is not mentioned in the narrative.

(3) EVIDENCE THAT THE RC/RMC/RO HAS A PARTNERSHIP WITH THE HA: (Maximum Points: 25 + 10 bonus points). Under this factor, *10 Bonus Points* will be given if the applicant can provide a narrative describing any additional partnerships the RC/RMC/RO has developed with the housing authority in order to implement other programs or initiatives such as Section 3 initiatives, HUD's Drug Elimination Program, Youth Sports Program, Comprehensive Grant (CGP), or other related initiatives. The narrative describing the additional partnerships must be signed by both the HA's Executive Director and a member of the RC's/RMC's/RO's Board. The narrative cannot include activities that are listed in the letter of support provided by the local HA.

- A high score (Maximum Points: 25) is received where the RC/RMC/RO provides a letter of support from the local HA that shows evidence that the HA and RC/RMC/RO have been working in partnership for at least 2 years, and the HA has provided opportunities and services such as training, contracts for services, transportation, and other in-kind services. (The letter must be signed by the local HA Executive Director.) There must be evidence that the HA has committed to support the RC/RMC/RO activities under the TOP program and has assisted in the preparation of the RC/RMC/RO's application for funding. The partnership must also be evidenced by submitting a copy of an executed Memorandum of Understanding (MOU).
- A medium score (Maximum Points: 12) is received where either: (i) The RC/RMC/RO provides a letter of support from the HA that states its support of the RC's/RMC's/RO's activities, but there is no evidence of a commitment to assist the RC/RMC/RO in implementing the TOP Work Plan or of a partnership established between the HA and the residents; or (ii) the RC/RMC/RO provides detailed documents (e.g., copies of correspondence exchanged with the HA, summaries of meetings held with the HA, and summaries of efforts made to establish a partnership with the HA) indicating that the residents have made a substantial effort to establish a partnership with the HA, but the HA will not support the RC's/RMC's/RO's activities.
- A low score (Maximum Points: 5) is received if the applicant mentions HA support or obstacles encountered in attempting to build a partnership with the HA.
- A score of zero (0 points) is received where the RC/RMC/RO fails to submit a letter of support or documentation of its efforts to obtain HA support.

(4) EVIDENCE THAT THE RC/RMC/RO HAS SUPPORT OF STATE/TRIBAL/LOCAL GOVERNMENT, COMMUNITY ORGANIZATIONS, OR OTHER PUBLIC/PRIVATE SECTOR GROUPS (Maximum Points: 15)

- A high score (Maximum Points: 15) is received where the RC/RMC/RO provides copies of letters of support discussing specific assistance from three or more entities (e.g., State/Tribal/local government, community organizations, or other public/private sector groups).
- A medium score (Maximum Points: 7) is received where the RC/RMC/RO provides letters of support from two entities.
- A low score (Maximum Points: 3) is received where the RC/RMC/RO fails to provide any letters of support, but support of the State/Tribal/local government, community organizations, or other public/private sector groups is mentioned in the narrative.
- A score of zero (0 points) is received where the RC/RMC/RO fails to submit a letter of support or documentation of its efforts to obtain support from the State/Tribal/local government, community organizations, or other public/private sector groups.

(5) CAPABILITY OF RC/RMC/RO IN HANDLING FINANCIAL RESOURCES (Maximum Points: 10). This factor can be demonstrated by including previous experience of the RC/RMC/RO or by providing an explanation of how the financial resources will be obtained:

- A high score (Maximum Points: 10) is received where the RC/RMC/RO provides evidence of having 2 or more years of experience in handling financial resources and has adequate accounting procedures in place or lacks experience but has provided an acceptable plan (i.e., hiring the HA or other private organizations) to develop the financial controls.
- A medium score (Maximum Points: 5) is received where the RC/RMC/RO provides evidence of having 1 year of experience in handling financial resources, but no accounting procedures are established and no acceptable plan has been provided to hire the HA or other private organizations to develop the financial controls.
- A low score (Maximum Points: 2) is received where the RC/RMC/RO provides evidence of having less than 1 year of experience in handling financial resources.
- A score of zero (0 points) is received where the RC/RMC/RO has no experience in handling financial resources and there is clearly no accounting system or procedures established.

O. Rating Factors—Additional Grants

An application for funding for an Additional Grant will be reviewed based

on the following Rating Factors (maximum 110 points, including 10 bonus points).

(1) EVIDENCE OF ACCOMPLISHMENTS AND NEED FOR ADDITIONAL FUNDING (Maximum Points: 30):

- A high score (Maximum Points: 30) is received where the RC/RMC/RO provides a summary that includes accomplishments and a description of need for additional funding. Applicant must also provide evidence that shows the completion of all of the activities listed below, therefore demonstrating progress and a need for additional funding:

(a) Developed an active community organization that includes democratically elected officers (example: election certification signed by the local HA and/or an independent third-party organization and minutes of meetings);

(b) Developed by-laws pursuant to 24 CFR part 950, subpart O, or 24 CFR part 964, whichever is applicable, that govern the operation of the organization (example: a copy of the RC's/RMC's/RO's by-laws);

(c) Developed floor/block captains or residential community groups and program committees that are in training or had training to carry out specific tasks (example: a copy of a list that includes the floor/block captains or residential community groups and program committees, and training plan or certificate of completion of training);

(d) Developed a basic financial management and accounting system that will provide effective control over and accountability for all grant funds; (example: a certification that the accounting system is developed);

(e) Developed a Memorandum of Understanding (MOU) between the RC/RMC/RO and HA that states the elements of their relationship and delineates what support the HA will provide to the resident organization (e.g., on-the-job training, technical assistance, equipment, space, transportation, etc.) and the activities to be conducted by the RC/RMC/RO (example: a copy of an executed MOU between the RC/RMC/RO and HA); and

(f) Evidence of completing a course of TOP-related training (example: a copy of the certificate or letter from the consultant/trainer that indicates the successful completion of training by the RC/RMC/RO).

- A medium score (Maximum Points: 20) is received where the RC/RMC/RO provides a summary that includes accomplishments and a description of need for additional funding and submits evidence of completing four of the activities listed under ''high score'' of this factor.
- A low score (Maximum Points: 10) is received where the RC/RMC/RO submits evidence of completing two of the activities listed under ''high score'' of this factor, but does not submit a summary that includes accomplishments and a description of need for additional funding.
- A score of zero (0 points) is given if the applicant does not submit a summary that includes accomplishments and a description of need for additional funding or evidence of accomplishing any of the activities listed under ''high score'' of this factor.

(2) EVIDENCE OF SUPPORT BY DEVELOPMENT'S RESIDENTS AND RESIDENT INVOLVEMENT IN THE RC's/RMC's/RO's ACTIVITIES (Maximum Points: 25):

- A high score (Maximum Points: 25) is received where the RC/RMC/RO describes support by the residents and provides documentation that shows support and the involvement of the residents in the RC's/RMC's/RO's activities. An applicant must submit a copy of a petition or other documentation (e.g., membership list) showing 75–100 percent of support and involvement of the residents, minutes of the RC's/RMC's/RO's recent monthly meeting, and the attendance log.
- A medium score (Maximum Points: 12) is received where the RC/RMC/RO describes support by the residents and the documentation of support includes a petition or other documentation (e.g., membership list) showing 50 percent of support and involvement of the residents.
- A low score (5 points) is received where the RC/RMC/RO describes support by the residents and the documentation of support includes documentation (e.g., petition, membership list) showing less than 50 percent of support and involvement of the residents.
- A score of zero (0 points) is received where the RC/RMC/RO fails to provide documentation of support by the development's residents and support is not mentioned in the narrative.

(3) EVIDENCE THAT THE RC/RMC/RO HAS A PARTNERSHIP WITH THE HA: (Maximum Points: 25 + 10 bonus points). Under this factor, *10 Bonus Points* will be given if the applicant can provide a narrative describing any additional partnerships the RC/RMC/RO has developed with the housing authority in order to implement other programs or initiatives such as Section 3 initiatives, HUD's Drug Elimination Program, Youth Sports Program, CGP, or other related initiatives. The narrative describing the additional partnerships must be signed by both the HA's Executive Director and a member of the RC's/RMC's/RO's Board. The narrative cannot include activities that are listed in the letter of support provided by the local HA.

- A high score (Maximum Points: 25) is received where the RC/RMC/RO provides a letter of support from the local HA that shows evidence that the HA and RC/RMC/RO have been working in partnership for at least 2 years, and the HA has provided opportunities and services such as training, contracts for services, transportation, and other in-kind services. (The letter must be signed by the local HA Executive Director.) There must be evidence that the HA has committed to support the RC/RMC/RO activities under the TOP program and has assisted in the preparation of the RC/RMC/RO's application for funding. The partnership must also be evidenced by submitting a copy of an executed Memorandum of Understanding (MOU).
- A medium score (Maximum Points: 12) is received where either: (i) the RC/RMC/RO provides a letter of support from the HA that states its support of the RC's/RMC's/RO's activities, but there is no evidence of a commitment to assist the RC/RMC/RO in implementing the TOP Work Plan or of a partnership established between the HA and the residents; or (ii) the RC/RMC/RO provides detailed documents (e.g., copies of correspondence exchanged with the HA, summaries of meetings held with the HA, and summaries of efforts made to establish a partnership with the HA) indicating that the residents have made a substantial effort to establish a partnership with the HA, but the HA will not support the RC's/RMC's/RO's activities.
- A low score (Maximum Points: 5) is received if the applicant mentions HA support or obstacles encountered in attempting to build a partnership with the HA.
- A score of zero (0 points) is received where the RC/RMC/RO fails to submit a letter of support or documentation of its efforts to obtain HA support.

(4) EVIDENCE THAT THE RC/RMC/RO HAS THE SUPPORT OF THE STATE/TRIBAL/LOCAL GOVERNMENT, COMMUNITY ORGANIZATIONS, OR OTHER PUBLIC/PRIVATE SECTOR GROUPS (Maximum Points: 20)

- A high score (Maximum Points: 20) is received where the RC/RMC/RO provides copies of letters from three or more entities (e.g., State/Tribal/local

government, community organizations, or other public/private sector groups).

- A medium score (Maximum Points: 10) is received where the RC/RMC/RO provides letters of support from two entities.
- A low score (Maximum Points: 5) is received where the RC/RMC/RO provides a letter of support from one entity.

P. Rating Factors—NROs/RROs/SROs

An application for funding will be reviewed based on the following Rating Factors (maximum of 110 points, including 10 bonus points).

(1) DESCRIBE THE GOALS AND OBJECTIVES OF THE NRO/RRO/SRO (Maximum Points: 30):

- A high score (Maximum Points: 30) is received where the NRO/RRO/SRO provides a detailed plan clearly describing methods for accomplishing the overall goals and objectives of organizing and training RCs/RMCs/ROs in the TOP initiatives. Applicants should also provide a description of the proposed training, identify selected trainers, and submit support letters from selected trainers and a list of RCs/RMCs/ROs that will receive training.
- A medium score (Maximum Points: 15) is received where the NRO/RRO/SRO provides a general outline of proposed methods for accomplishing the goals and objectives of organizing and training RCs/RMCs/ROs in the TOP initiatives.
- A score of zero (0 points) is received where the NRO/RRO/SRO does not clearly state the goals and objectives of the TOP initiative.

(2) EVIDENCE OF SUPPORT BY NRO/RRO/SRO BOARD OF DIRECTORS. (Maximum Points: 10):

- A high score (Maximum Points: 10) is received where the NRO/RRO/SRO provides documentation that shows support from its board of directors, as evidenced by a board resolution, minutes of meetings, and letters of support.
- A medium score (Maximum Points: 5) is received where the NRO/RRO/SRO provides documentation of support that is limited to minutes of meetings or letters of support.
- Low score (Maximum Points: 2) is received where the NRO/RRO/SRO fails to provide documentation of support, but support is mentioned.

(3) DESCRIPTION OF A PLAN TO FACILITATE THE CREATION OF A PARTNERSHIP(S) AMONG THE HA, RESIDENTS, AND OTHER LOCAL ORGANIZATIONS. (Maximum Points: 20 + 10 bonus points) *Ten Bonus Points* will be given if the applicant can provide a letter of support from the local HA of each RC/RMC/RO identified to receive training/technical assistance in the application.

- A high score (Maximum Points: 20) is received where the NRO/RRO/SRO provides a detailed plan that clearly describes methods for facilitating the creation of a strong partnership among the HAs, residents, and other local organizations. The plan includes the advantages of the partnership to the residents and the community.
- A medium score (Maximum Points: 10) is received where the NRO/RRO/SRO provides a general outline of methods for facilitating the creation of a strong partnership among the HA, residents, and other local organizations.
- A score of zero (0 Points) is received where the NRO/RRO/SRO provides a plan that is not clear.

(4) TRAINING EXPERIENCE:

(4a) *EVIDENCE OF PRIOR RESIDENT TRAINING EXPERIENCE.* This factor can be demonstrated by the support of the RCs/RMCs/ROs. The letters of support should indicate the type and quality of prior training and how the training is being used by the RC/RMC/RO. (Maximum Points: 20)

- A high score (Maximum Points: 20) is received where the applicant provides documentation that shows support by the residents (i.e., letters of support and a list that includes each RC/RMC/RO that the NRO/RRO/SRO has provided training or technical assistance. The list must also include the type of contract the NRO/RROs/SRO has established with each RC/RMC/RO).
- A medium score (Maximum Points: 10) is received where the applicant provides documentation that is limited to a list that includes the RCs/RMCs/ROs to which the NRO/RRO/SRO has provided training or technical assistance. The list must also include the type of contract the NRO/RRO/SRO has established with each RC/RMC/RO.
- Low score (Maximum Points: 5) is received where the applicant fails to provide documentation of support by the development's residents, but support is mentioned.

(4b) *EVIDENCE OF THE CAPABILITY TO PROVIDE LOCAL TRAINING.* The applicant should demonstrate the ability to sustain the training and technical assistance through provision of local or on-site trainers and to coordinate these activities throughout the grant period. The applicant should also demonstrate that the residents will have access to continued training and technical assistance through the local provider after the completion of the grant period. (Maximum Points: 10):

- A high score (Maximum Points: 10) is received where the applicant provides a detailed plan clearly showing its capability to identify and provide local training and to coordinate activities of the local training provider.
- A medium score (Maximum Points: 5) is received where the applicant provides a general description of its capability to identify and provide local training.
- A score of zero (0 points) is received where the applicant does not clearly state its capability to identify and provide local training.

(5) CAPABILITY OF HANDLING FINANCIAL RESOURCES. This factor can be demonstrated through previous experience, adequate financial control procedures, or similar evidence, or by an explanation of how such capability will be obtained. (Maximum Points: 10):

- A high score (Maximum Points: 10) is received where the NRO/RRO/SRO provides evidence of having 2 or more years of experience in handling financial resources and has adequate accounting procedures in place.
- A medium score (Maximum Points: 5) is received where the NRO/RRO/SRO provides evidence of having less than 2 years of experience in handling financial resources or has provided a plan for developing financial controls that are adequate.
- A score of zero (0 points) is received where the NRO/RRO/SRO has no experience in handling financial matters and does not submit evidence that shows that an adequate accounting system is in place or under development.

Q. Top Work Plan/Training Programs/Performance Standards

Each applicant is required to submit a TOP Work Plan that includes TOP-related activities that clearly show accomplishment of the RC's/RMC's/RO's goals within 3–5 years. The budget should include costs that are needed to implement each activity and training program/performance standard included in the TOP Work Plan. The projected budget should not exceed the maximum amount of $100,000. The TOP Work Plan should also include training programs, against which HUD will measure performance standards based on task accomplishments and time frames; for example, how detailed is the TOP Work Plan; what is the time frame for accomplishing the tasks; what resources will be used to accomplish these tasks, etc. Therefore, it is essential that training programs/performance standards and time frames be designed to produce results. Grantees are required to complete at least two training programs/performance standards, one of which must be the training program/performance standard listed below as

number ''1.'' These training programs/performance standards are not all-inclusive, and grantees may work with the HUD Field Office and the local HA to select other training programs/performance standards to meet their specific needs; however, the results must be measurable. Time frames for the suggested training programs/performance standards listed below are flexible, up to the limit established in each activity. Failure to meet the time frames may result in default of the Technical Assistance Grant (TAG) Agreement. Whenever the RC/RMC/RO hires a trainer or other expert for training/technical assistance, the training/technical assistance must be provided by a qualified housing management specialist, Consultant/Trainer, the HA, or other sources knowledgeable about the program.

Training Programs/Performance Standards

The training programs/performance standards include, but are not limited to:

1. Train block/building/floor captains, members of the RC/RMC/RO board, and other interested residents to increase its capacity as an organization. Examples may include, but are not limited to, establishing operating/planning committees and block/building/floor captains to carry out specific organization tasks and developing a cohesive relationship between the residents and the local community.

The training program must begin within 3–6 months after the TAG Agreement has been executed. All grantees must perform this training activity in a timely manner, because it serves to focus the resident community and will broaden participation by providing specific training to a large body of residents.

The following HUD requirements and training elements can be included in a training program:

- 24 CFR part 964 and part 950 (Public/Indian Housing).
- Training in civil rights requirements, including those for persons with disabilities.
- Procedures and guidelines governing TOP.
- Organization development.
- Conflict resolution and mediation.
- Techniques on planning and conducting organizational meetings.
- HUD regulations and policies governing the operation of low-income housing, which includes CGP, Section 3, etc.
- Procurement and contracting; financial management.

2. Develop strategies to decrease crime and violence by creating a sense of community responsibility and common concerns.

This training program must be in place within 6 months of completing TOP Work Plan Tasks 1 through 4; however, the results may take much longer. By completing the first training activity listed in number 1, above, there may be automatic progress made on this training activity, because crime and violence decreases when a sense of community begins to develop. Community and caring, combined with appropriate law enforcement, are the best tools against crime.

3. Train residents to develop a tutorial and scholarship program using a ''Board of Very Important Persons (VIP),'' such as Accountants, Bankers, Lawyers, officials in public/private agencies/organizations, to provide opportunities for educational attainment needed to perform resident-managed functions, including through institutions of higher learning.

This training program must be in place within 12 to 19 months of completing TOP Work Plan Tasks 1 through 4. This training activity may not be appropriate for every resident. The HA and grantee should work closely to develop strategies that fit the needs of the residents living in public/Indian housing.

4. Train residents in areas related to resident-owned businesses and provide technical assistance for job training and placement in the RMC development. This can be accomplished by using programs, such as the Section 3 jobs initiative or, for IHAs, Indian preference in accordance with 24 CFR Part 950.175 and Section 7(b) of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450e(b)).

This training program must be in place within 18 to 24 months of completing TOP Work Plan Tasks 1 through 4. This training activity may be achievable if developed in conjunction with the Section 3 technical assistance initiative and the Comprehensive Grant Program. The training strategy developed to implement the first training activity listed in number 1, above, can facilitate a practical approach to economic development and job training.

5. Train and provide technical assistance to residents in resident-managed business development.

This training program must be in place within 12 to 18 months of completing TOP Work Plan Tasks 1 through 4. This training activity would involve feasibility and market studies, development of business plans, outreach activities and innovative financing methods involving revolving loan funds and legal advice in establishing a resident-managed business entity.

6. Train residents in areas related to social support needs.

This training program must be in place within 24 months of completing TOP Work Plan Tasks 1 through 4. This training activity may involve feasibility studies to determine training and social support needs; training in management-related employment training and counseling; coordination of support services; training for programs such as child care, early childhood development, parent involvement, volunteer services, parenting skills, and before and after school programs; and training programs on health, nutrition and safety.

7. Train residents in the development of strategies to implement successfully a youth program that will address the needs of the youth, such as reducing crime, drug use, violence, and teenage pregnancy.

This training program must be in place within 18 months of completing TOP Work Plan Tasks 1 through 4; however, results may take longer. This training activity could involve, for example, the needs and problems of youth; improving youth initiatives that are currently active; and training youth, housing authority staff, resident management corporations, and resident councils on youth initiatives and program activities.

8. Train residents in the management of public and Indian housing developments.

This training program must be in place within 24 months of completing TOP Work Plan Tasks 1 through 4. This training activity requires residents to establish a partnership with the HA, receive training relating to property management, and establish a dual/full management contract with the HA. The dual management contract allows residents to work jointly with the HA in preparation for managing certain functions in the development. The full management contract allows residents to manage certain functions at the development. Training may involve skills directly related to the operation, management, maintenance, and financial systems of a project; training of residents with respect to fair housing requirements; negotiating management contracts; designing a long-range planning system; and training on HUD regulations and policies governing the operation of low-income public housing.

9. Train residents to develop a homeownership plan under section 5(h) (of the United States Housing Act of 1937) or an equivalent program.

This training program must be in place within 18 months of completing TOP Work Plan Tasks 1 through 4. Training would involve determining feasibility for homeownership by residents, including assessing the feasibility of other housing (including HUD-owned or -held single or multifamily) affordable for purchase by residents.

This training activity may result in residents developing a homeownership plan under the 5(h) (section 5(h) of the United States Housing Act of 1937, 42 U.S.C. 1437c(h)(5)) or an equivalent program and submitting the plan to HUD for approval.

General Top Work Plan Outline (for Basic and Additional Applicants)

(The TOP Work Plan in its entirety is provided in the TOP Application Kit.)

TASK 1—Organize public housing community and outreach to formulate basis to implement TOP initiatives.

TASK 2—Develop operating procedures for grant administration.

TASK 3—Develop memorandum of understanding (MOU) between the RC/RMC/RO and the HA based on collaborative principles, to empower the public housing community to implement TOP initiatives.

TASK 4—Develop a plan to obtain technical assistance and training to implement TOP initiatives.

TASK 5—Contract with consultant/trainer to obtain required training, guidance, and technical assistance in TOP initiatives.

TASK 6—Design, development, and implementation of resident and/or property management initiatives.

TASK 7—Design, development, and implementation of self-sufficiency programs.

TASK 8—Miscellaneous activities/expenditures.

TASK 9—Travel.

General Top Work Plan Outline (for NROs/RROs/SROs)

(The TOP Work Plan in its entirety is provided in the TOP Application Kit.)

TASK 1—Develop and implement an outreach strategy.

TASK 2—Organize resident groups.

TASK 3—Assist in organizing residents around concerns and issues of the TOP and other PIH programs as appropriate.

TASK 4—Develop strategies and implement a plan to ensure an effective partnership among RCs/RMCs/ROs, HAs, and the NROs/RROs/SROs.

TASK 5—Assist resident groups in implementing a strategy for developing TOP initiatives selected by the RC/RMC/RO.

R. HUD Notification

HUD will publish a listing of all successful applicants in the Federal Register, for public information.

II. Checklist of Application Submission Requirements

The application kit, which includes the NOFA, will contain a list of all application submission requirements to complete the application process.

III. Application Process

A. Actions Preceding Application Submission

Consistent with this NOFA, HUD may direct a HA to notify its existing RCs/RMCs/ROs of this funding opportunity. It is important for residents to be advised that, even in the absence of a RC/RMC/RO, the opportunity exists to establish a RC/RMC/RO before applying for funding. If no RC/RMC/RO exists for any of the developments, HUD encourages every HA to post this NOFA in a prominent location within the HA's main office, as well as in each development's office.

B. Application Submission and Development

(1) Submission. An application kit is required as the formal submission to apply for funding. The kit includes the overview of the TOP program, application requirements, forms, certifications, assurances, worksheets, selection criteria, TOP Work Plan, and budget information. An application kit may be obtained by writing the Resident Initiatives Clearinghouse, P.O. Box 6091, Rockville, MD 20850, or by calling the toll-free number: 1–800–955–2232. Requests for application kits must include your name, mailing address (including zip code), and telephone number (including area code), and should refer to document FR–4066. Applications may be requested beginning July 3, 1996. Applicants may access the TOP Application Kit through HUD's World Wide Web at http://www.hud.gov/pih. Each RC/RMC/RO and NRO/RRO/SRO must submit its application to the local HUD Field Office or, in the case of an IHA, to the appropriate HUD Office of Native American Programs, listed in the Appendix to this NOFA.

Each applicant must submit the original and two copies of its application. The Appendix lists addresses of HUD Field Offices that will accept a completed application. All applications must be received by the local HUD Field Office no later than 3:00 p.m. (local time) on the deadline date listed in the application kit. In the interest of fairness to all competing applicants, any application that is received after the deadline date and time will be considered ineligible. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. HUD will date-stamp incoming applications to evidence (timely or late) receipt, and, upon request, will provide an acknowledgement of receipt. Facsimile and telegraphic applications are not authorized and will not be considered.

HUD also encourages an applicant to submit a copy of the application to the HA for the jurisdiction in which the RC/RMC/RO is located.

(2) Development. The application must contain the following information:

(a) *RCs/RMCs/ROs:* Name and address of the RC/RMC/RO. Name and title of the board members of the RC/RMC/RO and date of the last election. A copy of the RC's/RMC's/RO's organizational documents (board resolution, charter, articles of incorporation (if incorporated)) and by-laws, narratives for all rating factors (Basic or Additional Grant), support letters, evidence needed for certain rating factors, forms, certifications, assurances, TOP Work Plan, budget, and training programs/performance standards information. Name and phone number of a contact person (in the event further information or clarification is needed during the application review process). Name, address, and phone number of the HA for the applicant's jurisdiction, to which inquiries may be addressed concerning the application.

(b) *NROs/RROs/SROs:* Name and address of the applicant. Name, title, and telephone number of a contact person (in the event further information or clarification is needed during the application review process). Name and title of the board members and date of last election. A copy of the articles of incorporation and nonprofit documents (i.e., by-laws, tax-exempt status or other organizational documents). Each NRO/RRO/SRO is required to list in the application the RCs/RMCs/ROs that the organization will train or provide technical assistance to, and to provide letters of support from each RC/RMC/RO identified in the application. In addition, the application should include the name and address of the HA for any jurisdiction in which the applicant proposes to organize new or inactive

RCs/RMCs/ROs and a proposed schedule of activities.

(c) *For all applicants:*

- The name of any development for which the funds are proposed to be used;
- A summary of the program proposed in the application. Also include in the summary the proposed length of time, in months, needed to complete TOP activities (i.e., 24 months, 36 months, etc). The maximum length to complete all activities is 5 years;
- The application must be signed by an authorized member of the board of the RC/RMC/RO or NRO/RRO/SRO (not the HA), and must include a resolution from the RC/RMC/RO or NRO/RRO/SRO stating that it agrees to comply with the terms and conditions established under this program and under 24 CFR parts 964 (for public housing) and 950 (for Indian housing); and
- Assurances (e.g., board resolution or certificate) that the RC/RMC/RO or NRO/RRO/SRO will comply with all applicable Federal laws, Executive Orders, regulations, and policies governing this program, including all applicable civil rights laws, regulations, and program requirements.

(3) *HA Support.* HUD is in full support of a cooperative relationship between each RC/RMC/RO and its HA. A resident organization is urged to involve its HA in the application planning and submission process. This can be achieved through meetings to discuss resident concerns and objectives and how best to translate these objectives into activities in the application. The RC/RMC/RO is also encouraged to obtain a letter of support from the HA, indicating to what extent the HA supports the proposed activities listed by the RC/RMC/RO and how the HA will assist the RC/RMC/RO. To foster partnership, HUD encourages NROs/RROs/SROs to obtain letters of support from the local HA of each RC/RMC/RO identified in the application to receive training/technical assistance.

IV. Training and Procurement Requirements

All grantees must adhere to the training and procurement requirements established by HUD. All grantees must attend a HUD-sponsored TOP orientation training before spending TOP funds, with the exception of funds needed to attend the training. If the grantee's grant agreement is executed and the organization is properly established in the LOCCS/VRS, the grantee must draw down the total amount needed to attend the training. If the grantee's grant agreement is not executed and the organization is not properly established in the LOCCS/VRS, the grantee may request the HA to advance the organization the total amount needed to attend the HUD orientation training. The grantee must reimburse the HA when the organization is properly established in the LOCCS/VRS.

A. Training Requirements

(1) RC/RMC/RO grantees are required to have training, and NRO/SRO/RRO grantees are requested to provide training, in the areas listed below, but the amount and scope of training will depend on the resident groups' goals. For example, training required to assume property management is more extensive than training needed to establish a landscaping enterprise. The required training areas are:

(a) HUD regulations and policies governing the operation of low-income housing, which includes the part 900 series of 24 CFR; Section 3 (of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u), implemented in 24 CFR part 135; other Fair Housing Act requirements; and applicable civil rights laws as implemented for public housing (24 CFR part 964) and Indian housing (24 CFR part 950);

(b) Financial management, including budgetary and accounting principles and techniques, in accordance with Federal guidelines, including OMB Circulars A–110 (and implementing regulations at 24 CFR part 84) and A–122, which contain Federal administrative requirements for grants, and A–133, relating to audit requirements for nonprofit organizations;

(c) Capacity building to develop the necessary skills to assume management responsibilities at the project; and

(d) Based on the goals of the RC/RMC/RO, property management or any TOP activities training that is required.

(2) Each grantee must ensure that this training is provided by a qualified housing management specialist (Consultant/Trainer) or the local HA. The RC/RMC/RO may spend up to $15,000 to hire an individual consultant to assist in implementing the TOP Work Plan Tasks 1 through 4. The total allowed for hiring an individual consultant to assist in implementing the TOP Work Plan Tasks 5 through 7 shall not exceed 50 percent of the total award to the grantee or $50,000, whichever is less.

B. Reporting Requirements

Grantees participating in TOP are required to submit Semiannual Reports Form (HUD) 52370, which will evaluate the progress in carrying out the approved TOP workplan/budget. Grantees shall submit the report on a semiannual basis for the periods ending June 30 and December 31. The reports must be submitted to HUD within 30 days after the end of each semiannual reporting period. No grant payments will be approved for drawdown through the Line of Credit Control System/Voice Response System (LOCCS) for grantees with overdue progress reports.

C. OMB Procurement Requirements

(1) The resident grantees must follow 24 CFR part 84, which implements OMB Circulars A–110 and A–122, prescribing standards and policies essential to the proper execution of procurement transactions, including standards of conduct for resident grantees' employees, officers, or agents engaged in procurement actions, to avoid any conflict of interest.

(2) To ensure the successful implementation of the TOP Work Plan activities, the RC/RMC/RO is required to determine the need to contract for outside consulting/training services, after considering its own capacity. Each RC/RMC/RO is encouraged to make maximum use of its HA, nonprofits, or other Federal, State, or local government resources for technical assistance and training needs. To ensure the successful implementation of the TOP Work Plan activities, each Basic Grantee may use up to $15,000 to obtain a consultant/trainer from the TOP database of registered consultant/trainers for assistance in implementing Tasks 1 through 4 of the TOP Work Plan.

(3) HUD encourages all interested consultants/trainers to register to participate in the TOP by completing the Consultant/Trainer Checklist included as an appendix to this NOFA and mailing it to the following address: Department of Housing and Urban Development, Office of Public and Indian Housing, Office of Resident Involvement, 451 7th Street, SW Room 4112, Washington, D.C. 20410.

The TOP grantee may select the HA to serve as the consultant/trainer; however, the HA must register to be included in the TOP database. Grantees may invite other familiar consultants/trainers to register in the TOP database.

(4) After completion of Tasks 1 through 4 of the TOP Work Plan, the RC/RMO/RO may hire a consultant/trainer to assist in the implementation of Tasks 5 through 7 of the TOP Work Plan. The grantees must follow 24 CFR 84, which implements OMB Circular A–110 and prescribes standards and policies essential to ensure open and free competition for the proper execution of procurement transactions,

when selecting a consultant/trainer. HUD will make available the source list of registered consultant/trainers upon request, for use in a competitive solicitation for consultant services to assist the RC/RMC/RO in implementing TOP Work Plan Tasks 5 through 7 of the TOP Work Plan. The amount allowed for hiring an individual consultant for this purpose shall not exceed 50 percent of the total grant award or $50,000, whichever is less. HUD Field Offices will monitor this process to ensure compliance with these requirements.

V. Corrections to Deficient Applications

HUD will notify an applicant in writing of any technical deficiencies in the application. Any deficiency capable of cure will involve only items not necessary for HUD to assess the merits of an application against the Rating Factors specified in this NOFA. For example, signatures needed on certain forms, certifications, TOP Work Plan, budget, and other required forms may be considered curable deficiencies. All applicants, including NROs/RROs/SROs, must submit corrections to the local HUD Field Office (including Area ONAPs, as appropriate) within 14 calendar days from the date of HUD's letter notifying the applicant of any technical deficiency. If corrections are received by the local Field Office after the 14-day time frame, the applications will be considered incomplete and will not be considered for funding.

After the application due date, applicants will not have an opportunity to submit independently information omitted from the application that directly relates to the rating factors contained in the sections on rating factors in this NOFA (sections I.N–I.P.), so as to enhance the merits of the application. HUD encourages all applicants to submit all documents with their applications before the due date, so that applicants will not be affected by the technical deficiency period.

VI. Other Matters

A. Freedom of Information Act

Applications submitted in response to this NOFA are subject to disclosure under the Freedom of Information Act (FOIA). To assist the Department in determining whether to release information contained in an application in the event a FOIA request is received, an applicant may, through clear earmarking or otherwise, indicate those portions of its application that it believes should not be disclosed. The applicant's views will be used solely to aid the Department in preparing its response to a FOIA request; the Department is required by the FOIA to make an independent evaluation of the information.

HUD suggests that an applicant provide a basis, when possible, for its belief that confidential treatment is appropriate; general assertions or blanket requests for confidentiality, without more information, are of limited value to the Department in making determinations concerning the release of information under FOIA. The Department is required to segregate disclosable information from non-disclosable items, so an applicant should be careful to identify each portion of the application for which confidential treatment is requested.

The Department emphasizes that the presence or absence of comments or earmarking regarding confidential information will have no bearing on the evaluation of applications submitted in response to this solicitation.

B. Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(b) of the HUD regulations, the policies and procedures contained in this rule relate only to technical assistance and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

C. Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this notice does not have potential for 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 will result from promulgation of this notice, as those policies and programs relate to family concerns.

D. 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 notice will not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. The NOFA will fund technical assistance and activities for resident management and other TOP initiatives of public and Indian housing. It will have no meaningful impact on States or their political subdivisions.

E. Documentation and Public Access Requirements; Applicant/Recipient Disclosures: HUD Reform Act

Documentation and public access requirements. Pursuant to Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) (HUD Reform Act), HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Materials will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in a Federal Register notice of recipients of HUD assistance awarded on a competitive basis. (See section 102 and 24 CFR part 4, subpart A, as published on April 1, 1996 (61 FR 14448).)

Disclosures. HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

F. Prohibition Against Advance Information on Funding Decisions

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) (Reform Act), codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons

who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics-related questions should contact the HUD Office of Ethics (202) 708–3815 (TTY/Voice) (this is not a toll-free number). Any HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact the appropriate Field Office Counsel or Headquarters counsel for the program to which the question pertains.

G. Information Collection Burden

The Department is soliciting comments, as required under 5 CFR 1320.8(d), before submitting the information collection requirements contained in this NOFA to OMB for renewal of the control number in accordance with 5 CFR 1320.10. The Department is seeking comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within 60 days from the date of this proposal. Comments must refer to the proposal by name and docket number (FR–4066–N–01) and must be sent to: Reports Liaison Officer, Office of Community Relations and Involvement, Department of Housing and Urban Development, 451 7th Street, SW, Room 4112, Washington, DC 20410–3600.

This Notice also lists the following information:

Title of Proposal: NOFA for FY 1996 for the Public and Indian Housing Tenant Opportunities Program—Technical Assistance.

Description of the Need for the Information and Proposed Use: This information collection is required in connection with the issuance of this NOFA, announcing the availability of $15 million to Resident Councils (RCs)/Resident Management Corporations (RMCs)/Resident Organizations (ROs), of which $500,000 is set-aside for National Resident Organizations (NROs)/Regional Resident Organizations (RROs)/Statewide Resident Organizations (SROs) to provide technical assistance and training activities under the TOP program.

Form Number: None.

Members of Affected Public: State and local governments.

Estimation of the Total Number of Hours Needed to Prepare the Information Collection including Number of Respondents, Frequency of Response, and Hours of Response:

	Number of respondents	Frequency of responses	Hours per response	Burden hours
Application Development	5225	10	41	21,422
Total Estimated Burden Hours: 21,422.				

H. Drug-Free Workplace Certification

The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees of federal agencies to certify that they will provide drug-free workplaces. Each potential recipient under this NOFA must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number is 14.853.

Authority: 42 U.S.C. 1437r; 42 U.S.C. 3535(d).

Dated: June 27, 1996.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–P

APPENDIX A

Tenant Opportunities Program

Consultant/Trainer Checklist

Public Housing Tenant Opportunities Program (TOP) Technical Assistance

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0087 (exp.08/31/96)

Public reporting burden for this collection of information is estimated to average 16 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2577-0087), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600.

Do not send this form to the above address.

Completion of this form is voluntary, but if you wish to provide technical assistance, it will ensure that your primary areas of interest/expertise are recorded . Data collected is publicly available. The collection of this information is authorized by Sections 23(c) and (g) of the U.S. Housing Act of 1937 as amended by Section 554 of the Cranston-Gonzales National Affordable Housing Act, P.L. 101-625. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Privacy Act Statement: The U.S. Housing Act of 1937, as amended, authorizes the Department of Housing & Urban Development (HUD) to collect all the information on this form. The Housing & Community Development Act of 1987, 42 U.S.C 3543 authorizes HUD to collect Social Security Numbers (SSN). The information will used to help manage the number and quality of consultants participating in the program. Specifically, the information will allow HUD to categorize consultants by field of expertise, geographic location, check references, and determine daily fees. The SSN is used as a unique identifier. HUD may disclose this information to Federal, State and local agencies when relevant to civil, criminal, or regulatory investigations and prosecutions. It will not be otherwise disclosed or released outside of HUD, except as required and permitted by law. Failure to provide the information could result in HUD's denial of proposed management or fees or cancellation of management contracts for noncompliance with HUD procedures. Providing the SSN is mandatory, and failure to provide it could affect your participation in HUD programs.

Please answer all the following questions. Part 1 asks for your name and other personal information and your business mailing address. Part 2 requests you identify from a list your specific capabilities and skills. Part 3 requests information about your references and background.

Part 1: Personal Information

Your Last Name	Your First Name	Your Social Security Number	Your Home Phone (Include Area Code)

Your Mailing Address (Department)

Office

Street Address | Business Phone (Include Area Code)

City, State & Zip Code | Business Fax (Include Area Code)

Part 2: Skills Inventory

Please identify the types of projects you feel you would be most effective in providing technical assistance. Refer the the categories on the back of this form. These categories are refined further into specific Skill Areas. Please review the categories listed, and then list the specific Skill Areas (eg.A204, C303) which best fits your capabilities and interests in the spaces provided below. You may list up to 15 Skill Areas. Please attach a narrative capability statement and approach to giving drug technical assistance in the Skill Areas you list.

Skill 1	Skill 2	Skill 3	Skill 4	Skill 5	Skill 6	Skill 7	Other (specify)
Skill 8	Skill 9	Skill 10	Skill 11	Skill 12	Skill 13	Skill 14	

Part 3: Work References (Please list at least three references. At least one should be a Housing Agency, Resident Management Corp., or Resident Council you have provided services for.)

Name and Address of Reference	Contact Person	Phone Number (Include Area Code)
1.		
2.		
3.		

Part 3: Background

Do you have experience working with persons who: speak only Spanish? Yes ☐ No ☐ are Native Americans? Yes ☐ No ☐

Do you have a criminal record? Yes ☐ No ☐ Having a criminal record may not prevent you from participating in the program. If you checked "Yes," please explain: (attach additional information if necessary.)

Have you completed all parts of this form? Yes ☐ No ☐

Have you attached a narrative capability statement that explains your experience in the Skill Areas you listed in Part 2? Yes ☐ No ☐

Have you attached your resume? Yes ☐ No ☐

Have you attached your rate of pay justification? Yes ☐ No ☐ This could include a previous invoice for similar work, a recent W-2 form, or an accountant's statement.

Incomplete applications will be returned

form **HUD-52371** (05/15/96)

APPENDIX A

Resource Skill Areas

A Agency Organization and Management

A101 Reserved
A202 Reserved
A203 Reserved
A204 Eviction Procedures
A205 Lease Agreements
A206 Legal Issues and Services
A207 M.I.S./Records Management
A208 Management Concepts, Systems and Techniques
A209 Analysis/Study
A210 Organizational Development
A211 Policy/Mission Development
A212 Population Management
A213 Screening Procedures
A214 Contract Negotiations
A999 Other (Specify)

B Facility Operations (Reserved)

C Program Development

C301 Action Planning
C302 Crises Intervention/Mediation/Conflict Resolution
C303 Designing/Implementing Programs
C304 Facilitation of Work Groups
C305 Needs Assessment/Surveys
C306 Program Evaluation
C307 Public/Private Partnerships
C308 Reserved
C309 Strategic Planning
C310 Training Design and Development
C311 Training Delivery Strategies
C312 Reserved
C313 Use of Volunteers
C314 Working With Local/State Elected Officials
C315 Working With State Legislatures
C316 Working in Multi-Cultural Populations
C317 Self Sufficiency Program
C999 Other (Specify)

D Prevention/Intervention Programs

D401 Aftercare
D402 Community Outreach
D403 Community Based Treatment
D404 Reserved
D405 Reserved
D406 Family Meetings
D407 Intervention/Referral
D408 Reserved
D409 Reserved
D410 Parent Education
D411 Parenting/Family Management
D412 Peer Support Programs
D413 Personal Goal Setting
D414 Reserved
D415 Resident Assistance Programs
D416 Student Assistance Programs
D417 Reserved
D418 Youth Resistance Training
D419 Youth Leadership
D999 Other (Specify)

E Anti-Crime Strategies

E501 Reserved
E502 Reserved
E503 Reserved
E504 Reserved
E505 Reserved
E506 Reserved
E507 Reserved
E508 Hotlines/Tiplines
E509 Neighborhood Watch
E510 Reserved
E511 Resident Patrols
E512 Reserved
E513 Reserved
E514 Reserved
E999 Other (Specify)

F Alternative Programs

F601 4-H
F602 Big Brothers/Big Sisters
F603 Boys/Girls Clubs
F604 Career Planning
F605 College/Scholarship Programs
F606 Education/GED
F607 Entrepreneurship
F608 Foster Grandparents
F609 Reserved
F610 Job Placement/Follow-up
F611 Job Training
F612 Reserved
F613 Mentor/Surrogate Relationships
F614 Reserved
F615 Reserved
F616 Reserved
F617 Sports/Cultural Activities
F618 Tutoring
F619 Vocational Training
F999 Other (Specify)

G Community/Resident Organization and Leadership Training

G700 Community Organizing
G701 Working with Residents or Resident Involvement
G702 Resident Management
G703 Economic Development
G704 Procedures/Guidelines governing TOP
G705 Financial Management/Accounting
G706 Property Management
G707 Procurement and Contracting
F999 Other (Specify)

BILLING CODE 4210–33–C

Appendix B—Names, Addresses, and Telephone Numbers of HUD Field Offices Accepting Applications for Tenant Opportunities Program Technical Assistance

Massachusetts State Office

Public Housing Division, Room 375, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Boston, Massachusetts 02222–1092, (617) 565–5234

Connecticut State Office

Public Housing Division, First Floor, 330 Main St., Hartford, Connecticut 06106–1860, (203) 240–4523

New Hampshire State Office

Public Housing Division, Norris Cotton Federal Building, 275 Chestnut St., Manchester, New Hampshire 03101–2487, (603) 666–7681

Rhode Island State Office

Public Housing Division, Sixth Floor, 10 Weybosset Street, Providence, Rhode Island 02903–3234, (401) 528–5351

New York State Office

Public Housing Division, 26 Federal Plaza, New York, New York 10278–0068, (212) 264–6500

Buffalo Area Office

Public Housing Division, 465 Main Street, Lafayette Court, 5th Floor, Buffalo, New York 14203–1780, (716) 551–5755

New Jersey State Office

Public Housing Division, One Newark Center, Thirteenth Floor, Newark, New Jersey 07102–5260, (201) 622–7900

Washington, D.C. Office

Public Housing Division, 820 First St. N.E., Suite 300, Washington, D.C. 20002–4502, (202) 275–9200

Pennsylvania State Office

Public Housing Division, 100 Penn Square East, Philadelphia, Pennsylvania 19107–3390, (215) 656–0579

Maryland State Office

Public Housing Division, City Crescent Building, 10 South Howard St., 5th Floor, Baltimore, Maryland 21202–2505, (410) 962–2520

Pittsburgh Area Office

Public Housing Division, 339 Sixth Avenue, Pittsburgh, Pennsylvania 15222–2515, (412) 644–6428

Virginia State Office

Public Housing Division, The 3600 Centre, 3600 West Broad St., P.O. Box 90331, Richmond, Virginia 23230–0331, (804) 278–4559

West Virginia State Office

Public Housing Division, 405 Capitol St., Suite 708, Charleston, West Virginia 25301–1795, (304) 347–7000

Georgia State Office

Public Housing Division, Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, Georgia 30303–3388, (404) 331–5136

Alabama State Office

Public Housing Division, Beacon Ridge Tower, 600 Beacon Parkway West, Suite 300, Birmingham, Alabama 35209–3144, (205) 290–7617

Kentucky State Office

Public Housing Division, P.O. Box 1044, 601 W. Broadway, Louisville, Kentucky 40201–1044, (502) 582–6163

Mississippi State Office

Public Housing Division, Dr. A. H. McCoy Federal Building, 100 West Capitol St., Suite 910, Jackson, Mississippi 39269–1096, (601) 965–5308

North Carolina State Office

Public Housing Division, Koger Building, 2306 W. Meadowview Rd., Greensboro, North Carolina 27407–3707, (910) 547–4001

Caribbean Office

Public Housing Division, New San Juan Office Building, 159 Carlos E. Chardon Ave., San Juan, Puerto Rico 00918–1804, (809) 766–6121

South Carolina State Office

Public Housing Division, Strom Thurmond Federal Building, 1835 Assembly St., Columbia, South Carolina 29201–2480, (803) 765–5592

Knoxville Area Office

Public Housing Division, John J. Duncan Federal Building, 710 Locust St. 3rd Floor, Knoxville, Tennessee 37902–2526, (615) 545–4384

Tennessee State Office

Public Housing Division, 251 Cumberland Bend Drive, Suite 200, Nashville, Tennessee 37228–1803, (615) 736–5213

Jacksonville Area Office

Public Housing Division, Southern Bell Tower, 301 West Bay Street, Suite 2200, Jacksonville, Florida 32202–5121, (904) 232–2626

Illinois State Office

Public Housing Division, Ralph Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507, (312) 353–5680

Michigan State Office

Public Housing Division, Patrick V. McNamara Federal Building, 477 Michigan Ave., Detroit, Michigan 48226–2592, (313) 226–7900

Indiana State Office

Public Housing Division, 151 North Delaware St., Indianapolis, Indiana 46204–2526, (317) 226–6303

Grand Rapids Area Office

Public Housing Division, Trade Center Building, 50 Louis, N.W., Grand Rapids, Michigan 49503–2648, (616) 456–2127

Minnesota State Office

Public Housing Division, 220 2nd St. South, Bridge Place Building, Minneapolis, Minnesota 55401–2195, (612) 370–3000

Cincinnati Area Office

Public Housing Division, 525 Vine St., 7th Floor, Cincinnati, Ohio 45202–3188, (513) 684–2884

Cleveland Area Office

Public Housing Division, Renaissance Building, 1350 Euclid Ave., 5th Floor, Cleveland, Ohio 44115–1815, (216) 522–4058

Ohio State Office

Public Housing Division, 200 North High Street, Columbus, Ohio 43215–2499, (614) 469–5737

Wisconsin State Office

Public Housing Division, Henry S. Reuss Federal Plaza, 310 W. Wisconsin Ave., Suite 1380, Milwaukee, Wisconsin 53203–2289, (414) 297–3214

Texas State Office

Public Housing Division, 1600 Throckmorton, P.O. Box 2905, Fort Worth, Texas 76113–2905, (817) 885–5401

Houston Area Office

Public Housing Division, Norfolk Tower, 2211 Norfolk, Suite 200, Houston, Texas 77098–4096, (713) 834–3274

San Antonio Area Office

Public Housing Division, Washington Square Building, 800 Dolorosa St., San Antonio, Texas 78207–4563, (210) 229–6783

Arkansas State Office

Public Housing Division, TCBY Tower, 425 West Capitol Ave., Little Rock, Arkansas 72201–3488, (501) 324–5931

Louisiana State Office

Public Housing Division, Fisk Federal Building, 1661 Canal St., Suite 3100, New Orleans, Louisiana 70112–2887, (504) 589–7200

New Mexico State Office

Public Housing Division, 625 Truman Street N.E., Albuquerque, NM 87110–6443, (505) 262–6463

Oklahoma State Office

Public Housing Division, 500 W. Main Street, 3rd Floor, Oklahoma City, OK 73102–3202, (405) 553–7559

Nebraska State Office

Public Housing Division, 10909 Mill Valley Rd., Omaha, Nebraska 68154–3955, (402) 492–3100

St. Louis Area Office

Public Housing Division, Robert A. Young Federal Building, 1222 Spruce St. Room 3207, St. Louis, Missouri 63103–2836, (314) 539–6583

Kansas/Missouri State Office

Public Housing Division, Room 200, Gateway Tower II, 400 State Avenue, Kansas City, Kansas 66101–2406, (913) 551–5462

Iowa State Office

Public Housing Division, Federal Building, 210 Walnut St., Rm. 239, Des Moines, Iowa 50309–2155, (515) 284–4512

Colorado State Office

Public Housing Division, 633 17th Street, First Interstate Tower North, Denver, Colorado 80202–3607, (303) 672–5440

California State Office

Public Housing Division, Philip Burton Federal Building & U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, California 94102–3448, (415) 556–4752

Hawaii State Office

Public Housing Division, 7 Waterfront Plaza, 500 Ala Moana Blvd., Suite 500, Honolulu, Hawaii 96813–4918, (808) 522–8185

Los Angeles Area Office

Public Housing Division, 1615 W. Olympic Blvd., Los Angeles, California 90015–3801, (213) 251–7122

Sacramento, California Office

Public Housing Division, 777 12th St., Suite 200, Sacramento, California 95814–1997, (916) 551–1351

Arizona State Office

Public Housing Division, Two Arizona Center, 400 N. 5th St., Suite 1600, Phoenix, Arizona 85004–2361, (602) 379–4434

Oregon State Office

Public Housing Division, Cascade Building, 400 Southwest Sixth Ave., Suite 700, Portland, Oregon 97204–1596, (503) 326–2661

Washington State Office

(Alaska public housing applicants send applications to address below)

Public Housing Division, Suite 360, Seattle Federal Office Building, 909 First Avenue, Seattle, Washington 98104–1000, (206) 220–5292

Native American Program Offices

Serves: All States East of the Mississippi River and Iowa:

Mr. Frances Harjo, Administrator, Eastern/Woodlands Office of Native American Programs, 5P, 77 W. Jackson Boulevard, 24th Floor, Chicago, Illinois 60604–3507, (312) 353–1282 or 1–800–735–3239, TDD—1–800–927–9275 or (312) 886–3741

Serves: Oklahoma, Kansas, Missouri, Texas, Arkansas, and Louisiana:

Mr. Wayne Simms, Administrator, Southern Plains Office of Native American Programs, 6.7P, 500 W. Main Street, Suite 400, Oklahoma City, OK 73102–3202, (405) 553–7520

Serves: Colorado, Montana, the Dakotas, Nebraska, Utah, and Wyoming:

Mr. Vernon Haragara, Administrator, Northern Plains Office of Native American Programs, 8P, First Interstate Tower North, 633 17th Street, Denver, Colorado 80202–3607, (303) 672–5462

Serves: California, Nevada, Arizona, and New Mexico:

Mr. Raphael Mecham, Administrator, Southwest Office of Native American Programs, Two Arizona Center, 9 OIP, 400 N. Fifth Street, Suite 1650, Phoenix, Arizona 85004, (602) 379–4156

Administrator, Southwest Office of Native American Programs, Albuquerque Division of Native American Programs, 9EPIDI, Albuquerque Plaza, 201 3rd Street, NW, Suite 1830, Albuquerque, NM 87102–3368, (505) 766–1372

Serves: Washington, Idaho, and Oregon:

Mr. Jerry Leslie, Administrator, Northwest Office of Native American Programs, 10PI, Seattle Federal Office Building, 909 First Avenue, Suite 300, Seattle, Washington 98104, (206) 220–5270

Serves: Alaska:

Mr. Marlin Knight, Administrator, Alaska Office of Native American Programs, 10.1PI, University Plaza Building, 949 East 36th Avenue, Suite 401, Anchorage, Alaska 99508–4399, (907) 271–4633

[FR Doc. 96–17007 Filed 7–2–96; 8:45 am]

BILLING CODE 4210–33–P

Federal Register

Wednesday
July 3, 1996

Part VI

Environmental Protection Agency

Effluent Guideline Plan; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL 5527–5]

RIN 2040–AC86

Effluent Guidelines Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Effluent Guidelines Plan.

SUMMARY: Today's notice announces the Agency's proposed plans for developing new and revised effluent guidelines, which regulate industrial discharges to surface waters and to publicly owned treatment works. Section 304(m) of the Clean Water Act requires EPA to publish a biennial Effluent Guidelines Plan. The Agency requests comment on the proposal and will publish a final plan following the close of the comment period.

DATES: Comments must be received on or before August 2, 1996.

ADDRESSES: Submit comments in writing to: Water Docket Clerk (4101), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The public record for this notice is available for review in the EPA Water Docket, Room 2616 Mall, 401 M Street, SW., Washington, DC. For access to Docket materials, call (202) 260–3027 between 9 a.m. and 3 p.m. for an appointment. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Eric Strassler, EPA Engineering and Analysis Division, telephone 202–260–7150.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities
II. Legal Authority
III. Introduction
A. Purpose of Today's Notice
B. Overview of Today's Notice
IV. Effluent Guidelines Program Background
A. Statutory Framework
B. Components of an Effluent Guideline Regulation
C. Development of Effluent Guideline Regulations
D. NRDC Litigation and Consent Decree
V. Today's Proposed Effluent Guidelines Plan
A. Effluent Guidelines Currently Under Development
1. Schedule for Ongoing Rulemaking
2. Changes in Rulemaking Scope, Schedules and/or Organization
a. Metal Products and Machinery
b. Pulp, Paper and Paperboard
c. Pharmaceutical Manufacturing
d. Transportation Equipment Cleaning
B. Process for Selection of New Effluent Guideline Regulations
1. Selection Criteria and Data Sources
a. Selection Criteria
b. Data Sources
2. New Rulemaking Activities
a. Iron and Steel Manufacturing
b. Other Rules
C. Preliminary Studies
1. Recently Completed Studies
a. Petroleum Refining
b. Metal Finishing
c. Textile Mills
d. Inorganic Chemicals
e. Steam Electric Power Generating
f. Iron and Steel Manufacturing
2. Ongoing Studies
a. Photographic Processing
b. Chemical Formulators and Packagers
3. Future Studies
a. Coal Mining
b. Feedlots
c. Stormwater Discharges
d. Hospitals
e. Ore Mining and Dressing
f. Glass Manufacturing
g. Canmaking
h. Organic Chemicals, Plastics and Synthetic Fibers
i. Pulp, Paper and Paperboard
j. Generic Effluent Guideline Issues
D. Other Rulemaking Actions
1. Leather Tanning and Finishing
2. Ore Mining and Dressing
3. Marine Discharges from Vessels of the Armed Forces
VI. Recommendations of the Effluent Guidelines Task Force
A. Data Sources
B. Criteria for Selecting Industries for Preliminary Studies
C. Design of Preliminary Studies
VII. Request for Comments
VIII. Economic Impact Assessment; Executive Order 12866
Appendix A—Promulgated Effluent Guidelines
Appendix B—Current and Future Rulemaking Projects
Appendix C—Preliminary Studies

I. Regulated Entities

Today's proposed plan does not contain regulatory requirements and does not provide specific definitions for each industrial category. Entities potentially affected by decisions regarding the final plan are listed below.

Category of entity	Examples of potentially affected entities
Industry	Pulp, Paper and Paperboard; Pesticide Formulating, Packaging and Repackaging; Coastal Oil and Gas Extraction; Centralized Waste Treatment; Pharmaceutical Manufacturing; Metal Products and Machinery; Landfills and Incinerators; Industrial Laundries; Transportation Equipment Cleaning; Iron and Steel Manufacturing; Coal Mining; Feedlots; Hospitals; Ore Mining and Dressing; Glass Manufacturing; Canmaking

To determine whether your facility would be regulated, you should carefully examine the applicability criteria in the appropriate proposed rule (previously published or forthcoming). Citations for previously published proposed rules and schedules for forthcoming proposed rules are provided in Appendix B of today's notice.

II. Legal Authority

Today's notice is published under the authority of section 304(m) of the Clean Water Act, 33 U.S.C. 1314(m), which requires EPA to publish a biennial Effluent Guidelines Plan, schedule review and revision of existing regulations and identify categories of dischargers to be covered by new regulations.

III. Introduction

A. Purpose of Today's Notice

Today's notice announces the Agency's proposed biennial plan pursuant to sec. 304(m). EPA invites the public to comment on the proposed plan, and following the close of the comment period the Agency will publish a final plan.

B. Overview of Today's Notice

The Agency proposes to develop effluent limitation guidelines and standards (''effluent guidelines'') as follows:

1. Continue development of 10 rules listed in the 1994 Effluent Guidelines Plan (59 FR 44234, August 26, 1994). The categories are: Pulp, Paper and Paperboard; Pesticide Chemicals (Formulating, Packaging and Repackaging); Coastal Oil and Gas Extraction; Centralized Waste Treatment; Pharmaceutical Manufacturing; Metal Products and Machinery, Phases 1 and 2; Landfills and Incinerators; Industrial Laundries; and Transportation Equipment Cleaning.

2. Begin development of revised effluent guidelines for the Iron and Steel Manufacturing category.

3. Initiate three preliminary studies to assist in determining whether new or revised rules should be developed for particular categories. Each preliminary

study will generally take approximately two years to complete.

4. Complete preliminary studies on the Photographic Processing and Chemical Formulating and Packaging industries.

5. Plan for development of seven additional effluent guidelines, either new or revised. The point source categories to be covered by these guidelines will be identified in future biennial Effluent Guidelines Plans. EPA's current plan is to begin development of one additional rule in 1996 and two rules each year from 1997 to 1999, with proposed rules published between 1998 and 2001, and final action taken between 2000 and 2003 respectively.

IV. Effluent Guidelines Program Background

A. Statutory Framework

The Federal Water Pollution Control Act (FWPCA) of 1972 (Pub. L. 92–500, Oct. 18, 1972) (the ''Act'') established a program to restore and maintain the integrity of the nation's waters. To implement the Act, Congress directed EPA to issue effluent limitation guidelines, pretreatment standards, and new source performance standards for industrial dischargers. These regulations were to be based principally on the degree of effluent reduction attainable through the application of control technologies.

The 1977 amendments to the FWPCA, known as the Clean Water Act Amendments (Pub. L. 95–217, Dec. 27, 1977) (CWA), added an additional level of control for conventional pollutants such as biochemical oxygen demand (BOD) and total suspended solids (TSS), and stressed additional control of 65 toxic compounds or classes of compounds (from which EPA later developed a list of 126 specific ''priority pollutants''). To further strengthen the toxics control program, sec. 304(e), added by the 1977 amendments, authorized the Administrator to establish management practices to control toxic and hazardous pollutants in plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage.

The effluent guidelines promulgated by EPA reflect the several levels of regulatory stringency specified in the Act, and they also focus on different types of pollutants. Section 301(b)(1)(A) directs the achievement of effluent limitations requiring application of best practicable control technology currently available (BPT). In general, effluent limitations based on BPT represent the average of the best treatment technology performance for an industrial category. For conventional pollutants listed under sec. 304(a)(4), sec. 301(b)(2)(E) directs the achievement of effluent limitations based on the performance of best conventional pollutant control technology (BCT). The Act requires that BCT limitations be established in light of a two-part ''cost-reasonableness'' test. The test, which assesses the relative costs of conventional pollutant removals, is described in detail in the Federal Register notice promulgating the final BCT rule on July 9, 1986 (51 FR 24974).

Both BPT and BCT regulations apply only to direct dischargers, i.e., those facilities that discharge directly into waters of the United States. In general, regulations are not developed to control conventional pollutants discharged by indirect dischargers because the POTWs receiving those wastes normally provide adequate treatment of these types of pollutants or they can be adequately controlled through local pretreatment limits.

For the toxic pollutants listed in sec. 307(a), and for nonconventional pollutants, secs. 301(b)(2)(A), (C), (D) and (F) direct the achievement of effluent limitations requiring application of best available technology economically achievable (BAT). Effluent limitations based on BAT are to represent at a minimum the best control technology performance in the industrial category that is technologically and economically achievable.

In addition to limitations for existing direct dischargers, EPA also establishes new source performance standards (NSPS) under sec. 306 of the Act, based on the best available demonstrated control technology, processes operating methods, or other alternatives. NSPS apply to new direct dischargers. Generally the NSPS limitations are to be as stringent, or more stringent than BAT limitations for existing sources within the industry category or subcategory.

Although the limitations are based on the performance capability of particular control technologies, including in some cases in-process controls, dischargers may meet their requirements using whatever combination of control methods they choose, such as manufacturing process or equipment changes, product substitution, and water re-use and recycling. The limitations and standards are implemented in permits issued through the National Pollutant Discharge Elimination System (NPDES) pursuant to sec. 402 of the Act for point sources discharging directly to the waters of the United States.

Section 402 of the CWA provides for the issuance of permits to direct dischargers under NPDES. These permits, which are required by sec. 301, are issued either by EPA or by a State agency approved to administer the NPDES program. Individual NPDES permits must incorporate applicable technology-based limitations contained in guidelines and standards for the industrial category in question. Where EPA has not promulgated applicable technology-based effluent guidelines for an industry, sec. 402(a)(1)(B) provides that the permit must incorporate such conditions as the Administrator determines are necessary to carry out the provisions of the Act. In other words, the permit writer uses best professional judgment (BPJ) to establish technology-based limitations for the dischargers.

Indirect dischargers are regulated by the general pretreatment regulations (40 CFR Part 403), local discharge limits developed pursuant to Part 403, and categorical pretreatment standards for new and existing sources (PSNS and PSES) covering specific industrial categories. These categorical standards under sections 307(b) and (c) apply to the discharge of pollutants from non-domestic sources which interfere with or pass through publicly owned treatment works (POTWs), and are enforced by POTWs or by State or Federal authorities. The categorical pretreatment standards for existing sources covering specific industries are generally analogous to the BAT limitations imposed on direct dischargers. The standards for new sources are generally analogous to NSPS.

To ensure that effluent guidelines remain current with the state of the industry and with available control technologies, section 304(b) of the Act provides that EPA shall revise the effluent guidelines at least annually if appropriate. In addition, section 301(d) provides that EPA shall review and if appropriate, revise any effluent limitation required by section 301(b)(2).

B. Components of an Effluent Guideline Regulation

The principal components of effluent guideline regulations are numerical wastewater discharge limitations controlling specified pollutants for a given industry. These are typically concentration-based limits (specified in units such as milligrams of pollutant per liter of water) or production-based mass limits (specified in units such as milligrams of pollutant per unit of production). Numerical limits also cover parameters such as pH and temperature.

A guideline often subcategorizes an industry based on differences in raw materials, manufacturing processes, characteristics of the wastewaters, or type of product manufactured; in some cases, non-water quality environmental impacts or other appropriate factors that justify the imposition of specialized requirements on the subcategorized facilities are used as a basis. EPA develops a set of effluent limitations for each category or subcategory at each level of control (BPT, BAT, etc.) that is addressed in the guideline.

A guideline also may prescribe Best Management Practices (''BMPs'') in addition to or in lieu of numerical limits. BMPs may include, for example, requirements addressing the minimization or prevention of storm water runoff, plant maintenance schedules and requirements addressing the training of plant personnel.

C. Development of Effluent Guideline Regulations

EPA has accumulated substantial experience and expertise in the course of preparing 51 effluent guidelines. This section of the notice summarizes the various tasks which the Agency typically undertakes in an effluent guideline rulemaking.

EPA begins work on an effluent guideline rulemaking project by tentatively defining the scope and dimensions of the industry category. The Agency determines the size of the category as it has been defined, using all available sources of information. Given the diversity of regulatory categories, no single source suffices to establish size. At various times, EPA has used one or more of the following sources: standard published sources, information available through trade associations, data purchased from the Dun and Bradstreet, Inc. data base, other publicly available data bases, U.S. Census Bureau data, other U.S. Government information, and any available EPA data base. If a category is very large and/or diverse, the Agency will determine whether it can be broken down into appropriate categories or subcategories. If more than one subcategory can be identified, the Agency may need to establish priorities for regulation.

EPA works with interested stakeholders early in the regulation development process. State and local regulatory officials familiar with the industry are consulted, and business associations and citizen groups are also invited to share information.

Regulatory information about industry categories is obtained by EPA largely through its survey questionnaires, site visits and wastewater sampling. Survey questionnaires solicit detailed information necessary to assess the statutory rulemaking factors (particularly technological and economic achievability of available controls), water use, production processes, and wastewater treatment and disposal practices. A significant portion of the Agency's questionnaires typically seek information necessary to assess the economic achievability of a prospective regulation.

Generally, the Agency defines its site visits and wastewater sampling effort based on information received in response to the questionnaires. While the questionnaire provides information about production processes, water uses and, in general terms, what is found in the industry's wastewater, on-site sampling and detailed monitoring data are used to characterize the pollutants found in discharges. Site visits are also used to assess manufacturing processes, wastewater generation, pollutant control technologies, pollution prevention opportunities (e.g., process changes), and potential non-water quality impacts of effluent guidelines (i.e., air emissions, sludge generation, energy usage).

In developing a list of pollutants of concern for an industry, EPA initially will study wastewater samples for all pollutants that can be measured by recognized analytical methods.

Currently over 457 pollutants or analytes can be measured by these methods. This includes the subset of 126 pollutants known as ''priority'' pollutants developed pursuant to CWA sec. 307(a). EPA will develop new analytical methods to cover additional pollutants as necessary. For example, the Agency has developed new methods for use in the Pesticides, Pulp and Paper, Pharmaceuticals, and Offshore Oil and Gas effluent guidelines. (EPA generally proposes any new methods for public comment concurrently with the proposed rule.)

Most of the effluent sampling and analysis that has been conducted specifically to support effluent guideline regulations promulgated to date has been conducted by EPA. On occasion, however, these activities have been pursued on a cooperative basis with industry parties. For example, EPA and numerous pulp and paper manufacturers participated in cooperative efforts to sample and analyze effluent, wastewater treatment sludge, and pulp from domestic mills that bleach chemical pulp in their production processes.

EPA conducts engineering and statistical analyses of the technical data to develop control and treatment options for the pollutants of concern, and the projected costs for these options. The Agency considers the costing information and economic data gathered from the survey and other sources in its economic impact analysis, and then selects one or more of the options as the basis for a rulemaking proposal. It also develops assessments of the environmental impact of the industry discharges, and may conduct a regulatory impact analysis as well.

The Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Title III of Pub.L. 104–121, March 29, 1996), requires that EPA conduct regulatory flexibility analyses for rules which have a significant impact on a substantial number of small entities. These analyses are to assess the impact of the rule on small entities and consider alternative ways of reducing those impacts. Section 344 of SBREFA also requires EPA to organize a ''small business advocacy review panel'' for each rule where a regulatory flexibility analysis is required.

Prior to publishing a proposed rule, EPA usually conducts a public meeting to discuss the Agency's findings and describe the general outlines of the rule. Following publication, a hearing is conducted during the public comment period, and supplemental notices of new data may be published, if appropriate.

The Agency's outreach efforts to improve the regulatory development process have involved some industries subject to effluent guidelines. One such special effort is the Common Sense Initiative (CSI), a committee established under the Federal Advisory Committee Act (FACA)(Pub.L. 92–463). Through CSI, EPA has brought together federal, state, and local government representatives, environmental interest and environmental justice leaders, labor representatives, and industry executives to examine the full range of environmental requirements affecting six pilot industries. These six teams are exploring comprehensive strategies for environmental protection which include regulatory and voluntary approaches on which all can agree. Two of the six teams, Metal Finishing and Iron and Steel, are discussing effluent guidelines issues as well as other regulations. EPA looks forward to receiving recommendations from these CSI teams.

D. NRDC Litigation and Consent Decree

EPA has developed today's proposed Effluent Guidelines Plan pursuant to a consent decree in *NRDC et al* v. *Browner* (D.D.C. Civ. No. 89–2980, January 31, 1992, as modified). The Decree commits EPA to schedules for proposing and

taking final action on effluent guidelines, and also for conducting preliminary studies. Some of the industry categories to be regulated are specified in the Decree. For the remaining required rulemakings,

EPA retains the discretion to select guidelines for development based on Agency priorities.

EPA will use the results of the preliminary studies and other information (such as public comments and recommendations from state and local governments) to select industries for future regulation. The Decree requires the Agency to study eleven industries.

The Decree also required EPA to establish the Effluent Guidelines Task Force, an advisory committee, to formulate recommendations for improvements to the effluent guidelines program. The Agency created the Task Force in 1992. The Task Force has held several public meetings and has begun to present recommendations to the EPA Administrator. The work of the Task Force is discussed further in Section V of today's notice.

Since 1992, EPA and NRDC have agreed to several modifications of the Decree consisting of deadline extensions for certain rules.

V. Today's Proposed Effluent Guidelines Plan

A. Effluent Guidelines Currently Under Development

1. Schedule for Ongoing Rulemaking

The Agency is currently in the process of developing new or revised effluent guidelines for 10 categories. (These categories were listed in the Agency's 1994 Effluent Guidelines Plan.) The categories and actual or Consent Decree dates for proposal and final action are set forth in Table 1.

TABLE 1.—EFFLUENT GUIDELINES CURRENTLY UNDER DEVELOPMENT

Category	Proposal	Final action
	Consent decree or actual	Consent decree
Pulp, Paper and Paperboard	12/17/93	(1)
Pesticide Formulating, Packaging, and Repackaging	4/14/94	9/96
Centralized Waste Treatment	1/27/95	2 9/96
Coastal Oil and Gas Extraction	2/17/95	10/96
Pharmaceutical Manufacturing	5/2/95	2 8/96
Metal Products and Machinery, Phase	15/30/95	2,3 9/96
Industrial Laundries	2 12/96	2 12/98
Transportation Equipment Cleaning	2 12/96	2 12/98
Landfills and Incinerators	2 3/97	2 3/99
Metal Products and Machinery, Phase 2	3 12/97	2,3 12/99

1 The Pulp, Paper and Paperboard rulemaking is not covered by the January 31, 1992 consent decree.
2 EPA is discussing extensions to Consent Decree dates with NRDC.
3 EPA is considering merging Phases 1 and 2 of the Metal Products and Machinery rule. See discussion below.

The Agency has only recently received funding for Fiscal Year 1996, and funding restrictions may affect rulemaking schedules. EPA is discussing extensions to all the Consent Decree dates with NRDC, for both budgetary reasons and specific policy, technical and administrative issues in some regulations.

2. Changes in Rulemaking Scope, Schedules and/or Organization

a. Metal Products and Machinery. EPA is considering merging Phases 1 and 2 of the Metal Products and Machinery rule. The Phase 1 proposed rule, covering seven industry sectors, was published on May 30, 1995 (60 FR 28209). Such a merger would mean that EPA would not proceed with a final rule for Phase 1, but would issue a new proposal covering both phases (15 sectors total) and promulgate a final rule covering both phases.

There are several reasons why a single final rule for this category would be desirable:

- The same basis and applied metals as well as the same manufacturing and wastewater treatment unit operations typically are used throughout both phases of the MP&M category. The classification of a facility as MP&M Phase 1 or Phase 2 should not affect its ability to treat its wastewater to a given level.
- The complexities of having different effluent limits across the two phases (for the same pollutant and level of control) would be avoided. Having one set of effluent limits for the MP&M category greatly simplifies implementation for POTWs and compliance for facilities.
- Merging these rules would allow EPA to use POTW survey data being collected for Phase 2 to develop more precise estimates of the administrative burden for all sectors, and to consider aggregated environmental impacts and compliance costs.
- Opportunities to explore alternative permitting requirements such as BMPs would be enhanced.
- The additional time needed for a combined rule would allow more extensive stakeholder involvement. For example, members of the Metal Finishing CSI team have expressed interest in working with EPA on obtaining additional data, and POTWs and NPDES permit authorities will be able to provide more substantive data on implementation issues.

EPA invites comment on the merits of combining the two phases into one rule.

b. Pulp, Paper and Paperboard. EPA issued the proposed Pulp, Paper and Paperboard ''Cluster Rules'', covering both effluent guidelines and National Emission Standards for Hazardous Air Pollutants (NESHAP), on December 17, 1993 (40 CFR part 430, 58 FR 66078). The proposed effluent guidelines were organized into 12 subcategories.

EPA plans to promulgate final effluent guidelines for two subcategories later this year: Bleached Papergrade Kraft and Soda (proposed Subpart B), and Papergrade Sulfite (proposed Subpart E). At least eight of the remaining subcategories will be addressed in a final rule expected in 1997: Unbleached Kraft; Semi-Chemical; Mechanical Pulp; Non-Wood Chemical Pulp; Secondary Fiber Deink; Secondary Fiber Non-Deink; Fine and Lightweight Papers from Purchased Pulp; Tissue, Filter, Non-Woven, and Paperboard from Purchased Pulp (proposed Subparts C, F, G, H, I, J, K and L, respectively). Two remaining subcategories, Dissolving Kraft (proposed Subpart A) and

Dissolving Sulfite (proposed Subpart D), will be addressed in a subsequent rule.

c. Pharmaceutical Manufacturing. EPA published a proposed rule for the Pharmaceutical Manufacturing Category on May 2, 1995 (60 FR 21592). In that notice, the Agency stated that it is required by the Clean Air Act Amendments of 1990 (CAAA) to promulgate NESHAP regulations by 1997; no NESHAP regulations were proposed along with the water regulations.

In developing the proposed effluent guidelines and standards, EPA coordinated its efforts to make sure that the rule would be consistent, within the constraints of the governing statutes, with the forthcoming air emissions standards. The Agency's analysis of industry wastewater showed a substantial portion consists of volatile organic compounds which pose a risk to human health through increased exposure to carcinogens and increased exposure to systemic toxicants from atmospheric exposure.

The Agency intends to propose the NESHAP in November 1996, and promulgate the standards in November 1997. The current Consent Decree for effluent guidelines requires promulgation for the pharmaceutical industry by August 1996. While EPA's original intent was to issue separate air and water rules utilizing a common technology basis, the Agency is considering the merits of jointly promulgating the air and water regulations by the 1997 CAAA deadline. The Agency believes that a single promulgation of industry standards will be beneficial in terms of consistency and clarity, and will result in more integrated multi media regulatory controls. EPA also believes that these benefits would outweigh benefits that might be obtained from a slightly earlier promulgation of the effluent guidelines alone.

EPA invites public comment on the merits of simultaneous promulgation of air and water standards for this industry.

d. Transportation Equipment Cleaning. EPA began development of effluent guidelines for the Transportation Equipment Cleaning industry assuming that the scope would include effluent generated from the interior cleaning of tank trucks, rail tank cars, and tank barges, and the exterior cleaning and de-icing of aircraft. However, as a result of data collection and analysis, the Agency has decided to limit the scope of the rule to effluent generated from tank and container interior cleaning.

Last year EPA decided to exclude aircraft exterior cleaning and de-icing from the current effluent guidelines development effort because of other Agency requirements recently promulgated under the stormwater program (60 FR 51215, September 29, 1995). New stormwater permits applicable to airports require implementation of pollution prevention plans to control stormwater discharges. EPA anticipates that the stormwater permit program will reduce, and may eliminate the need for a specific effluent guideline covering these discharges.

The Agency will track the effectiveness of stormwater pollution prevention efforts to control deicing discharges and other airport stormwater runoff and decide later if an effluent guideline is necessary for aircraft exterior cleaning and de-icing.

B. Process for Selection of New Effluent Guideline Regulations

Section 304(m) does not specify criteria that the Agency should use to select categories for regulation by effluent guidelines. For the first Effluent Guidelines Plan, published January 2, 1990 (55 FR 80), EPA listed criteria it had used to select categories. The 1992 consent decree, while specifying some of the categories to be regulated, allows the Agency flexibility in selecting future categories for regulation, and does not specify selection criteria. Therefore EPA intends to continue to use selection criteria such as those listed in the 1990 plan.

1. Selection Criteria and Data Sources

a. Selection Criteria. EPA considers three kinds of criteria for selection of categories: environmental factors, utility to states and POTWs, and economic impacts. The environmental factors allow the Agency to compare the discharges of various categories to approximate risk to human health and the environment. The specific factors used have included:

- Total priority pollutants discharged (lbs/day).
- Total pollutants discharged (lbs/day).
- Total priority toxic pounds-equivalent discharged (lbs/day).
- Number of carcinogens present in discharges.
- Number of facilities discharging to water quality-impaired receiving waters.
- Number of documented cases of sediment contamination.

Data for all of the above factors may not be available for all of the categories under consideration. EPA has found that an estimate of the total priority pollutants discharged is usually available for each category, and can be used to calculate the total priority toxic pounds-equivalent discharged. These have been among the most useful indicators for selecting categories for effluent guidelines. The toxic pounds-equivalent (developed for most of the 126 priority pollutants and hundreds of nonconventional pollutants) are calculated using the mass loading of a pollutant (measured in pounds), multiplied by a weighting factor for each pollutant based on toxicity and potential for bioaccumulation. The individual values are then summed to provide the category value.

The second broad criterion EPA uses in selecting industries for development of effluent guidelines is the ''utility'' or ''usefulness'' of the regulation. This factor reflects the fact that, even in the absence of a national effluent guideline, a discharger of pollutants into waters of the United States must obtain an NPDES permit incorporating technology-based effluent limits. Permit writers at facilities not covered by national guidelines are directed to use Best Professional Judgment in determining what technology-based limits are appropriate. (A roughly analogous situation exists with respect to the development of ''local limits'' for those facilities discharging into POTWs). At some facilities, however, development of BPJ permits by individual permit writers may be especially difficult due to the complexity of wastestreams, presence of pollutants with poorly understood treatability characteristics, or other factors. National effluent guidelines may be especially appropriate for such facilities and the categories of which they are a part. Promulgation of new and revised categorical pretreatment standards was the first recommendation in ''National Pretreatment Program: Report to Congress'' (EPA 21W–4004, July 1991).

In assessing the utility or usefulness of a national effluent guideline, EPA typically looks at a variety of factors. Among these are:

- Average priority pollutants discharged per facility;
- Average priority toxic pounds-equivalent discharged per facility;
- Number of discharging facilities.

The number of priority pollutants discharged per facility and the toxic pounds-equivalent levels are considered as relative indicators of plant complexity. The number of discharging facilities signifies the greater impact of a guideline on a large-population category, in reducing permit writing workload and implementing permit limitations on a timely basis.

The economic impact factors consist of cost and economic achievabilty of additional controls, and investment cycle. The cost and economic achievability factor is an estimate based on the Agency's projection of what the ''best available technology'' would be in a new or revised regulation, and the impacts of such costs on the industry. The investment cycle factor is a consideration of the timing of an industry's capital investments in equipment. This is based on an assumption that if there is a periodic equipment replacement cycle for an industry, the economic impact of a new or revised regulation may be less if the compliance period coincides with the replacement cycle. These economic factors are difficult to estimate in the absence of detailed questionnaire data and other information that are gathered during a regulation development project, but EPA attempts to assemble some economic projections during its preliminary studies.

These criteria are groups of factors that the Agency considers and weighs in setting rulemaking priorities. The criteria can not be applied mechanically. In applying the criteria and selecting categories of dischargers for the preparation of new or revised guidelines, the Agency uses considerable judgment grounded in its expertise in the regulation of the discharge of pollutants and the administration of the Clean Water Act and other authorities that address pollution of the nation's waters.

The Effluent Guidelines Task Force has developed recommendations on criteria for selecting industries for preliminary studies. The recommendations are discussed in section V below.

b. Data Sources. The Agency evaluates which categories should be subject to new or revised effluent guidelines using the following sources of information:

- Recommendations from NPDES permit writers in its own regional offices and State agencies.
- Recommendations from POTWs and the Association of Metropolitan Sewerage Agencies (AMSA).
- Preliminary studies of industries, which are discussed further in section IV.C of today's notice.
- Rulemaking records from existing effluent guidelines, which document unresolved issues from past rulemaking activity for some categories.
- Other EPA reports, such as the annual Toxic Release Inventory (TRI), ''An Overview of Sediment Quality in the United States'' (EPA 905/9–88–002, June 1987), and ''National Sediment Contaminant Point Source Inventory: Analysis of Facility Release Data'' (Draft, May 1996).
- Reviews of variance requests and petitions.
- Public comments.

EPA continues to rely on these data sources for effluent guidelines planning. The Effluent Guidelines Task Force has developed recommendations on use of data sources for selecting industries. These recommendations are discussed below.

2. New Rulemaking Activities

The 1992 consent decree requires that EPA begin rulemaking on two categories in 1996, and start work on two more in 1997.

a. Iron and Steel Manufacturing. EPA has decided to develop revisions for the Iron and Steel Manufacturing category (40 CFR part 420). This decision is based on consideration of a preliminary data summary on the category recently prepared by the Agency. Initial development of a proposed rule will begin later this year, with proposal scheduled for December 2000 and promulgation scheduled for December 2002. The preliminary data summary is discussed below in section IV.C.1.

b. Other Rules. EPA has not yet selected additional rulemaking projects. EPA is not proposing specific industrial categories for selection in today's notice. However, based on the above discussion of data sources, the Agency may choose the next categories from the following list:

- Petroleum Refining.
- Textile Mills.
- Inorganic Chemicals.
- Steam Electric Power Generating.
- Photographic Processing.
- Chemical Formulators and Packagers.
- Other categories being considered for preliminary studies. Recent, ongoing and future preliminary studies are discussed briefly in Section IV.C of today's notice. The public is invited to comment on these categories, as well as recommending other categories for development of new or revised effluent guidelines.

C. Preliminary Studies

The purpose of a Preliminary Study is to indicate whether and to what extent an industry discharges toxic and nonconventional pollutants, and to provide a basis for comparison with other industries for purposes of assigning priorities for regulation. The results of a Preliminary Study for an industry are published in a ''Preliminary Data Summary.'' The Preliminary Data Summary presents a synopsis of recent technical and economic information on a category of dischargers. The Preliminary Data Summaries are not used directly as a basis for rulemaking, but are used in the Agency's determination of which categories most require preparation of new or revised effluent guidelines. (They also may be expanded to become guidance documents for NPDES permit writers and POTWs.)

A Preliminary Study typically collects data on the following:

- The products manufactured and/or services provided by an industry;
- Number, types and geographic location of facilities;
- Destination of discharges (directly to surface waters, indirectly to POTWs, or both);
- Characterization of the wastewater discharges and identification of pollutants present in the wastestreams (e.g., mean concentrations of pollutants, wastewater volumes, mass loadings);
- Sampling and analytical methods employed to ascertain the presence and concentration of pollutants in the wastewater;
- Source reduction, recycling and pollution control technologies in use and potentially applicable to the industry;
- Non-water quality environmental impacts associated with wastewater treatment in the industry (e.g., air emissions, wastewater treatment sludges, and other wastes including hazardous wastes);
- Cost of control technologies in place and cost estimates for additional controls;
- Cost-effectiveness of reduction of toxic and nonconventional pollutants;
- Estimates of water quality impacts of discharges within the subject industry;
- Economic assessment (current financial condition of firms in the industry, industry expansion or reduction trends, size characterization of firms, impact of estimated treatment costs on representative facilities).

The type and level of detail of information varies among the Preliminary Data Summaries, depending on the data available to the Agency when each document is prepared and whether the industry is covered by an existing effluent guideline. For example, some of the Summaries have comprehensive, primary data on the number and location of the discharging facilities while others contain estimates drawn from secondary data sources. However, the Summaries represent the Agency's best characterization of industries at the time the summaries are compiled. As additional data are

acquired, they are factored into the evaluation process. Consequently, the Preliminary Data Summaries are also subject to revision. The Agency has made the Summaries available to the public and intends to continue to do so.

1. Recently Completed Studies

a. Petroleum Refining. The BAT regulations for the Petroleum Refining category were promulgated in 1982 at 40 CFR part 419. The preliminary data summary, completed in 1994, compared data collected by EPA in 1992 and 1993 with data collected for the 1982 rule in the late 1970s.

Historically, U.S. petroleum refineries have been large water users. The industry has changed significantly since the previous rulemaking with regard to patterns of water usage and product formulations. Many of the refineries studied use well below 50 percent of the flows predicted by the Agency's 1982 BPT and BAT flow models, with some refineries as low as 15 percent of their water use rates predicted by the BPT flow model. (The BAT regulations did not require any further flow reductions; however, as a result of litigation, the 1986 amendment to BAT and NSPS incorporated additional flow reduction as part of the basis for limitations for phenol and total chromium.)

Refineries have modified product formulations such as gasoline to comply with Clean Air Act requirements covering volatile organic compounds and lead. Such manufacturing process changes have led to modifications of wastewater collection systems, which may still be underway at some facilities.

A summary of the treatment technologies that are identified as currently in place is presented in the report. Of the 27 refineries studied, 20 are direct dischargers and 7 are indirect dischargers. All of the 20 direct discharging refineries have some form of biological treatment. Three have sand filtration and one facility has an in-plant activated carbon system in addition to biological treatment.

A summary of the effluent data collected from six refineries visited as part of this study compares the pollutants covered by BPT with the concentrations used as a basis to develop the BPT limitations in 1974. Effluent concentration data are also summarized for a number of other pollutants, including pollutants covered by the current effluent guidelines. These data were obtained from the following sources:

- Average concentration data (over a one year period) collected during Environment Canada's ''Seven Refineries Study'' conducted in 1989;
- Long term average data collected from seven U.S. refineries during the Canadian study;
- EPA's Permit Compliance System (PCS) covering 138 direct discharging refineries for 1992.

A preliminary assessment of the pollutant loadings and potential water quality impacts of discharges from petroleum refining facilities to surface waters and POTWs, using readily available data and information sources on refinery wastewater volume and constituents, annual loadings and average concentration, are estimated in the summary. In addition, potential aquatic life and human health impacts are summarized based on a review of documented environmental impacts and a review of the physical-chemical properties and toxicity of pollutants associated with wastewater discharges from the petroleum refining industry.

EPA's categorization of the 98 pollutants of interest, based on their fate and impact, indicated that approximately one quarter of the pollutants exhibit high or moderate acute toxicity to aquatic life. EPA classifies 23 of the pollutants as potential carcinogens, while 52 are recognized as human systemic toxicants. Of the pollutants of concern, 41 have EPA-assigned concentration limits for drinking water protection. Approximately half of the pollutants are expected to biodegrade fast or moderately fast in oxygenated water. However, several highly to moderately toxic pollutants are resistant to biodegradation or only slowly biodegrade. Whole effluent toxicity (WET) tests done at 47 petroleum refining facilities in Texas, Louisiana, and Oklahoma showed approximately 40 percent failed at least one WET test for acute, chronic, or sublethal effects. Tests conducted at five refineries in the San Francisco Bay region were in compliance with chronic WET test requirements. Twenty petroleum refining facilities are identified by States as point sources impairing (or contributing to impairment of) water quality and are included on their CWA Section 304(l) ''Short List'', which identifies facilities discharging to impaired water bodies. Three cases of sediment contamination are identified with petroleum refineries based on a 1987 report.

b. Metal Finishing. The Metal Finishing regulations were promulgated in 1983 at 40 CFR part 433. The preliminary data summary, completed in 1994, briefly summarized the Metal Finishing regulations and a related category, Electroplating, promulgated in 1981 at 40 CFR part 413. The summary also discussed then-current efforts in the development of the Metal Products and Machinery (MP&M) rule. Because the MP&M rule was expected to significantly overlap in coverage with the Metal Finishing rule, the preliminary data summary deferred additional technical, economic and environmental assessment of the industry.

c. Textile Mills. The Textile Mills regulations were promulgated in 1982 at 40 CFR part 410. EPA completed its study of the industry in 1995. The numbers of establishments engaged in the manufacture of textile products were estimated at nearly 6,000. Approximately 35 to 50 percent are engaged in wet processing (dyeing, finishing, printing and coating), and at least 90 percent of these sources discharge their process wastewater to POTWs. Water conservation programs developed by textile facilities have reduced the total volume of wastewater discharged through more efficient use of process water. Compared with 1980, the industry in 1993 averaged 22 percent less water per pound of fiber processed. A survey of POTWs afforded a review of the pretreatment technologies and innovative pollution prevention techniques that are currently being employed by textile users of POTWs.

Pollutant parameters in textile process wastewater were characterized before and after treatment. Available data indicated: (1) Few organic priority pollutants were identified consistently and, when detected, were quantified at very low concentrations (less than 100 ppb); and (2) metal parameters consistently detected at low levels include: copper, chromium, and zinc. At textile operations using metallized dyes, copper, chromium or nickel are often chelated by organic ligands to form water-soluble metal complexes. While their solubility limits the removal of such metal complexes during biological treatment, complexation also suppresses the immediate and subsequent bioavailability (toxicity) of metal species in the treated wastewater.

Although most textile facilities engaged in wet processing discharge their wastewater to POTWs, a survey of POTWs with textile users did not identify any general operational problems that could be related to the lack of categorical pretreatment standards for this industry. In the absence of categorical pretreatment standards, each POTW surveyed has developed local limits for those parameters it has determined must be controlled to assure compliance with its own NPDES permit.

d. Inorganic Chemicals. The Inorganic Chemicals regulations were promulgated in 1982 (Phase 1) and 1984 (Phase 2) at 40 CFR part 415. EPA completed its study of the industry in 1994. EPA identified approximately 51 chlor-alkali facilities, 47 inorganic pigment facilities, 140 industrial gas facilities, and 422 other inorganic chemical manufacturing facilities. These are believed to represent nearly complete coverage of this category in the United States. Inorganic chemicals are mostly used by major manufacturing industries to produce automobiles, steel, paper, petroleum products, and housing materials.

EPA identified 30 inorganic pollutants and their compounds (13 priority and 17 nonconventional) as pollutants of interest in the wastewater discharges from inorganic chemical manufacturing facilities. These include 15 metals, one metal oxide, two non-metallic elements, five inorganic acids, and seven other inorganic compounds. An analysis of 1992 data from PCS indicates that permit limits for copper and zinc are exceeded most frequently of the 12 metals examined. A chemical load analysis of the data shows that zinc represents the vast majority of total discharge quantity (about 70 percent) followed by chromium and nickel. A one-year chemical load analysis of surface water releases and transfers to POTWs of inorganic chemicals using 1992 TRI data shows that 5.4 million pounds are being released to surface waters and 27.1 million pounds are being transferred to POTWs. Ammonia, ammonium nitrate and ammonium sulfate represent the vast majority of total releases, with ammonia being reported most frequently. Mercury was the most frequently reported metal in discharges from the 1992 TRI facilities. The total discharge of priority pollutants from the Inorganic Chemicals Manufacturing Category is estimated at 0.51 million pounds per year.

EPA's categorization of the 30 pollutants of interest, based on their potential environmental fate and impact, indicates that one-third of the pollutants (10 of 30), primarily metals in their elemental form, are highly toxic to aquatic life. The Agency has set drinking water maximum contaminant level standards for approximately one-third of the pollutants (11 of 30), and about half (16 of 30) have been identified as human systemic toxicants. EPA classifies arsenic, cadmium, and lead as Class A, B1, and B2 carcinogens, respectively. Calculated toxic weighted loads, based on toxicity and bioaccumulation potential, indicate that approximately 40 percent of the weighted surface water releases are from priority pollutants and approximately 30 percent of POTW transfers are from priority pollutants. States, in developing lists of point sources impairing water quality under sec. 304(l), identified 27 inorganic chemical manufacturing facilities. Inorganic chemical manufacturing ranks first among 40 industrial categories as a source of potential sediment contaminants in a 1995 draft EPA report (''National Sediment Contaminant Point Source Inventory: Analysis of Release Data for 1992'', EPA Office of Science and Technology, May 1995 draft). EPA also reports 12 cases of possible sediment contamination associated with inorganic chemical manufacturing.

e. Steam Electric Power Generating. The Steam Electric Power Generating regulations were promulgated in 1982 at 40 CFR part 423. The Preliminary Data Summary for the Steam Electric Point Source Category was completed in 1995. The 1982 Guidelines and Standards are currently being applied to about 900 utility steam electric facilities, and potentially to over one thousand non-utility steam electric generators. Steam electric generation is by far the Nation's largest industrial water user, estimated at over 110 trillion (110×10^{12}) gallons per year.

Pollutants of concern for this industry include chlorine, mercury, arsenic, copper, zinc and lead. EPA estimates a total annual pollutant load of 22 million pounds, of which 727 thousand pounds are priority pollutants, based on 1992 PCS data. Chlorine and iron represent the vast majority of total loads, being 34 and 40 percent respectively. Zinc and copper represent the majority of priority pollutant loads, respectively comprising 37 and 28 percent of the total. When arranged by toxic weighted pounds chlorine is found to be the most significant pollutant, comprising 70 percent of total toxic pounds-equivalent. Mercury and arsenic contribute the greatest number of toxic pounds-equivalent among the priority pollutants. These estimated pollutant loading represent only 361 of the 910 U.S. steam electric utility plants operating in 1992, due to insufficient data for the excluded facilities.

The Steam Electric Industry ranks third among 44 industrial categories as a source of potential sediment impact. Categorization of the 53 pollutants of interest based on their environmental fate and impact indicate that 22 of the 53 are highly or moderately toxic to aquatic life. A review of documented environmental impacts shows that States identify 39 steam electric facilities as point sources impairing water quality based on their CWA Section 304(l) ''short list.''

Due to many changes that have occurred in this industry since the 1982 rule, the current guidelines and standards do not address issues such as:

- ''Non-utilities'', mainly comprised of cogenerators and renewable fuel burners,
- Combined cycle generators, with gas turbine exhaust heat driving a steam turbine,
- Use of bromine and other biocides in place of chlorine,
- Zebra mussel control strategies, and
- Wastewaters from a growing population of non-steam electric generators.

f. Iron and Steel Manufacturing. The Iron and Steel Manufacturing regulations were promulgated in 1982 at 40 CFR part 420 and amended in 1984. EPA completed its study of the industry in 1995. The industry has consolidated and modernized in the past fifteen years. Integrated mills continue to ''down-size'' to reflect changes in the demand of different steels and to remain competitive. ''Mini-mills'' continue to grow due to their ability to make higher quality steels. Coking operations are declining due to changes in iron-making processes. Continuous casting is now the norm for the industry due to the higher energy efficiency of the process over the traditional piecemeal casting operations. These changes are believed to be fostered by domestic and world competition.

The 300 industry facilities are becoming more efficient. This has led to substantial changes in how the industry operates. Pollutant loadings are down due to improved recycle rates on many unit operations, more efficient processing of conventional operations, elimination of obsolete processes, improved computerization of manufacturing, changes in market demands, and improved treatment processes. Many better-performing mills are discharging wastewater loadings far below EPA's current standards.

However, not all of the industry has kept pace with the improved operations or pollution prevention opportunities. Forty mills are included on the sec. 304(l) ''short list'', and a number of mills continue to discharge in excess of current effluent guidelines. Facilities in 10 of the 12 subcategories discharge some toxic and nonconventional pollutants that are not covered in the current regulation. Changes made by the industry in its cold forming operations have rendered some current standards inapplicable, and some elements of the current regulation are obsolete. Many better-performing mills are discharging

wastewater loadings far below EPA's current standards (e.g., § 420.01(b), involving centralized waste treatment).

Revised effluent guidelines for the Iron and Steel industry could result in a substantial reduction in pollutants discharged: as much as 29 million pounds per year of total suspended solids, 6.9 million pounds of oil and grease, and 710,000 pounds of ammonia-N.

2. Ongoing Studies

a. Photographic Processing. The Photographic regulations were promulgated in 1976 for BPT (direct dischargers) only, at 40 CFR part 459. Subsequent to promulgation of the BPT rule, EPA collected some additional information to support development of BAT, NSPS and pretreatment standards, but no additional rules were promulgated. As of 1980, the Agency estimated that 99 percent of 11,000 photographic processing facilities were indirect dischargers. Several POTWs have recommended that EPA develop categorical standards for indirect dischargers. While processing facilities are believed to be widely dispersed across the United States, POTW efforts vary considerably. Some POTWs have implemented local limits for silver and perhaps other pollutants, while others have no specific mechanisms for this industry.

EPA is reviewing the pollutants of concern (such as silver, cyanide, and chromium), what technologies are available for controlling discharges and POTWs' efforts to address the discharges by means of local limits or other mechanisms. In addition to working with states and POTWs, the Agency is consulting with business associations in the review of industry-recommended silver management practices.

b. Chemical Formulators and Packagers. Chemical formulators and packagers (CFP) purchase concentrated chemical products from chemical manufacturers, and mix or otherwise formulate and/or package them into end-use products for sale to consumers, businesses and institutions. CFP facilities are similar to pesticide formulating, packaging and repackaging (PFPR) facilities in that some discharge wastewater, while others have no discharge. However, some CFP facilities are not covered by either the impending PFPR final rule, the Organic Chemicals, Plastics and Synthetic Fibers (OCPSF) category (40 CFR part 414), nor the Inorganic Chemicals category (40 CFR part 415).

In the course of developing the PFPR rule, EPA acquired some data on CFP facilities. EPA will continue to review these data and develop a profile of the industry's discharges.

3. Future Studies

EPA intends to begin three preliminary studies in 1996. Studies are being considered on the following subjects:

a. Coal Mining. Regulations for the Coal Mining category were promulgated in 1982 at 40 CFR part 434. The Agency is aware of several issues that have emerged subsequent to the rulemaking or that were not resolved in the promulgated rule. These include the question of whether there should be separate subcategories for remining operations and western coal mines; whether limitations on manganese discharges should be revised; whether the criteria for ''bond release'' as defined at 40 CFR 434.11(d) should be revised; and whether discharges related to methane gas production should be regulated in Part 434.

b. Feedlots. Regulations for the Feedlots category were promulgated in 1974 at 40 CFR part 412. The effluent guidelines, which apply to feedlots of 1,000 or more animal units (AUs), contain limitations requiring no discharge of process wastewater pollutants, based on treatment of wastes in lagoons or holding ponds. The Agency is aware of several issues which could be explored in a preliminary study. These include:

- Changes in industry (e.g., there has been an increase in recent years in the number of large corporate hog farms)
- The ability of facilities to comply using technology that was the basis for the 1974 effluent guidelines during chronic rainfall and snowmelt runoff events
- Regulatory coverage of livestock markets
- Proper runoff control structure dewatering to maintain free-board and land disposal of contained runoff by techniques consistent with non-point source controls.

c. Stormwater Discharges. Stormwater discharges are explicitly addressed in several effluent guidelines, such as Fertilizer Manufacturing (40 CFR Part 418) and Coal Mining (40 CFR part 434). In addition, discharges associated with industrial activity and from municipal separate stormwater sewer systems serving a population of 100,000 or more are subject to NPDES stormwater permitting requirements at 40 CFR 122.21 and 122.26. The stormwater permit program is being implemented by EPA and States utilizing the NPDES regulations and permits, including individual, general and sector permits. The Agency is considering whether development of additional technical information and guidance on characterizing stormwater discharges and evaluating the efficacy of controls would be useful to discharging facilities in complying with permit requirements. EPA may conduct a study to explore what kinds of documentation would be helpful. For example, the Agency could develop a compilation of municipal stormwater control techniques appropriate for specific situations, along with cost models and cost-effectiveness analyses.

d. Hospitals. BPT regulations for the Hospitals category were promulgated in 1976 at 40 CFR part 460. EPA published a Preliminary Data Summary on the Hospitals category in 1989. The 1989 summary reported that there were 6,870 registered hospitals in the United States as of 1985, and approximately 97 percent of these were indirect dischargers. A principal pollutant of concern from hospital discharges has been silver, emanating from processing of x-ray images. While some hospitals employ silver recovery systems, a national PSES limitation for silver may be useful to some POTWs in promoting fuller control of silver discharges. Recommended silver management practices developed by the photographic industry may be reviewed for relevancy to addressing hospital discharges. Additionally, the Agency may explore discharges associated with procedures for deactivation of infectious waste, including discharges from scrubber water of on-site incinerators.

e. Ore Mining and Dressing. Most portions of the Ore Mining and Dressing category were promulgated in 1982 at 40 CFR part 440. (Subpart M, Gold Placer Mining Subcategory, was promulgated in 1988). EPA may study issues stemming from a pending action affecting some gold mines under Subpart J (see section IV.D.2 of today's notice), and may also examine the need for revised analytical methods for cyanide, which affects multiple subcategories in part 440.

f. Glass Manufacturing. BPT regulations for the Glass Manufacturing category were promulgated in 1974 at 40 CFR part 426. The Agency is aware of changes in industry manufacturing practices since 1974 that may affect wastewater discharge characteristics, and revisions to the effluent guidelines may be appropriate. For example, there are new processes for manufacturing light bulbs and fiber optics, and there has been a substantial increase in production of float glass, while plate glass manufacturing has declined.

g. Canmaking. Regulations for the Canmaking subcategory of the Coil Coating category were promulgated in 1983 at 40 CFR part 465, Subpart D. One of the pollutant parameters included in this subcategory is Total Toxic Organics (TTO). EPA's inclusion of the TTO limit was based on the industry's use of can sealant compounds. The Agency has received reports from some POTWs that industry may no longer be using these compounds, but POTWs continue to require TTO monitoring because the limitation remains in the regulation. EPA may investigate the TTO issue to determine whether a revision to the limitation is appropriate.

h. Organic Chemicals, Plastics and Synthetic Fibers. Regulations for the OCPSF category were promulgated in 1987 at 40 CFR part 414. EPA may conduct a retrospective study of the industry's actual compliance strategies and incurred costs for complying with the final regulation in comparison to the Agency's projected technology bases and estimated costs of compliance used for developing the regulation. The Agency establishes end-of-pipe numerical standards based on the performance of specific waste management and wastewater treatment unit operations. Individual plants may select appropriate wastewater management practices and treatment alternatives to comply with the numerical standards. This study would identify the selected in-plant and end-of-pipe wastewater treatment unit operations and determine the extent to which process modifications, source reduction, water conservation, and pollution prevention were used to meet the numerical standards. The study would identify the actual costs incurred to comply with the regulation and compare them to the Agency's estimated engineering costs of compliance. This information may assist the Agency in improving the accuracy of its general approach to estimating the engineering costs of compliance.

i. Pulp, Paper and Paperboard. The proposed rule for the Pulp, Paper and Paperboard Category included BPT, BCT and NSPS for conventional pollutants for six of the proposed subcategories (Subparts G, H, I, J, K, and L), but did not address toxic and nonconventional pollutant discharges. EPA is aware of increased activity in the secondary fiber and deinking segments of the industry, and may conduct a study focusing on toxic and nonconventional pollutant discharges from these and other mills in these subcategories.

j. Generic Effluent Guideline Issues. A number of suggestions which could affect numerous existing or planned effluent guidelines have been raised in the context of recently proposed regulations. Several of these suggestions involve implementation of effluent guidelines, while others directly impact the content of effluent guideline regulations. These suggestions include such things as allowing certification in lieu of monitoring for specified pollutants under defined circumstances, defining Best Management Practices in concert with concentration-based limitations as an alternative to mass-based limitations, considering exemptions for indirect dischargers below a cut-off point defined in terms of either flow or pollutant loadings, and allowing a reduced sampling frequency (e.g., once a year) for indirect dischargers under defined circumstances. EPA is aware of a great interest in some of these suggestions by the regulated community and local governments and may conduct a study to evaluate the potential effects of implementing these suggestions.

D. Other Rulemaking Actions

1. Leather Tanning and Finishing

EPA is promulgating minor revisions to pretreatment standards for existing and new sources applicable to certain facilities in the Leather Tanning and Finishing point source category (40 CFR part 425). The facilities involved discharge process wastewaters to POTWs. EPA is eliminating the upper (alkaline) pH limits for facilities in these subcategories. Affected POTWs may still elect to set an alternative upper (alkaline) pH limit based on local circumstances. EPA is promulgating these changes as a ''direct'' final rule in order to provide prompt implementation, which will allow facilities to minimize any potential hazards to worker safety and health that may occur in the absence of this rule.

This regulation is being promulgated in response to a petition submitted by a trade association for the leather tanning industry, the Leather Industries of America. The petition requests the Agency to consider relaxing the upper pH limit for certain indirect dischargers. The Agency is making a minor amendment to these regulations, provided that such an amendment would not adversely affect POTW operations or receiving water quality. This minor amendment would not affect the other rulemakings described in today's notice. EPA is not planning other revisions to the Leather Tanning regulations.

2. Ore Mining and Dressing

EPA is proposing to exempt a waste stream from existing effluent guidelines for the Copper, Lead, Zinc, Gold, Silver and Molybdenum Ores Subcategory of the Ore Mining and Dressing Category (40 CFR part 440, Subpart J). The Agency published a proposed rule on February 12, 1996 (61 FR 5364).

Dewatered tailings generated by the Alaska-Juneau (A–J) gold mine project near Juneau, Alaska would be affected by this proposal. The use of impoundments or ''tailings ponds'' was an important component of the technology basis of the existing regulations, which were promulgated in 1982. EPA is proposing this exemption based on the results of a preliminary review of the technology basis for the existing regulations that appear to show that, because of the severe topographic and climatic conditions that exist at the A–J site, the use of a tailings impoundment is impractical. If constructed, an extraordinary amount of wet weather runoff would flow into the impoundment which would make it impracticable to treat the mill tailings. In addition, construction of a massive tailings impoundment may result in long-term environmental degradation and there are safety concerns with a pond of this size.

This proposal opens the way for the detailed evaluation of alternatives for treatment of the tailings. The discharge of tailings from the A–J project to marine waters, which otherwise would be prohibited by Subpart J, could appropriately be evaluated. The proposal does not in itself authorize or endorse any method of tailings treatment or disposal. The discharge of tailings to marine waters would require final revision of Subpart J under the proposal. EPA will evaluate all comments and information received prior to making a final determination, which the Agency currently expects to do by the end of 1996.

3. Marine Discharges from Vessels of the Armed Forces

Section 325 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106, February 10, 1996) amended the Clean Water Act by adding sec. 312(n), which requires EPA and the Department of Defense (DOD) to:

- Determine discharges from vessels of the armed forces requiring control
- Promulgate performance standards for marine pollution control
- Promulgate regulations governing design, construction, installation and use of marine pollution controls.

EPA is currently developing a plan with DOD to comply with sec. 312(n).

The amendment requires the discharge determination within two years of enactment, promulgation of performance standards within two years of discharge determination, and promulgation of other regulations within one year after promulgation of standards.

VI. Recommendations of the Effluent Guidelines Task Force

The Effluent Guidelines Task Force was established by EPA to recommend improvements to the effluent guidelines program. The Task Force consists of members appointed by the Agency from industry, citizen groups, state and local government, the academic and scientific communities, and EPA's Office of Research and Development. The Task Force was created to offer advice to the EPA Administrator on the long-term strategy for the effluent guidelines program, and particularly to provide recommendations on a process for expediting the promulgation of effluent guidelines. It is chartered as a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT), the external policy advisory board to the Administrator, pursuant to the Federal Advisory Committee Act (FACA).

The Task Force has developed recommendations on three topics pertinent to EPA's effluent guidelines planning process: data sources, criteria for selecting industries for preliminary studies, and the design of studies.

A. Data Sources

The Task Force generally agreed with EPA on the sources of data that are appropriate for comparing categories. It encouraged EPA to consider information supplied by POTWs, AMSA, States, and trade associations. Reviews of technical literature and the Toxic Release Inventory (for basic identification of industry sources and locations) were also recommended.

B. Criteria for Selecting Industries for Preliminary Studies

The Task Force supported EPA's use of total toxic pounds-equivalent discharged as one of the principal selection criteria. Other criteria that EPA has used in previous Effluent Guidelines Plans were supported with varying degrees of emphasis, and several new factors were recommended. The recommendations included using number of facilities and flow (including establishing a cutoff below which alternatives to establishing effluent guidelines will be developed); giving priority to industries not covered by existing guidelines; giving priority to industries targeted for regulations by other EPA programs (e.g. air, solid waste); giving priority to service industries; and priority to industries which are at or near the beginning of their investment cycles.

C. Design of Preliminary Studies

The Task Force recommended that in cases where an industry and its issues are documented, EPA should proceed directly to rulemaking rather than conducting an intermediate preliminary study. This should only be done where there is a preponderance of already assimilated information indicating full rulemaking is appropriate, or in cases where stakeholders have clearly indicated that effluent guidelines are needed. Where there is uncertainty about the extent of industrial discharges and comparability to other categories, a study should be conducted.

VII. Request for Comments

EPA invites public comment on its plans for development of effluent guidelines and preliminary studies. Comments will be accepted until August 2, 1996. In particular, the Agency is interested in data that would facilitate category-wide comparisons of industries with regard to discharge characteristics, treatment practices and effects on water quality. In addition to the industries discussed or listed in today's notice, EPA will consider information on other industries in developing Effluent Guidelines Plans.

VIII. Economic Impact Assessment; Executive Order 12866

Today's notice proposes a plan for the review and revision of existing effluent guidelines and for the selection of priority industries for new regulations. This notice is not a ''rule'' and does not establish any requirements; therefore, no economic impact assessment has been prepared. EPA will provide economic impact analyses or regulatory impact analyses, as appropriate, for all of the future effluent guideline rulemakings developed by the Agency.

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

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

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

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

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

It has been determined that this plan is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

Dated: June 27, 1996.

Carol M. Browner,

Administrator.

APPENDIX A—PROMULGATED EFFLUENT GUIDELINES

[''Promulgation'' refers to the date of promulgation of BAT controls unless otherwise noted. Minor amendments or corrections are not shown.]

Category	40 CFR Part	Promulgation	Revised Rule (P: Proposal F: Final Action) or Study Completion (S)
Aluminum Forming	467	10/83	
Asbestos Manufacturing	427	2/74	
Battery Manufacturing	461	3/84	
Builder's Paper and Board Mills [1]	431	12/86 (BCT)	
Carbon Black Manufacturing	458	1/78	
Cement Manufacturing	411	8/79 (BCT)	

APPENDIX A—PROMULGATED EFFLUENT GUIDELINES—Continued

["Promulgation" refers to the date of promulgation of BAT controls unless otherwise noted. Minor amendments or corrections are not shown.]

Category	40 CFR Part	Promulgation	Revised Rule (P: Proposal F: Final Action) or Study Completion (S)
Coal Mining	434	10/82	
Coil Coating	465	12/82	
Canmaking Subcategory	.....	11/83	
Copper Forming	468	8/83	
Dairy Products Processing	405	6/86 (BCT)	
Electroplating	413	1/81 (PSES)	
Electrical and Electronic Components	469	4/83	
Explosives Manufacturing	457	3/76	
Feedlots	412	2/74	
Ferroalloy Manufacturing	424	7/86 (BCT)	
Fertilizer Manufacturing	418	8/79 (BCT)	
Fruits and Vegetables Processing	407	7/86 (BCT)	
Glass Manufacturing	426	7/86 (BCT)	
Grain Mills	406	7/86 (BCT)	
Gum and Wood Chemicals	454	5/76 (BPT)	
Hospitals	460	5/76 (BPT)	S 1989
Ink Formulating	447	7/75	
Inorganic Chemicals	415	6/82	S 1994
Iron and Steel Manufacturing	420	5/82	S 1995
Leather Tanning and Finishing	425	11/82	
Meat Products	432	7/76 (BCT)	
Metal Finishing	433	7/83	S 1994
Metal Molding and Casting (Foundries)	464	10/85	
Mineral Mining and Processing	436	7/77 (BPT)	
Nonferrous Metals Forming	471	8/85	
Nonferrous Metals Manufacturing	421	6/84	
Oil and Gas Extraction	435		
Offshore Subcategory	.....	3/4/93	
Coastal Subcategory	.....	11/79 (BPT)	P 2/17/95; F 10/96
Other Subcategories	.....	11/79 (BPT)	
Ore Mining and Dressing	440	12/82	
Gold Placer Mining Subcategory	.....	5/88	
Organic Chemicals, Plastics and Synthetic Fibers	414	11/87	
Paint Formulating	446	7/75	S 1989
Paving and Roofing Materials	443	7/75	
Pesticide Chemicals	455		
Manufacturing	.....	9/28/93	
Formulating, Packaging, Repackaging	.....	4/78 (BPT)	P 4/14/94; F 9/96
Petroleum Refining	419	10/82	S 1993
Pharmaceutical Manufacturing	439	10/83	P 5/2/95; F 11/97 [2]
Phosphate Manufacturing	422	6/76	
Photographic Processing	459	7/76 (BPT)	S 1996
Plastics Molding and Forming	463	12/84	
Porcelain Enameling	466	11/82	
Pulp, Paper and Paperboard	430	12/86 (BCT)	P 12/17/93; F [1]
Rubber Manufacturing	428	2/74	
Seafood Processing	408	7/86 (BCT)	
Soap and Detergent Manufacturing	417	4/74	
Steam Electric Power Generating	423	11/82	S 1995
Sugar Processing	409	7/86 (BCT)	
Textile Mills	410	9/82	S 1994
Timber Products Processing	429	1/81	

Notes:

[1] EPA proposed merging part 431 with part 430 in the proposed Pulp, Paper and Paperboard rule on 12/17/93. The Pulp, Paper and Paperboard rulemaking is not covered by the January 31, 1992 consent decree.

[2] EPA is discussing extensions to Consent Decree dates with NRDC.

APPENDIX B—CURRENT AND FUTURE RULEMAKING PROJECTS

Category	Proposed	Final
Pulp, Paper and Paperboard	12/17/93 (58 FR 66078)	([1])
Pesticide Formulating, Packaging and Repackaging	4/14/94 (59 FR 17850)	9/96
Centralized Waste Treatment	1/27/95 (60 FR 5464)	[2] 9/96

APPENDIX B—CURRENT AND FUTURE RULEMAKING PROJECTS—Continued

Category	Proposed	Final
Coastal Oil and Gas Extraction	2/17/95 (60 FR 9428)	10/96
Pharmaceutical Manufacturing	5/2/95 (60 FR 21592)	[2] 8/96
Metal Products and Machinery, Phase 1	5/30/95 (60 FR 28209)	[2,3] 9/96
Industrial Laundries	[2] 12/96	[2] 12/98
Transportation Equipment Cleaning	[2] 12/96	[2] 12/98
Landfills and Incinerators	[2] 5/97	[2] 5/99
Metal Products and Machinery, Phase 2	[2] 12/97	[2,3] 12/99
Iron and Steel Manufacturing	[2] 12/98	[2] 12/00
1 category	[2] 12/98	[2] 12/00
2 categories	[2] 12/99	[2] 12/01
2 categories	[2] 12/00	[2] 12/02
2 categories	[2] 8/01	[2] 12/03

Notes:
[1] The Pulp, Paper and Paperboard rulemaking is not covered by the January 31, 1992 consent decree.
[2] EPA is discussing extensions to Consent Decree dates with NRDC.
[3] EPA is considering merging Phases 1 and 2 of the Metal Products and Machinery rule.
See discussion above.

APPENDIX C—PRELIMINARY STUDIES

Category	Complete
Petroleum Refining	1993
Metal Finishing	1993
Textile Mills	1994
Inorganic Chemicals	1994
Steam Electric Power Generating	1995
Iron and Steel Manufacturing	1995
Photographic Processing	1996
Chemical Formulators and Packagers	1996
Three studies (see discussion in Section IV.C.3)	1997

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July 3, 1996

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Revision of Hydraulic Systems Airworthiness Standards To Harmonize With European Airworthiness Standards for Transportation Category Airplanes, and Proposed Advisory Circular for Hydraulic System Certification Tests and Analysis; Proposed Rule and Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 28617; Notice 96–6]

RIN 2120–AF79

Revision of Hydraulic Systems Airworthiness Standards To Harmonize With European Airworthiness Standards for Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the airworthiness standards for transport category airplanes to harmonize hydraulic systems design and test requirements with standards proposed for the European Joint Aviation Requirements (JAR). These proposals were developed in cooperation with the Joint Aviation Authorities (JAA) of Europe and the U.S. and European aviation industry through the Aviation Rulemaking Advisory Committee (ARAC). These changes are intended to benefit the public interest by standardizing certain requirements, concepts, and procedures contained in the airworthiness standards without reducing, but potentially enhancing, the current level of safety.

DATES: Comments must be received on or before October 1, 1996.

ADDRESSES: Comments on this notice may be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28617, 800 Independence Avenue SW., Washington, DC 20591; or delivered in triplicate to: Room 915G, 800 Independence Avenue SW., Washington, DC 20591.

Comments delivered must be marked Docket No. 28617. Comments may also be sent electronically to the following internet address: nrmpcmts@mail.hq.faa.gov. Comments may be examined in Room 915G weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. In addition, the FAA is in maintaining an information docket of comments in the Transport Airplane Directorate (ANM–100), Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, WA 98055–4056. Comments in the information docket may be examined weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mahinder K. Wahi, Flight Test and Systems Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (206) 227–2142; facsimile (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comment Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to any environmental, energy, or economic impact that might result from adopting the proposals contained in this notice are invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments in triplicate to the Rules Docket address above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available in the Rules Docket, both before and after the comment period closing date, for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which is stated: ''Comments to Docket No. 28617.'' The postcard will be date stamped and returned to the commenter.

Availability of the NPRM

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), the Federal Register's electronic bulletin board service (telephone 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: 202–267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov or the Federal Register's web page at http://www.access.gpo/su–docs for access to recently published rulemaking documents.

Any person may obtain a copy of this notice of submitting a request to the Federal Aviation Administration (FAA), Office of Rulemaking, ARM–1, 800 Independence Avenue, S.W., Washington, D.C. 20591 or by calling (202) 267–9680. Communications must identify the notice number or docket number of this notice.

Persons interested in being placed on a mailing list for future rulemaking documents should also request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The airworthiness standards for transport category airplanes are contained in 14 CFR part 25. Manufacturers of transport category airplanes must show that each airplane they produce of a different type design complies with the relevant standards of part 25. These standards apply to airplanes manufactured within the U.S. for use by U.S. registered operators and to airplanes manufactured in other countries and imported under a bilateral airworthiness agreement.

In Europe, the Joint Aviation Requirements (JAR) were developed by the Joint Aviation Authorities (JAA) to provide a common set of airworthiness standards for use within the European aviation community. The airworthiness standards for European type certification of transport category airplanes, JAR–25, are based on part 25 of Title 14. Airplanes certificated to the JAR–25 standards, including airplanes manufactured in the U.S. for export to Europe, receive type certificates that are accepted by the aircraft certification authorities of 23 European countries.

Although part 25 and JAR–25 are very similar, they are not identical. Differences between the FAR and the JAR can result in substantial additional costs when airplanes are type certificated to both standards. These additional costs, however, frequently do not bring about an increase in safety. For example, part 25 and JAR–25 may use different means to accomplish the same safety intent. In this case, the manufacturer is usually burdened with meeting both requirements, although the level of safety is not increased correspondingly. Recognizing that a common set of standards would not only economically benefit the aviation industry, but would also maintain the necessary high level of safety, the FAA and JAA consider harmonization to be a high priority.

In 1988, the FAA, in cooperation with the JAA and other organizations representing the American and European aerospace industries, began a

process to harmonize the airworthiness requirements of the United States and the airworthiness requirements of Europe, especially in the areas of Flight Test and Structures.

In 1992, the FAA harmonization effort was undertaken by the ARAC. A working group of industry and government hydraulic systems specialists of Europe and the United States was chartered by notice in the Federal Register (57 FR 58843, December 12, 1992). The working group was tasked to develop a draft notice of proposed rulemaking (NPRM) and any collateral documents, such as advisory circulars, concerning new or revised requirements for hydraulic systems, and the associated test conditions for hydraulic systems, installed in transport category airplanes (§ 25.1435). The JAA is to develop a similar proposal to amend JAR–25, as necessary, to achieve harmonization.

The rulemaking proposal contained in this notice is based on a recommendation developed by the Hydraulic Systems Harmonization Working Group, and was presented to the FAA by the ARAC as a recommendation.

The Aviation Rulemaking Advisory Committee

The ARAC was formally established by the FAA on January 22, 1991 (56 FR 2190) to provide advice and recommendations concerning the full range of the FAA's safety-related rulemaking activity. This advice was sought to develop better rules in less overall time using fewer FAA resources than are currently needed. The committee provides the opportunity for the FAA to obtain firsthand information and insight from interested parties regarding proposed new rules or revisions of existing rules.

There are 64 member organizations on the committee, representing a wide range of interests within the aviation community. Meetings of the committee are open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act.

The ARAC establishes working groups to develop proposals to recommend to the FAA for resolving specific issues. Tasks assigned to working groups are published in the Federal Register. Although working group meetings are not generally open to the public, all interested parties are invited to participate as working group members. Working groups report directly to the ARAC, and the ARAC must accept a working group proposal before that proposal can be presented to the FAA as an advisory committee recommendation.

The activities of the ARAC will not, however, circumvent the public rulemaking procedures. After an ARAC recommendation is received and found acceptable by the FAA, the agency proceeds with the normal public rulemaking procedures. Any ARAC participation in a rulemaking package will be fully disclosed in the public docket.

Discussion of the Proposals

The FAA proposes to amend § 25.1435 to harmonize this section with JAR–25. The JAA intend to publish a Notice of Proposed Amendment (NPA), also developed by the Hydraulic Systems Harmonization Working Group, to revise JAR–25 as necessary to ensure harmonization in those areas for which the proposed amendments differ from the current JAR–25, Change 14. When it is published, the NPA will be placed in the docket for this rulemaking.

Generally, the FAA proposes to: (1) Add appropriate existing-JAR requirements to achieve harmonization; (2) Move some of the existing regulatory text to an advisory circular; (3) Consolidate and/or separate requirement subparagraphs for clarity; and (4) Revise airplane static proof pressure test requirements to require a complete functional (dynamic) airplane test at a lower pressure. A new proposed Advisory Circular (AC) 25.1435–1 has been developed by the ARAC to ensure consistent application of these proposed revised standards. Public comments concerning the AC 25.1435–1 are invited by separate notice published elsewhere in this issue of the Federal Register. The JAA intend to publish an Advisory Material Joint (AMJ), also developed by the Harmonization Working Group, to accompany their NPA. The proposed AC and the proposed AMJ contain harmonized advisory information. The following is a discussion of the specific proposals prescribed in this NPRM.

Proposal 1. The FAA proposes to replace current § 25.1435(a)(1) to add the existing requirements of JAR 25.1435(a)(10) and associated Appendix K requirements regarding design load factors for proof and ultimate pressure conditions for elements of the hydraulic system (see proposal 2 below regarding current § 25.1435(a)(1)). The proof and ultimate pressure conditions would be defined as the design operating pressure times the factors of safety. This would be done to address unusually high pressures which may be seen in service, material defects and differences, manufacturing/construction tolerances and the consequences of failures (e.g. pressure vessel failure). The proposed load factors, ranging between 1.5 and 4.0, relate to the design operating pressure (DOP) and would apply to tubes, fittings, pressure vessels containing gas at high pressure (e.g., accumulators) and at low pressure (e.g. hydraulic reservoirs), hoses, and all other elements.

By adopting these JAR minimum factors of safety standards which currently are not specifically stated in the FAR, the FAA intends to maintain an existing level of safety because normal U.S. Industry practices meet or exceed these standards.

DOP is the normal maximum steady pressure. Excluded are reasonable tolerances and transient pressure effects such as may arise from acceptable pump ripple or reaction to system functioning or flow demands that may affect fatigue. In localized areas of systems and system elements the DOP may be different from the DOP for the system as a whole due to the range or normally anticipated airplane operational, dynamic and environmental conditions. Such differences would be required to be taken into account. The term ''design operating pressure'' would be discussed in AC 25.1435–1.

Proposal 2. The FAA proposes to redesignate the current § 25.1435(a)(1) as § 25.1435(a)(2), delete the word ''loads'' from ''pressure loads'' (''loads'' is redundant) and edit some text to avoid repetition. The term ''limit structural load'', and a recommended minimum time to hold pressure would be discussed in AC 25.1435–1.

Proposal 3. The FAA proposes to redesignate the current § 25.1435(a)(2) as a new § 25.1435(a)(3), delete the word ''loads'' from ''pressure loads'' (''loads'' is redundant) and edit some text to avoid repetition. The term ''ultimate structural load'' and a minimum time to hold pressure would be discussed in AC 25.1435–1.

Proposal 4. The FAA proposes to add a new § 25.1435(a)(4) that would contain the current requirements of § 25.1435(b)(2)(i) and (b)(2)(ii) regarding induced loads, pressure transients, and fatigue as well as the current JAR 25.1435(a)(11) requirements regarding fatigue design considerations accounting for fluctuating or repeated external or internal loads and pressure transients. These loads could be structurally or environmentally induced. By delineating these requirements, the FAA intends to ensure that each element is designed to provide fatigue resistance capability consistent with anticipated element usage, thus maintaining the current

level of safety. The terms ''fatigue'', and ''externally induced loads'' would be discussed in AC 25.1435–1.

Proposal 5. The FAA proposes to add a new § 25.1435(a)(5) that would contain the current requirements of § 25.1435(b)(2)(i) through (b)(2)(v), except those addressed under proposal 4 above, as well as parts of the current JAR 25.1435 (a)(5) and (a)(6) requirements addressing excessive vibration, abrasion, corrosion, mechanical damage, and the ability to withstand inertia loads. These requirements would be consolidated and simplified by stating that each element must be designed to perform as intended under all environmental conditions for which the airplane is certificated. An acceptable means of compliance would be included in AC 25.1435–1.

Proposal 6. The FAA proposes to add a modified version of the existing JAR 25.1435(a)(2) as § 25.1435(a)(1), requiring means to indicate appropriate system parameters at a flight crewmember station if (1) the system performs a function necessary for continued safe flight and landing, or (2) in the event of hydraulic system malfunction, corrective action by the crew is required to ensure continued safe flight and landing. The existing JAR 25.1435(a)(2) requires fluid quantity and pressure indication under specified circumstances; prior to Amendment 25–72, § 25.2435 contained an identical requirement. It was considered at the time that this requirement is covered by § 25.1309(c), which requires that warning information must be provided to alert the crew to unsafe system operating conditions, and to enable them to take appropriate corrective action, and the § 25.1435 requirement was therefore deleted. It is, however, now recognized that there is value in defining indication requirements for hydraulic systems and implications of their loss. The existing level of safety would not be impacted since the FAA is proposing the adopt an existing industry practice. The term ''appropriate system parameters'' would be discussed in AC 25.1435–1. (Note: see proposal 12 below with respect to status of current § 25.1435(b)(1) requirements).

Proposal 7. The FAA proposes to replace the current § 25.1435(b)(2) by adding a modified version of the current JAR 25.1435 (a)(4) and (a)(7) to require that each system have means to ensure that system pressures remain within the design capabilities of each element. Prior to Amendment 25–72, § 25.1435 contained a requirement that was identical to the current JAR requirement, but it was characterized as both containing arbitrary pressure transient limits and unnecessary because the intent is covered under § 25.1309. The requirement was therefore deleted from § 25.1435. The proposed version deletes the arbitrary limits but would require that the intent be specifically addressed by § 25.1435(b)(2) to ensure consideration of the pressure and volume related transients that are unique to the hydraulic systems. There would be no impact on level of safety since an existing industry practice is being adopted. An acceptable means of compliance with § 25.1435(b)(2) would be included in AC 25.1435–1.

Proposal 8. The FAA proposes to add a new § 25.1435(b)(3) which would contain a modified version of the existing JAR 25.1435(a)(5) requirements regarding the means to minimize harmful or hazardous concentrations of the hydraulic fluid or vapors, if liberated in any form, into the crew and passenger compartments during flight. Prior to Amendment 25–72, § 25.1435 contained an identical requirement. It was considered at the time that § 25.831(b) covers this requirement under a general statement that the ventilation air must be free of hazardous or harmful gases or vapors. However, § 25.831(b) specifies allowable limits for carbon monoxide and carbon dioxide, but no other products. It could be construed that those two gases are the only hazardous products. Section 25.1435 would therefore be revised to state the specific requirement with respect to the hydraulic fluid or vapors.

The JAR requirement currently states, in relevant part, that ''there must be a means to prevent harmful or hazardous concentration of fluid. * * *'' In recognition of the fact that absolute prevention of such concentrations is not an achievable objective, the FAA proposes that the hydraulic system must have ''means to minimize the release of harmful or hazardous concentrations * * *'' To show compliance with this requirement, an applicant would have to show, both that the likelihood of releases has been minimized, and that, if there is such a release, the concentrations from the release would also be minimized. The level of safety would remain unaffected because it's an existing industry practice to address this issue. An acceptable means of compliance with § 25.1435(b)(3) and a discussion of the terms ''harmful'' and ''hazardous'' would be included in AC 25.1435–1.

Proposal 9. The FAA proposes to redesignate the existing § 25.1435(c) as § 25.1435(b)(4); this is identical to the existing JAR 25.1435(c) requirements regarding use of flammable hydraulic fluid and fire protection. A discussion of the term ''flammable hydraulic fluid'' would be included in AC 25.1435–1.

Proposal 10. The FAA proposes to add a new § 25.1435(b)(5), containing the current JAR 25.1435(d) requirements that the airplane manufacturer must specify the approved hydraulic fluid(s) suitable to be used in the system(s) and ensure that the system(s) meet the applicable placarding requirements of the current § 25.1541. Although it is a standard U.S. industry practice to identify the compatible hydraulic fluid on each component's name plate, the practice may not be universal. In order to minimize the potential use of incompatible fluids, seals, etc. in any system, it is necessary to include this requirement. A discussion of mixability of hydraulic fluids would be included in AC 25.1435–1.

Proposal 11. Current § 25.1435(b)(2) requirements for hydraulic system compliance by test and analysis would be separated into §§ 25.1435 (c), (c)(1) and (c)(2); the list of environmental factors [current § 25.1435 (b)(2)(ii) through (b)(2)(v)] would be moved to AC 25.1435–1; and, text in the aforementioned sections would be clarified. In addition, analysis would be permitted in place of or to supplement testing, where shown to be reliable and appropriate. A discussion on endurance and fatigue testing, and simulated failures would be included in AC 25.1435–1.

Proposal 12. Current § 25.1435(b)(1) requirements for static testing of a complete hydraulic system to 1.5 times the design operating pressure (without deformation of any part of the system that would prevent performance of intended function) would be replaced with a new § 25.1435(c)(3) requirement that ''the complete hydraulic system must be functionally tested on the airplane over the range of motion of all associated user systems.'' Also, the section would require that ''the test must be conducted at the system relief pressure or 1.25 times the DOP if a system pressure relief device is not part of the system design.'' This proposal reflected the recently granted petition for exemption to the Boeing Company, Regulatory Docket No. 27384. The petition, any comments received, and a copy of the 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. A discussion on relief

pressure settings and an acceptable means of compliance with § 25.1435(c)(3) would be included in AC 25.1435–1.

The FAA considers that the proposed functional (i.e., dynamic) test more closely approximates actual operating conditions than the existing static test. This is because for the static test, several parts of the system and associated relief valves (including return lines) may need to be disabled to allow system pressurization at 1.5 times the design operating pressure because the relief valves are designed to open at a pressure lower than 1.5 times the design operating pressure. Although the proposed test pressure would be lower than 1.5 times the design operating pressure, all elements would still be required to be able to withstand at least 1.5 times the design operating pressure per current § 25.1435(a)(2) (proposed § 25.1435(a)(3)), at least retaining and potentially enhancing the current level of safety by identification of additional dynamic interference problems.

Regulatory Evaluation Summary

Regulatory Evaluation, Regulatory Flexibility Determination, and Trade Impact Assessment

Changes to federal regulations must undergo several economic analyses. First, Executive Order 12866 directs Federal agencies to promulgate new regulations or modify existing regulations only if the potential benefits to society outweigh the potential costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Finally, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these assessments, the FAA has determined that this proposed rule: (1) Would generate benefits exceeding its costs and is not ''significant'' as defined in Executive Order 12866; (2) Is not ''significant'' as defined in DOT's Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; and (4) would lessen restraints on international trade. These analyses, available in the docket, are summarized below.

Although several revisions would be made to § 25.1435, only three of them would impose additional costs (see below—proposals 1, 4, and 12, with the latter having potential cost savings for some manufacturers). Most of the changes codify current industry practice or conform § 25.1435 to corresponding sections of the JAR. Adoption of the proposed changes would increase harmonization and commonality between American and European airworthiness standards. Harmonization would eliminate unnecessary duplication of airworthiness requirements, thus reducing manufacturers' certification costs. One manufacturer of part 25 large airplanes estimated such cost-savings could range between $60,000 and 600,000 per type certification (pertaining to hydraulic systems only); a manufacturer of part 25 small airplanes estimated such savings at $30,000 to $90,000 per type certification; Potential safety benefits resulting from specification of minimum accepted standards would supplement these cost-savings.

Proposal 1. These changes codify existing industry standards. As such, they would not result in additional costs for most manufacturers, However, one manufacturer of small transport category airplanes estimated increased testing costs of approximately $25,000 per type certification Codification of the proposed standards would ensure that current safety levels are retained.

Proposals 2, 3, and 9. There would be no additional costs associated with these minor changes.

Proposal 4. Although some of the changes described are new requirements in the FAR, most American manufacturers of large transport category airplanes are already in compliance with the similar current European standards, which had to be met in order to market airplanes in JAA member countries. The modified testing and analysis regime is already in place. Initial first-time costs have already been incurred; such costs have diminished in recent certifications. Consequently, actual incremental costs would be negligible. One manufacturer, however, indicated that additional testing and analysis costs, ranging between $100,000 and $200,000 per type certification, would be incurred for the first one or two type certifications. Learning curve efficiencies would likely reduce these costs thereafter. Manufacturers of small transport category airplanes, on the other hand, expect no or negligible additional costs attributable to the new fatigue-related proposals. Codification of the proposed standards would ensure that minimum acceptable fatigue requirements are specified with potential for safety enhancement.

Proposals 5, 6, 7, 8, and 10. These changes codify existing industry standards and would not result in additional certification/production costs. Codification of the proposed standards would ensure that current safety levels are retained.

Proposal 11. There would be no additional costs associated with these revisions. The use of analysis in lieu of or supplemental to testing may reduce certification costs in some cases.

Proposal 12. Most manufacturers of part 25 airplanes would not experience additional costs associated with dynamic testing of hydraulic systems. In fact, testing time and associated costs could be reduced to some small extent since, unlike static testing, the proposed dynamic testing would not entail disabling any system(s) or otherwise reconfiguring the airplane. One manufacturer of part 25 large airplanes estimated potential savings between $100,000 and $200,000 per type certification in this regard (another estimated such savings at only $25,000). However, a manufacturer of part 25 small transport category airplanes estimates $25,000 in additional testing, analysis, and report preparation costs per type certification attributable to this proposal. The proposed requirements would at least retain, and potentially enhance, the current level of safety by identification of additional dynamic interference problems.

Summary of Costs and Benefits

Manufacturers of part 25 small airplanes could experience additional costs totalling approximately $50,000 per type certification resulting from proposals 1 (design load factors) and 12 (dynamic testing). The estimated $30,000–$90,000 harmonization cost savings, coupled with potential safety benefits from proposals 4 and 12, would exceed these costs.

For manufacturers of part 25 large airplanes, the cost differential could range from a $25,000–$200,000 reduction (resulting from proposal 12) to a $100,000–$200,000 increase (resulting from proposal 4). The proposal 12 cost savings coupled with the estimated $60,000–$600,000 harmonization cost savings would exceed the additional costs of proposal 4; potential safety benefits from proposals 4 and 12 would supplement the cost-savings.

The FAA finds the proposed rule, therefore, to be cost-beneficial for both part 25 small and large transport manufacturers.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by government regulations. The RFA requires a Regulatory

Flexibility Analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, prescribes standards for complying with RFA review requirements in FAA rulemaking actions. The order defines ''small entities'' in terms of size thresholds, ''significant economic impact'' in terms of annualized cost threshold, and ''substantial number'' as a number which is not less than eleven and which is more than one-third of the small entities subject to the proposed or final rule.

The proposed rule would affect manufacturers of transport category airplanes produced under future new airplane type certifications. For manufacturers, Order 2100.14A specifies a size threshold for classification as a small entity as 75 or fewer employees. Since no transport category airplane manufacturer has 75 or fewer employees, the proposed rule would not have a significant economic impact on a substantial number of small manufacturers.

International Trade Impact Assessment

The proposed rule would not constitute a barrier to international trade, including the export of American airplanes to foreign countries, and the import of foreign airplanes into the United States. Instead, the proposed changes to the FAR would harmonize with corresponding existing or proposed standards in the JAR, thereby lessening restraints on trade.

Federalism Implications

The amended regulations proposed in this rulemaking 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 preparing a Federalism Assessment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) standards and recommended practices to the maximum extent practicable. The FAA has determined that this rule does not conflict with any international agreement of the United States.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this proposed rule.

Conclusion

Because the proposed changes to standardize specific hydraulic systems test requirements of part 25 are not expected to result in substantial economic cost, the FAA has determined that this proposed regulation would not be significant under Executive Order 12866. Because this is an issue which has not prompted a great deal of public concern, the FAA has determined that this action is not significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 25, 1979). In addition since there are no small entities affected by this proposed rulemaking, the FAA certifies, under the criteria of the Regulatory Flexibility Act, that this rule, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities. An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendments

Accordingly, the Federal Aviation Administration proposes to amend 14 CFR part 25 as follows:

PART 25—AIRWORTHINESS STANDARDS—TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

2. Section 25.1435 is revised to read as follows:

§ 25.1435 Hydraulic systems.

(a) *Element design.* Each element of the hydraulic system must be designed to:

(1) Withstand the proof pressure without leakage or permanent deformation that prevents it from performing its intended function, and the ultimate pressure without rupture. The proof and ultimate pressures are defined in terms of the design operating pressure (DOP) as follows:

Element	Proof (xDOP)	Ultimate (xDOP)
1. Tubes & fittings	1.5	3.0
2. Pressure vessels containing gas:		
High pressure (e.g., accumulators)	3.0	4.0
Low pressure (e.g., reservoirs)	1.5	3.0
3. Hoses	2.0	4.0
4. All other elements	1.5	2.0

(2) Withstand, without deformation that would prevent it from performing its intended function, the design operating pressure in combination with limit structural loads that may be imposed;

(3) Withstand, without rupture, the design operating pressure multiplied by a factor of 1.5 in combination with ultimate structural load that can reasonably occur simultaneously;

(4) Withstand the fatigue effects of all cyclic pressures, including transients, and associated externally induced loads, taking into account the consequences of element failure; and

(5) Perform as intended under all environmental conditions for which the airplane is certificated.

(b) *System design.* Each hydraulic system must:

(1) Have means located at a flightcrew station to indicate appropriate system parameters.

(i) It performs a function necessary for continued safe flight and landing; or

(ii) In the event of hydraulic system malfunction, corrective action by the crew to ensure continued safe flight and landing is necessary;

(2) Have means to ensure that system pressures, including transient pressures and pressures from fluid volumetric changes in elements that are likely to remain closed long enough for such changes to occur, are within the design capabilities of each element, such that they meet the requirements defined in § 25.1435(a)(1) through (a)(5);

(3) Have means to minimize the release of harmful of hazardous concentrations of hydraulic fluid or vapors into the crew and passenger compartments during flight;

(4) Meet the applicable requirements of §§ 25.863, 25.1183, 25.1185, and 25.1189 if a flammable hydraulic fluid is used; and

(5) Be designed to use any suitable hydraulic fluid specified by the airplane manufacturer, which must be identified by appropriate markings as required by § 25.1541.

(c) *Tests.* To demonstrate compliance with § 25.1435 and support compliance with § 25.1309, tests must be conducted on the hydraulic system(s), and/or

subsystem(s) and elements, except that analysis may be used in place of or to supplement testing, where the analysis is shown to be reliable and appropriate. All internal and external influences must be taken into account to an extent necessary to evaluate their effects, and to assure reliable system and element functioning and integration. Failure or unacceptable deficiency of an element or system must be corrected and be sufficiently retested, where necessary.

(1) The system(s), subsystem(s), or element(s) must be subjected to performance, fatigue, and endurance tests representative of airplane ground flight operations.

(2) The complete system must be tested to determine proper functional performance and relation to the other systems, including simulation of relevant failure conditions, and to support or validate element design.

(3) The complete hydraulic system(s) must be functionally tested on the airplane in normal operation over the range of motion of all associated user systems. The test must be conducted at the system relief pressure 1.25 times the DOP if a system pressure relief device is not part of the system design. Clearances between hydraulic system elements and other systems or structural elements must remain adequate and there must be no detrimental effects.

Issued in Washington, DC, on June 26, 1996.

Ava L. Robinson,

Acting Director, Aircraft Certification Service.

[FR Doc. 96–17034 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 25.1435–1, Hydraulic System Certification Tests and Analysis

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed advisory circular (AC) 25.1435–1 and request for comments.

SUMMARY: This notice announces the availability of and requests comments on proposed Advisory Circular (AC) 25.1435–1, Hydraulic System Certification Tests and Analysis. This AC provides guidance on acceptable means, but not the only means, of demonstrating compliance with the requirements of § 25.1435 and related regulations pertaining to hydraulic systems. The proposed AC complements revisions to the airworthiness standards that are being proposed by a separate notice. This notice provides interested persons an opportunity to comment on the proposed AC.

DATES: Comments must be received on or before October 1, 1996.

ADDRESSES: Send all comments on the proposed AC to the Federal Aviation Administration, Attention: Mahinder K. Wahi, Flight Test and Systems Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Avenue SW., Renton, WA 98055–4056. Comments may be examined at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jan Thor, Regulations Branch, ANM–114, at the above address, telephone (206) 227–2127.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the subject AC may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.** Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters must identify the title of the AC and submit comments in triplicate to the address specified above. All comments received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

Discussion

In 1988, the FAA, in cooperation with the European Joint Aviation Authorities (JAA) and other organizations representing the American and European aerospace industries, began a process to harmonize the airworthiness requirements of the United States and the airworthiness requirements of Europe.

In 1992, the harmonization effort was undertaken by the Aviation Rulemaking Advisory Committee (ARAC). A working group of industry and government hydraulic systems specialists of Europe and the United States was chartered by notice in the Federal Register (57 FR 58843, December 12, 1992). The working group was tasked to develop a draft notice of proposed rulemaking (NPRM) and any collateral documents such as advisory circulars concerning new or revised requirements for hydraulic systems and the associated test conditions for hydraulic systems installed in transport category airplanes (§ 25.1435). The JAA is to develop a similar proposal to amend the Joint Aviation Requirements (JAR) as necessary, to achieve harmonization.

The advisory material made available via this notice was developed by the Hydraulic Systems Harmonization Working Group to ensure that the harmonized standards would be interpreted and applied consistently. It was presented to the FAA by the ARAC as a recommendation.

Part 25 of the Federal Aviation Regulations (FAR) prescribes the United States airworthiness standards for transport category airplanes. Proposed AC 25.1435–1 provides guidelines that the FAA has found acceptable to demonstrate compliance with those airworthiness standards for hydraulic systems. Revisions to part 25 are being proposed by the FAA in a notice of proposed rulemaking published elsewhere in this issue of the Federal Register. That notice also describes the use of the Aviation Rulemaking Advisory Committee to develop both the proposed revisions to part 25 and the proposed AC 25.1435–1.

Proposed AC 25.1435–1 provides additional guidance material and one means, but not the only means, of complying with the part 25 revisions proposed in Notice No. 96–[insert notice number of NPRM entitled, ''Revision of Hydraulic Systems Airworthiness Standards to Harmonize with European Airworthiness Standards for Transport Category Airplanes'') published in the same edition of the Federal Register]. Issuance of the AC 25.1435–1 is contingent on final adoption of the proposed revision to part 25.

Issued in Renton, Washington, on February 29, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

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Part VIII

Department of Transportation

Coast Guard

33 CFR Part 164

Navigation Safety Equipment for Towing Vessels; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 164

[CGD 94–020]

RIN 2115–AE91

Navigation Safety Equipment for Towing Vessels

AGENCY: Coast Guard, DOT.
ACTION: Final rule.

SUMMARY: The Coast Guard here requires that towing vessels carry and properly use equipment such as radars, compasses, marine charts or maps, and publications and that they carefully choose, inspect, and maintain towlines. This final rule is necessary as part of a comprehensive initiative to improve navigational safety for towing vessels. The purpose of requiring navigational-safety equipment on towing vessels is to help prevent another catastrophic train wreck such as that of the Sunset Limited in Alabama during September, 1993, and another spill such as that off Puerto Rico during January, 1994.

DATES: This rule is effective on August 2, 1996. The Director of the Federal Register approves as of August 2, 1996 the incorporation by reference of certain publications listed in this rule.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. Edward LaRue, Navigation Rules Division (G–MOV–3), (202) 267–0416, or LCDR Suzanne Englebert, Project Development Division (G–MSR–2), Office of Marine Safety and Environmental Protection, (202) 267–6490.

SUPPLEMENTARY INFORMATION:

Regulatory History

Soon after the fatal accident on September 22, 1993, near Mobile, Alabama, in which a barge collided with a railroad bridge and caused the Sunset Limited to plunge into a bayou, the Secretary of Transportation directed that the Coast Guard and the Federal Railroad Administration review the circumstances of the accident and undertake initiatives to minimize the risk of any similar tragedy in the future. A detailed review of marine-safety issues related to uninspected towing vessels appears in the notice of proposed rulemaking (NPRM) entitled ''Navigation Safety Equipment for Towing Vessels'' published on November 3, 1995 (60 FR 55890).

This final rule constitutes part of a comprehensive initiative by the Coast Guard to improve navigational safety for towing vessels. While other regulatory efforts are concentrating on reporting of casualties, on licensing, and on training on radar, this rule helps ensure that the mariner piloting a towing vessel has adequate equipment to safely navigate the waters being transited. It will impose the following: (1) Requirements for carriage of radars, searchlights, radios, compasses, swing-meters, echo depth-sounding devices, electronic position-fixing devices, marine charts or maps, and publications; (2) requirements for proper use of this navigational equipment; (3) requirements for maintenance, inspection, and serviceability of towlines, towing gear, and terminal gear; and (4) general requirements for navigational safety.

Thirty-seven letters were received in response to the NPRM. The Coast Guard has considered all of the comments and, in some instances, revised the proposed rule as appropriate. One comment requested that a public meeting be held. The Coast Guard determined that a public meeting was unnecessary for this rulemaking because the comments received were substantive and represented all aspects of both the industry and the public. The other comments have been grouped by issue and are discussed as follows:

Discussion of Comments and Changes

1. General

Seven comments supported and applauded the Coast Guard in its efforts to improve safety in the towing industry. The Coast Guard acknowledges and appreciates these comments.

One comment recommended that the Coast Guard verify the availability of radar standards from the Radio Technical Commission for Maritime Services (RTCM). The comment claimed either that the standards are unavailable or that the RTCM is exhibiting an unwillingness to provide them. The Coast Guard verified that the standards are readily available from the RTCM.

One comment recommended that the term ''gear'' in § 164.80(a) be defined because it may be confused with ''terminal gear.'' The Coast Guard reviewed § 164.80(a) and does not agree that the two terms will be confused, because ''gear'' as used in paragraph (a) is a general term for the equipment and systems to be inspected onboard the vessel and is further qualified in the subordinate, numbered paragraphs.

One comment stated that the term ''rivers and Western Rivers'' as used in paragraph 2 of the Discussion of Proposed Rules of the preamble was confusing. The comment also noted that the proposed rule expanded the definition of ''Western Rivers'' to include waters not covered for purposes of the Inland Navigation Rules. The comment recommended that the definition of ''other designated waterways'' be consistent with that in 33 CFR 89.25. The Coast Guard agrees and has removed the term ''river'' from the definitions in § 164.70. The Coast Guard has also expanded the definition of ''Western Rivers'' to include all waters specified by §§ 89.25 and 89.27, and has added the words ''and such other, similar waters as are designated by the COTP.''

Four comments recommended that the definition of river include the Gulf Intracoastal Waterway (GIWW). By including all waters specified by §§ 89.25 and 89.27 in the definition of ''Western Rivers'', the Coast Guard has included the GIWW. This change should eliminate any confusion over the applicability of this rule on the GIWW.

One comment commended the Coast Guard for its efforts to exempt vessels engaged in assistance towing. The Coast Guard acknowledges and appreciate this comment.

Four comments noted the vast differences between the marine-assistance industry and the tug and barge industry. They also stated that few marine-assistance firms' vessels would meet the criteria for exclusion offered by the Coast Guard. They recommended that the applicability of this final rule be changed from towing vessels of 8 meters (26.25 feet) or more in length to towing vessels of 12 meters (39.4 feet) or more in length. The Coast Guard, knowing and understanding the differences between the marine-assistance and the tug and barge industries, asked its Towing Safety Advisory Committee (TSAC) to research the possibility of a regulatory threshold based on a risk analysis. A risk analysis was done by a TSAC working group; after reviewing the analysis, which was in turn based on both historical data and analysis of forces, the Coast Guard agrees with the comments and has applied this rule only to towing vessels of 12 meters (39.4 feet) or more in length rather than to those of 8 meters (26.25 feet) or more in length. This analysis by TSAC is

available in the docket, as described earlier in this preamble. This change should exempt the vast majority of vessels engaged in the marine-assistance industry from the requirements of this rule.

Four comments proposed that § 164.01(b)(2) contain a definition for a disabled vessel as follows: ''Disabled vessel means a vessel that is in need of assistance, whether docked, underway, aground, sunk or abandoned. Disabled vessel does not include a barge or any vessel [that] is not regularly operated under its own power.'' The comments assert that, if this definition is accepted, then any comments by marine-assistance firms become academic since marine-assistance vessels will no longer as affected by this final rule. This rule, especially since the Coast Guard has changed the length of affected vessels from 8 to 12 meters, exempts the bulk of vessels engaged in marine assistance—helping people in disabled vessels on rivers, bays, or oceans. However, the Coast Guard must be careful not to exempt vessels that are performing commercial towing, even if the vessels are owned or operated by marine-assistance firms. The Coast Guard does not accept the four comments' definition of ''disabled vessel'' and has not amended the rule in the recommended manner.

Four comments concerned exemptions. Two recommended extending the proposed exemptions in § 164.01 to small, private work boats or tow boats involved in limited towing inside a limited geographical area, as other exemptions extend to work boats operating in fleeting areas and shipyards. A third recommended that the COTP be able to exempt vessels under certain traffic conditions and in restricted operating areas. The fourth recommended that the Coast Guard devise a method for exemption using speed and draft because of the differences in speeds and drafts between assistance vessels and tugs and pushboats. Seven comments recommended adding provision to § 164.01 specifying that the responsibility for determining applicability of an exemption besides with the COTP. In addition, they recommended a formal process to request a waiver. While it would be impossible to cover every possible exemption scenario, the Coast Guard agrees that an exemption process should be established and that the final exemption authority should rest with the COTP. The Coast Guard has amended § 164.01 to specify the availability of exemptions, the process to request them, and the final granting authority of the COTP. The COTP will base the decision for exemption on such things as routes, traffic, and capabilities of vessels.

One comment raised the issue of moving an exempted vessel from one fleeting area to another. The comment asked whether permission would be needed and, if so, how it would be obtained and whether it would have to be reverified with the new COTP for any different fleeting area. After review, the Coast Guard does not see the need to grant permission for an exempted vessel to move from one fleeting area to another if it is not engaged in towing, but it does see the need to reverify the exemption if the fleeting area is in a different COTP zone. In any case, the owner, master, or operator of a towing vessel engaged in towing from one fleeting area to another would have to request an exemption in accordance with § 164.01(b)(4) of this final rule.

Three comments recommended that towing vessels covered by this final rule become inspected vessels. They also recommended that all towing gear on these vessels be inspected by the Coast Guard or an approved classification (''class'') society. They recognized the time and financial constraints of annual boardings and recommended that towing vessels obtain certificates of inspection from entities such as approved class societies or from the National Association of Marine Surveyors. They also recommended that an initial exam occur within 24 months of the effective date of the rule and that the certificate be renewed every five years thereafter. Inspection of towing vessels has been studied by the Coast Guard and is outside the scope of this rulemaking.

One comment recommended that § 164.01 be modified to exempt vessels used in response-related activities, including training, as well as vessels of opportunity, such as fishing vessels engaged in those activities. The comment continued that an exemption should not apply to those vessels actually engaged in traditional towing activities but only to those vessels used solely in oil-spill response. The Coast Guard agrees and has amended § 164.01 so it exempts vessels used solely for pollution response.

One comment alleged delay in the rulemaking. It held the neglect of the Coast Guard, as it thought, representative of the discharge of its responsibilities in support of the Oil Pollution Act of 1990 (OPA 90) and urged the Coast Guard to quickly institute this final rule. The Coast Guard notes that this rulemaking allowed for early and meaningful public participation in its development.

Six comments stated that Coast Guard rules pertaining to towing vessels, now on the books, already provide navigational safety when properly enforced and followed. They also stated that more rules do not guarantee additional safety or prevention of accidents, especially in instances of major neglect by operators of towing vessels. Until now, few and minimal rules have applied to towing vessels 12 meters in length or over. This final rule is based in large measure on the general industry standard of care and sets a reasonable threshold consistent with this standard. This rule should raise the performance, of the few owners and operators who are hazardous, to that standard of care.

One comment questioned the Coast Guard's ability to enforce its rules. This final rule requires towboats to carry certain equipment and gear that usually are permanently installed. The Coast Guard anticipates that the verification of onboard, operational equipment and appropriately maintained gear will be achievable.

2. Carriage of navigational equipment

a. Radar

Two comments noted that proposed § 164.01(b)(1) may conflict with § 165.803(m)(2)(i), which requires radar-equipped fleeting boats, and with § 165.803(m)(2)(v), which requires continuous radar surveillance during periods of restricted visibility. The Coast Guard finds no conflict. A vessel that may not be required, under § 164.01(b)(1), to carry radar, may nonetheless be required, under § 165.803(m)(2), to carry radar when engaged in the activities described there.

Two comments recommended that the Coast Guard establish very limited local areas where towing would be permitted without radar-equipped towboats; this should prevent non-radar-equipped fleeting vessels from traveling large distances. The Coast Guard agrees that towing without radar should be conducted only within a company's fleeting area. Any other type of operations should be referred to the COTP for approval or exemption, if applicable.

Six comments concurred with radar as required equipment, yet expressed opposition to the development of minimum performance standards by a third-party technical organization. They recommended that the Coast Guard develop the standards with assistance of representatives from towing companies.

The RTCM, which developed radar standards, consists of members from industry, government, and manufacturers. The Coast Guard did participate in the development of the radar standards and maintains that the standards are reasonable.

One comment concurred with the radar requirement, but raised concerns about radar's being on harbor boats because of limited space in the pilot house, excessive vibration, and the constant facing and unfacing of tows. Harbor operations may qualify for an exemption that can be granted by the COTP. Masters, owners, and operators may present their particular operations to the COTP to consider for exemption.

Three comments supported the radar requirement, but recommended that it be for two marine radars. They also recommended that the grace period be reduced from 96 to 48 hours before notice to the COTP of the lack of an operating radar. The Coast Guard disagrees. On smaller vessels there may not be enough room for two radar consoles and their antennas. For some operations, it may also be cost-prohibitive. The Coast Guard has determined that a grace period of 96 hours is generous while it still secures safety.

One comment recommended that for an owner or operator of an existing radar some means of determining whether the existing radar conforms to RTCM standards needs to be developed. No formal certificate or sticker is affixed to the radar. The comment asked whether the Coast Guard would develop a list of approved radars, and recommended a list and some type of labelling requirement. Once the RTCM standards are referred to in this final rule, manufacturers will market radars that meet them. Manufacturers' self-certification is presently used successfully with regard to performance standards adopted by the International Maritime Organization (IMO). The deferred effective dates should provide enough time to determine whether an existing radar meets standards, and the Coast Guard expects lists of standards to be developed by various interested parties.

Two comments recommended reducing the grace period for having a radar that meets the display and stabilization requirements. One recommended from 5 to 3 years; the other recommended from 4 to 2 years. The Coast Guard has not implemented either of these timelines, because an accelerated implementation could put too much of an economic burden on owners or operators with small businesses. In addition, radar manufacturers need time to gear up to RTCM standards.

b. Searchlight

Three comments supported a requirement for a searchlight. Two recommended that the language in § 164.72(a)(2) better define the searchlight's capability. One called for an effective beam of twice the length of the tow; the other called for an effective beam of three to four times the length of the tow. The Coast Guard agrees with a better defined capability for the searchlight and has amended § 164.72(a)(2) to indicate a capability of illuminating objects at a distance of at least two times the length of the tow. For vessels towing astern, this requirement should be met for the length of tow used during transits on waters subject to Inland Navigation Rules.

c. Radios

Two comments supported a requirement for radios. They also supported a requirement for either a backup power source for a permanently installed radio or a separate, portable, battery-powered VHF–FM marine radio with a capability of 24-hour continuous use. The Coast Guard notes the support; however, technical requirements such as those relating to power source are established by the Federal Communications Commission (FCC).

Three comments observed that in April, 1992, the FCC lifted the requirement that vessel captains and operators must have Restricted Radiotelephone operators' permits. The comments questioned whether § 164.72(a)(3) is incompatible with the FCC ruling. The Coast Guard verified with the FCC that the lifting of the requirement affected only noncompulsory vessels (those not required by convention, statute, or regulation to have ship radio-station licenses). This final rule still supports the requirement to have Restricted Radiotelephone operators' permits.

d. Compasses and Swing-meters

Three comments took exception to vessels' not being able to carry a fluxgate compass in lieu of a magnetic compass. They pointed out that some tugs cannot use a card-type magnetic compass, because of the magnetic field in the pilot house due to electric welding. They noted that a fluxgate compass is approximately 1/20th the cost of a gyrocompass. They challenged the reasoning of disallowing a fluxgate compass because it requires an external power source. They stated that most card-type compasses have light bulbs for night use and that other navigational equipment, such as Long Range Aid to Navigation (LORAN) or Global Positioning System (GPS), need external power. The Coast Guard notes the exception, yet will not allow the substituting of a fluxgate compass for a magnetic one in this final rule. The fluxgate compass requires power to operate; a magnetic compass does not, and can be viewed with a flashlight should the vessel experience a power failure.

One comment wanted to know whether the Coast Guard was going to adopt ''standards'' for swing-meters. At the present time, the Coast Guard does not see the need to adopt ''standards'' for swing-meters.

Two comments supported a requirement for a magnetic compass, but also wanted a requirement for a gyrocompass equipped with an audible course-change indicator; they also recommended that both requirements cover towing vessels on Western Rivers as well as on all other waters. The Coast Guard does not agree with the requirement of a gyrocompass on all tug boats operating on all navigable waters of the U.S. It has set a swing-meter or magnetic compass as the minimum because either is cost-effective for all operators including small companies.

Two comments recommended that towing vessels pushing ahead and operating on Western Rivers be equipped with an audible swing-meter; this would be in addition to, not instead of, the magnetic compass proposed in § 164.72(a)(4)(i). The Coast Guard disagrees with the recommendation. One or the other should be more than sufficient to aid the vessel in its operations.

One comment recommended that § 164.72(a)(4) be modified, to allow a gyroscope. The Coast Guard has not set a gyroscope as an equivalent to a magnetic compass, because a gyroscope relies on an outside power source.

One comment opposed the requirement because a compass or swing-meter would not aid a harbor boat working in a small harbor or a fleeting area. Note that this final rule lets a vessel owner or operator seek from the COTP an exemption from this requirement.

e. Echo Depth-Sounding Device

Three comments supported the requirement. Two recommended compliance within 1 year from the effective date of this final rule; the other recommended compliance within 2 years. One comment also recommended the installation of two sounding devices. The Coast Guard disagrees with bringing

compliance forward from 5 years to 1 year. It notes that, while taken individually navigation equipment is relatively inexpensive, taken cumulatively the costs are not negligible. The 5-year implementation schedule is intended to lessen the impact of multiple requirements. The Coast Guard agrees that in some circumstances two sounding devices may be desirable; in general, however, one should give the operator or master adequate depth information.

Five comments disagreed with exempting tows on Western Rivers from having sounding devices; they stated there should be no exemptions. One of the five also stated that, at a minimum, sounding devices should be installed on vessels that move environmentally threatening cargoes. The Coast Guard holds that depth sounders are not so useful in pooled water as they are in open water where depths vary greatly. On towboats pushing ahead, they would be located too far aft to provide even a last-minute warning of shallow water. The Coast Guard has maintained the exemption as proposed.

One comment disagreed that a sounding device should be placed on every towing vessel. It recommended that ship-docking tugs operating in harbors, lakes, rivers, and bays be exempted from the requirement. Again, the owner or operator of a vessel may seek an exemption from this requirement.

f. Electronic Position-Fixing Device

No comments concerned the requirement for an electronic position-fixing device.

g. Marine Charts or Maps

One comment recommended that the words ''reasonably available'' remain in the definition of ''currently corrected.'' This would allow for a delay in the entry of corrections because of late receipt of Notices to Mariners (NTMs). The Coast Guard agrees, and the wording remains.

Three comments recommended that § 164.72(b)(1) require the carriage of current or currently corrected charts or maps and that, to this end, the definition for ''currently corrected'' change. The Coast Guard agrees with the concept of allowing either current editions or currently corrected editions of charts and maps; however, it has achieved this end without amending the definition.

Three comments recommended that § 164.72(b)(2) refer to NTMs, but not to Local Notices to Mariners (LNMs), because of the impossibility of ensuring delivery of LNMs. The Coast Guard partially agrees and has cast the final rule to include NTMs published by the Defense Mapping Agency. LNMs have remained because they are available for Western Rivers.

One comment recommended that a towing vessel on the Western Rivers be authorized to carry either a current edition of, or a currently corrected, river map from the U.S. Army Corps of Engineers (ACOE). It also recommended creating a new definition for ''currently corrected'', which would apply to Western Rivers and allow currently corrected charts to be used up to 5 years after their date of publication. The Coast Guard agrees and has amended the definition of ''currently corrected'' to include current editions of ACOE river maps and currently corrected editions provided it has not been over 5 years since their publication.

One comment recommended that § 164.72(b)(1)(i) be revised to reflect that ''All towing vessels, both inland and seagoing, are required * * *.'' This section already covers ''each towing vessel.'' The only variation allowed is in § 164.72(b)(1)(ii), which accommodates different routes.

One comment suggested that other sources of charts or maps, such as chartbooks published by State authorities or commercial publishers, be approved. The Coast Guard disagrees. Although these charts or maps may be updated annually, they conform to no hydrographic standard and therefore are not recognized by the Coast Guard as legal charts. In addition, these charts are usually advertised as ''not for navigation.''

Six comments opposed requiring towing vessels to be equipped with charts or maps that both are published by the National Ocean Service (NOS), the ACOE, or another authority and are either current editions or currently corrected charts or maps. They argued that, for lack of funding to the NOS, U.S. waterways are not regularly charted or mapped and stated that it is therefore unrealistic to require current editions or currently corrected charts or maps. They further recommended that the rule should include British Admiralty Charts as a possible alternative. NOS procures excellent nautical products, and the Coast Guard will continue to require their use. However, the Coast Guard also recognizes that there are charts produced by foreign governments of U.S. waters, such as British Admiralty charts, that are legally sufficient and could be acceptable alternatives. The Coast Guard has amended the rule as proposed to include charts published by a foreign government that will make safe navigation possible, that are based on hydrographic standards similar to those used by NOS, and that are applicable to a vessel's transit.

One comment did not support the requirement of a chart or map and felt it an excessive burden on those vessels that work in the same operating area. The Coast Guard does not agree. Vessels are required only to have charts or maps for their areas of operation, so the number of charts or maps to maintain should be minimal: the smaller the area, the fewer the charts or maps. The local information these charts or maps provide to operate is valuable and should assist them in verification of their position along their voyages.

h. Publications

One comment noted that proposed § 164.72(b)(3) restated the requirement of 33 CFR 88.05 that self-propelled vessels of 12 meters or more must have on board and maintain for ready reference a copy of the Inland Navigation Rules. It recommended that this section be removed. The Coast Guard agrees, and it does not appear in this final rule.

Two comments disagreed with the selection of nautical publications that the proposed rule would have required to be on board. They stated that some, such as NTMs, were good but did not need to be physically on board. They also felt that the Coast Pilot was of little use to a captain in local waters; the captain's ''local knowledge'' was of far greater value. It is not the intent of the Coast Guard that a vessel maintain a huge library of nautical publications. Rather, the Coast Guard is requiring those publications that most prudent mariners would retain on board their vessels. The final rule also provides that latitude for an owner or operator to have only those publications or extracts from publications for the area(s) to be transited. The number of publications or extracts required to be on board is minimal, and should not be a burden to the owner or operator; and the publications or extracts do provide valuable port-specific information.

3. Proper Use of Navigational Equipment

Two comments recommended that the tug and barge industry adopt a system where three qualified watchstanders or operators are always on board. Two others also recommended that on all towing vessels, especially on those on oceangoing and coastwise transits, at least one crewmember be a licensed engineer. These are manning issues not within the scope of this rulemaking.

Three comments recommended that the licensing system be restructured

similar to that for vessels of unlimited tonnage, so that an individual would have to serve as a mate before becoming a master on tugs greater than 8 meters. Two other comments strongly recommended that training standards be incorporated either into the navigational sections of the final rule or into a new section in part 164. The Coast Guard has published an NPRM entitled, ''Licensing and Manning for Officers of Towing Vessels'' (61 FR 31332, June 19, 1996) and invites comments to that docket on these issues.

One comment recommended that, when in pilotage waters, all tank barges that are over a certain minimum (1,000 tons) and are subject to Federal jurisdiction have to be under the direction and control of a pilot holding a Federal license or pilotage endorsement for the waters being traversed. It further recommended that this requirement include the towing vessels propelling these barges. The placement of pilots in charge of barges and onboard tugs is another issue of manning not within the scope of this rulemaking.

4. Maintenance, Inspection, and Serviceability of Towlines and Terminal Gear

Two comments recommended that the responsibility for towing gear used in pushing ahead or towing alongside belong to just one party, the master or the operator. They stated that not making the master or the operator solely responsible might cause some decision between the owner and either the master or the operator, or result in no one's being responsible. The Coast Guard disagrees. As for vessels towing astern, for vessels towing alongside or pushing ahead the owner is included with the master or operator so that the responsibility is ''several'': Rests on each. If the owner and the master or operator are the same, then the responsibility rests on one individual. If a company owns a fleet, then it is appropriate that the company have adequate maintenance policies and appropriately empower the master or operator to ensure the requirements are met. In this way, all parties have a share of the responsibility for failing to meet the requirements—one for liability, either or both of the others for their licenses.

Two comments recommended that every owner of a towing vessel be required to have a prescribed Preventive Maintenance System (PMS) for all towing gear; this PMS should include maintenance and inspection schedules and a supply system that provides spare parts. In this final rule the Coast Guard has outlined minimum factors for proper maintenance. The owner should base each vessel's PMS on the owner's experience and expertise and on the manufacturers' recommendations and suggestions rather than use one prescribed by the Coast Guard.

Two comments recommended that this final rule direct the carriage aboard the towing vessel of manufacturers' maintenance requirements and wear specifications for towlines. The Coast Guard agrees with TSAC that the requirements and specifications can be located in a company office, at a repair facility, or on the vessel, and deems it appropriate to allow this flexibility.

Four comments recommended that the Coast Guard specify sizes for towing wires. Two recommended that it establish minimum standards to ensure that the size of the wire, the bollard pull of the tug, and the maneuverability of the tug and tow are properly matched. Two others recommended that § 164.74(a)(1) include graphs or tables to assist the master, owner, or operator in determining minimum breaking strength of a towline and that these graphs or tables be guidelines, not minimum standards. The Coast Guard has determined that manufacturers' published specifications should provide the owner, master, or operator with the information needed to properly determine a towline's strength and appropriate use. The towing industry is diverse, operating in many different environments. By not specifying sizes, the Coast Guard has provided a flexible format to allow companies to assess their operations and choose their towlines appropriately.

Two comments recommended that every towing vessel operating on oceans or coastwise be required to have an emergency tow wire and that this rule prescribe its maintenance and repair. The Coast Guard disagrees. 33 CFR part 155 already requires emergency towlines aboard large oil barges; but duplicate towlines now appear unnecessary aboard most barges, since the competent repair of most towlines, at sea, is feasible. By recognizing and dictating the minimum acceptable repair, § 164.74(a)(2) should avoid incompetent repair such as that which caused the grounding of the T/B MORRIS J. BERMAN and yet also avoid the costly alternative of requiring duplicate towlines.

One comment felt that it would be difficult, if not impossible, to keep records on towlines. Two recommended that the reference to ''shock loading'' in proposed § 164.74(a)(3)(iv)(C) be eliminated because the phenomenon is difficult to define or quantify. All three also asked whether this provision would require a monitor of tow-wire tension with data-recording capability. The Coast Guard has reviewed the recording requirements and, with the exception of that on shock loading, finds them to be reasonable and valuable for the assessment of the towline's history. It never intended to require monitors of tow-wire tension, and it has removed the reference to shock loading.

One comment recommended that § 164.74(a)(3)(iv)(G) be revised to read ''Results of a tensile test taken to confirm the residual strength of the towline, if necessary.'' The comment noted that tensile testing is an integral component of towline inspection and maintenance. But an operator may just as well determine that a towline or segment of towline must be removed without conducting a tensile test: It should not be implied that a tensile test must be conducted in every instance. The Coast Guard concurs and, although it has not adopted the suggested wording, in this final rule has revised the proposed wording.

Two comments recommended that the Coast Guard clarify the applicability to terminal gear of § 164.74(b)(4), which would have required a method for emergency release of towlines. One stated that the final rule should clarify whether this wording applies to synthetic towlines or towlines employed without a winch and should also specify whether the winch-brake requirement of § 164.74(b)(7) will satisfy the requirement of paragraph (b)(4) for a tugboat outfitted with a tow winch. The Coast Guard has clarified the release requirement by removing the term ''emergency.'' This requirement is intended to ensure some manner of safety disengaging the towline. If a vessel has a winch, letting the cable run off the drum will be acceptable. If a vessel uses synthetic line, an axe will be acceptable provided there is a protected area where the person can stand while releasing the line. The winch-brake requirement is separate from this releasing requirement: It ensures that winch speed can be controlled, even if power is lost.

Two comments recommended that the towing-gear standards be more stringent than proposed. They considered the wording in § 164,74 too ambiguous, especially the term ''appropriate.'' They recommended that what is appropriate should be some standard such as the AWO Responsibile Carrier Program, the U.S. Navy Standards, or some manufacturers' recommendations. They urged that to be valid the final rule should incorporate specific standards by reference or spell them out. The Coast

Guard has not made this rule more specific than proposed, because it applies to a diverse industry and because no current standards adequately address every towing-vessel arrangement. The Coast Guard has allowed the owners and operators the flexibility of developing their own maintenance standards, but has outlined specific, minimal criteria to ensure an irreducible measure of safety.

Six comments stated that the requirements for towlines and terminal gear in general were not appropriate for small assistance-towing vessels. Other comments objected in particular to requirements on thimbles, poured sockets, wire cables, shackles, and metal fittings, because these items could damage light boats and injure personnel aboard disabled vessels; on the use of cotter pins or other means to secure connections of terminal gear, because such items are unacceptable and even dangerous; and on testing towlines and maintaining elaborate records of towlines' history, because these items impose a disproportionate burden. The Coast Guard has determined that these requirements are not appropriate for most small assistance-towing vessels. It has amended the applicability of this final rule from vessels of 8 meters in length to vessels of 12 meters in length and over. It developed these requirements to ensure that towlines remain intact and attached during towing especially for those combinations of tugs and barges that pose greater risk to the waterways.

5. Navigation; Tests and Inspections; Maintenance, Failure, and Reporting

Two comments expressed the opinion that § 164.80 was not appropriate for small assistance-towing vessels, since applying the same criteria to a 1,600-gross-ton (GT) vessel as to an 8–GT vessel is not reasonable (least of all when the latter uses an outboard motor). The Coast Guard has determined that § 164.80 indeed should not apply to small assistance-towing vessels. It has amended the applicability of this rule from vessels 8 meters in length to vessels of 12 meters in length and over. This change exempts smaller assistance-towing vessels, yet covers larger assistance-towing vessels (also engaged in commercial towing), which pose greater risk to the waterways.

Three comments noted that proposed § 164.80 would have required vessel operators to inspect and test equipment before departure from port or at least weekly. They supposed that the intent was to compel routine, walk-through inspections of a towing vessel's vital systems before its embarking on an extended voyage. They contended that any periodic tests or inspections might fall mid-voyage while, in practice, all tests and inspections fall either upon embarkation or, by harbor tugs engaged in essentially continuous service, upon change of crew (weekly or biweekly). They asserted that industry practices are consistent with dictates of prudent navigation. The Coast Guard agrees, and has revised § 164.80 to ratify this frequency of tests and inspections.

Three comments expressed confusion over § 164.80(a)(2) due to the term ''vessel-control alarms'', which to them connoted autopilot or steering-system alarms. They stated that few towing vessels have either of these. They recommended either clarifying the meaning or changing the requirement to ''vessel's installed alarm systems.'' The Coast Guard has kept the wording as proposed. If steering-system alarms or autopilot alarms are installed, it is appropriate to test them before departing from port; however, this final rule does not require installation of additional alarms.

One comment questioned whether § 164.80(b) should require that navigational equipment be checked by vessels under 1,600 GT. The Coast Guard did not propose to require this measure for towing vessels under 1,600 GT in the NPRM; however, it did state that this equipment must be operational. It is logical to include a test of this equipment for these vessels and it is consistent with the intent of the rulemaking. The Coast Guard has added a test of this equipment for towing vessels under 1,600 GT.

Two comments stated that proposed § 164.82 should be more stringent. One urge that § 164.82(d) have language strong enough to obligate a towing vessel's operator to moor or anchor the vessel if, in the operator's judgment, proceeding without radar would jeopardize the safety of the tow, of other vessels, or of the environment; at a minimum, a tow of environmentally hazardous cargoes should have to moor in hours of darkness when the towing vessel's radar is inoperative. One comment held that personnel who order a vessel to depart with a broken radar are ordering a ''less seaworthy'' vessel to go to sea and should be held responsible for doing so. The Coast Guard wrote this requirement to ensure that towing vessels' owners, operators, and masters address and correct equipment problems. But it is not necessarily unsafe to operate without a radar in some areas and weather. The operator or master certainly risks his or her license if he or she operates in poor weather, at night, or in congested traffic without an operable radar. Section 164.82 of this final rule outlines clearly that an owner as well as an operator or master must consider the conditions before leaving port or continuing a transit once equipment fails—one for avoiding liability and each of the others for keeping the license.

One comment raised the question whether the COTP really wanted to know if a small assistance-towing vessel's radar was inoperable in accordance with § 164.82(d). The Coast Guard has changed the applicability of this final rule so most assistance-towing vessels are exempt from the rule. Those 12 meters in length and over that also operate as commercial towing vessels remain subject to it, and should. The Coast Guard has reviewed the reporting requirements and values reports of defective radars on all towing vessels of 12 meters or more in length engaged in commercial towing.

Three comments recommend that § 164.82 include the option of telephoning the COTP and requesting a deviation for an inoperative radar. Section 164.82(c) of this final rule allows a phoned-in request for deviation; but, because of the legal nature of this type of request, it also requires a written follow-up.

One comment recommended keeping the words ''Failure of redundant * * *'' in § 164.82(d). The Coast Guard concurs and has kept them.

Two comments recommended inserting the words ''after entering a port'' behind ''96 hours'' in § 164.82(d) because it is probable that a radar would fail during a sea voyage and would be inoperative more than 96 hours before a technician could get aboard. The two also felt that such a requirement would create a burden because it would mean that the vessel has to request a deviation from each COTP as the vessel passes through the zones. Information of an inoperative radar is critical when a vessel is under way, and services of a technician should not be difficult to obtain, least of all in the zones; therefore, the Coast Guard has not amended this requirement from the NPRM.

One comment noted that, if this final rule applied to foreign-flag vessels towing in U.S. waters, it would mandate equipment not now required by treaty such as the International Convention for the Safety of Life at Sea 74/78 (SOLAS), as amended; the comment argued that to impose regulations as a requirement of port entry without agreement of the IMO would be inappropriate. The comment offered as an example the proposed requirement for an illuminated swing-meter or magnetic compass: It is

conceivable (though unlikely) that a foreign-flag towing vessel not subject to SOLAS would not have a compass. The Coast Guard has determined that it could not require less in this final rule without defaulting on its duty to protect the U.S. navigable waters from the risk posed by towing vessels. These vessels can seek from the COTP an exemption if they enter U.S. navigable waters without the required equipment. By requiring this equipment, the Coast Guard ensures that these vessels will be adequately equipped while operating in U.S. navigable waters or, at a minimum, that the COTP will be aware of their substandard state.

6. Logs

One comment recommended that the final rule require maintenance of more-comprehensive logbooks; the proposed rule would have authorized maintenance of a simple ''diary'', which the comment held insufficient because it could not prove that vessel personnel comply with the work-hour limitations of 46 U.S.C. 8104 and would not offer a comprehensive list of items to take account of. The same comment recommended that, because of the illiteracy of some operators, log books should have a minimal number of items that could be answered by initial, check-marks, or numbers rather than call for long, narrative paragraphs. The same comment recommended that § 164.78(b) be streamlined to require a log entry only when a pre-departure test or inspection indicated a failure or malfunction of a component; this approach would be consistent with industry practice and would minimize unnecessary paperwork. The Coast Guard considers it appropriate for companies to determine the method of recordkeeping that meets the requirements in this rule and their own needs and that suits the capability of the operators and masters they employ. (Again, manning and rest hours are not within the scope of this rule.) To ensure compliance with this rule, the Coast Guard requires a record of tests even if nothing fails. In the interest of minimizing these reports, the Coast Guard has not dictated the format of the entry and will allow companies to continue to use their established procedures.

One comment recommended that the local Officer in Charge of Marine Inspection (OCMI) be authorized to approve a company's individual safety-certification process in lieu of establishing a new and inflexible regime of logging and reporting for ensuring that vessels' systems, gear, and the like are inspected and tested. The Coast Guard has changed the language on inspecting and testing in this final rule to reflect companies' procedures. The Coast Guard sees no need for an OCMI's special approval of a company's individual process. However, the process must record at least the tests and inspections required by this rule.

A final comment recommended that retroreflective material be placed on both sides of barges to aid in seeing the barges, especially of a large tow. This is outside the scope of this rulemaking, but is under consideration by the Navigation Safety Advisory Council (NAVSAC). If found to be feasible, it may be the subject of a separate rulemking or of standard agreed to by government and industry.

Incorporation by Reference

The Director of the Federal Register has approved the material in § 164.03 for incorporation by reference under 5 U.S.C. 552 and 1 CFR Part 51. The material is available as indicated in that section.

Regulatory Evaluation

This final 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).

A final Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT has been prepared and is available in the docket for inspection or copying where indicated under **ADDRESSES.** This final rule applies to all commercial towing vessels 12 meters or greater in length. An estimated 4,686 existing towing vessels currently operate on U.S. waters and are affected by this rule. The Coast Guard estimates that the one-time cost of implementing this rule is $28 million. Summaries of the comments to the NPRM on its regulatory evaluation, of the anticipated benefits of this final rule, and of the estimated cost of this rule follow:

Summary of Comments

Two comments held the statement ''this rule would not result of a significant economic impact on a substantial number of small entities'' entirely false. They noted that the cost to upgrade a marine-assistance vessel valued at $30,000 would be substantial. This rule in final form does not affect marine-assistance vessels; it affects only those vessels engaged in commercial towing. It applies to all of the latter vessels 12 meters (39.25 feet) or greater in length operating in U.S. waters. These vessels will have to retain manufacturing specifications on towlines and regularly maintain and inspect the towlines. They will have to carry updated charts or maps and publications, marine radar, and searchlights. Some (depending on service) will also have to carry magnetic compasses or swing-meters, depth-sounders, and electronic position-fixing devices.

Summary of Benefits

The principal benefits of this final rule will be to enhance the safety of navigation and reduce the risk of collisions, allisions, and groundings.

The allision in September, 1993, of a tow with a fixed railroad bridge near Mobile, Alabama, established the necessity of navigational-safety equipment for towing vessels. These navigational-safety measures will reduce damage to the human and natural environments by increasing the number of tools at the disposal of a vessel operator, thereby decreasing the likelihood of an accident.

The preliminary findings of studies prepared after the derailment of the Sunset Limited indicate that many owners and operators of towing vessels voluntarily equip their vessels with much of the proposed equipment here required. Review of the kind and amount of equipment voluntarily installed suggests the desirability of the industry's taking these measures. In addition, reliability and performance of modern navigational equipment has improved, which also suggests that mariners can have available to them, at falling cost, valued, accurate information. The benefits of each piece of equipment are as follows:

A marine surface-navigation radar is an essential piece of navigational-safety equipment. Not only does it aid in detecting and avoiding other vessels; it helps in constricted waterways and during periods of decreased visibility.

A searchlight also helps in restricted waterways, and is essential in checking the condition of tows and warning other vessels of the presence of towlines.

A magnetic compass indicates headings, which are critical to safe navigation of a vessel in open waters. It allows dead-reckoning in restricted visibility, enables the vessel to fix its position, helps the vessel to determine the effect of winds and currents, and tells the rate of turn for the tow.

A swing-meter, or rate-of-turn indicator, tells the rate of turn for the

towing vessel itself, which is valuable for every vessel pushing ahead and is critical for every large, multiple-barge tow pushing ahead. TSAC has indicated the considerable value of this device to every vessel pushing ahead.

A depth-sounder decreases the risk of grounding. It provides immediate information on depth, and also helps fix the vessel's position.

An electronic position-fixing device has become a basic navigational tool on board both offshore and coastal vessels. It supplants plotting by traditional means, for which few towing vessels have either the time or the personnel.

Charts or maps, and publications, have always been a basic navigational tool. They give detailed, recent information on obstructions, routes, bridge clearances, communication channels, river currents, and hazards to navigation.

Finally, owners' and operators' retention of manufacturers' data on the breaking strength of towlines, together with minimal standards of inspection and serviceability, will help ensure that towlines remain intact throughout transits and are of the appropriate sizes or configurations. The desirability of keeping tugs made up to their barges appears self-evident.

All of these measures serve essentially the same purpose: to increase navigational safety for towing vessels and barges on U.S. waters. Although the Coast Guard recognizes that many prudent operators already practice them, this rule will codify them, provide basic performance standards for the equipment, and compel compliance for vessels not conforming to the sound practices of the majority of the industry.

The benefits from these measures are significant, but the Coast Guard cannot quantify them from available data.

Summary of Costs

The present value of the one-time costs to the towing industry of installing the required navigational equipment is, on a very conservative estimate, just under $28 million. This estimate is based on Coast Guard research. It assumes that a high proportion of vessels do not already carry the equipment, and does not factor in the difference in requirements for the difference in routes. Therefore, although it does not include costs for maintenance and repair, the Coast Guard expects that the actual value of the costs to the industry will run appreciably lower than $28 million.

The estimated one-time cost of towing vessels 20 meters (65.62 feet) or more in length totals $10.2 million; this comes to about $4,600 a vessel. That for those between 12 and 20 meters totals $17.4 million; this comes to about $7,000 a vessel. The average cost for smaller vessels, paradoxically, is higher than that for larger ones because the Coast Guard's estimating methodology assumes that a larger proportion of smaller vessels do not already carry the required navigational-safety equipment.

This final rule will impose recurring costs in following years. There will be three annual components of recurring costs: updates, deviations, and towline testing. (a) Estimated cost of updates is $468,000 a year for the purchase of new editions of charts or maps and publications as necessary. (b) Estimated costs of deviations is about $43,000 a year, assuming 1,072 of them a year. This number is low because the rule will allow 96 hours to make any necessary repairs. This is to decrease the burden on industry, especially on small entities. (c) Finally, estimated cost of towline testing is about $300 a test. At 937 tests a year (20 percent of vessels), this component will be $281,000 a year. These three annual components of recurring costs will total $792,000.

Small Entities

The costs to small entities will not be significant, because, unlike the proposed rule, this final rule exempts towing vessels of less than 12 meters in length, certain yard and fleeting craft, assistance-towing vessels, and pollution-response vessels; because of the large number of vessels already in compliance; and because of the phase-in periods for several provisions. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each rule that contains a collection-of-information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection-of-information requirements include reporting, recordkeeping, notification, and other, similar requirements.

This final rule contains collection-of-information requirements in the following sections: 164.72(b), 164.74(a) 164.78(b), and 164.82(d). The following particulars apply:

DOT No.: 2115.

OMB Control No.: 2115–0628.

Administration: U.S. Coast Guard.

Title: Navigation Safety Equipment for Towing Vessels.

Need for Information: This final rule will require the mariner to log or otherwise record information necessary for the safe operation of the vessel, including (1) Updating navigational charts or maps and publications to ensure that they accurately reflect local conditions; (2) keeping documentation on the vessel's towline to verify its strength and recording regular inspections of it to ensure that it remains sound; (3) recording tests of the navigation and towing equipment to ensure that they are functioning properly; and (4) requesting a deviation from the COTP if the vessel's radar is inoperative to ensure that this essential equipment is repaired. These recordkeeping requirements are thoroughly consistent with good commercial practice and the dictates of good seamanship for safe navigation and maintenance of critical navigational-safety equipment.

Proposed Use of Information

The primary use of this information will be to ensure that the mariner records information necessary for the safe operation and maintenance of the vessel. The secondary use will be to help Coast Guard inspectors determine whether a vessel is in compliance or, in the case of a casualty, whether failure to comply with this final rule contributed to the casualty. The Coast Guard has no specific plan to collect these data for statistical analysis.

Frequency of Response: The various information called for by this final rule will be recorded at different intervals. Updates of charts or maps and publications under § 164.72(b) bill occur at least weekly. Towline verification will entail, for each towline, keeping a record of the initial manufacturing data indefinitely. Entries in inspection logs or other documentation for towlines under § 164.74(a) will entail recording at least monthly. The recording under § 164.78(b) of tests and inspection of equipment will be frequent, and consistent with the underway schedule of the vessel. Finally, the submittal of requests for deviations under § 164.82(d) should occur infrequently, only when certain navigational-safety equipment fails and remains inoperative for greater than 96 hours.

Burden Estimate: 302,663 hours.

Respondents: 4,686 owners, masters, or operators of towing vessels.

Average Burden Hours a respondent: 64.6 annual hours a respondent.

Persons need not respond to an information collection unless it displays a currently valid control number from

OMB. This final rule contains information collections that have been approved by OMB.

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 (October 26, 1987) and has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federal Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under paragraphs 2.B.2.e(34) (d) and (e) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 164

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

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 164 as follows:

PART 164—NAVIGATION SAFETY REGULATIONS

1. The authority citation for part 164 is revised to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. 2103, 3703; 49 CFR 1.46. Sec. 164.13 also issued under 46 U.S.C. 8502. Sec. 164.61 also issued under 46 U.S.C. 6101.

2. In § 164.01, paragraph (b) is added to read as follows:

§ 164.01 Applicability.

* * * * *

(b) Sections 164.70 through 164.82 of this part apply to each towing vessel of 12 meters (39.4 feet) or more in length operating in the navigable waters of the United States other than the St. Lawrence Seaway; except that a towing vessel is exempt from the requirements of § 164.72 if it is—

(1) Used solely within a limited geographic area, such as a fleeting-area for barges or a commercial facility, and used solely for restricted service, such as making up or breaking up larger tows;

(2) Used solely for assistance towing as defined by 46 CFR 10.103;

(3) Used solely for pollution response; or

(4) Any other vessel exempted by the Captain of the Port (COTP). The COTP, upon written request, may, in writing, exempt a vessel from § 164.72 for a specified route if he or she decides that exempting it would not allow its unsafe navigation under anticipated conditions.

3. Section 164.03 is amended by revising paragraph (b) to read as follows:

§ 164.03 Incorporation by reference.

* * * * *

(b) The materials approved for incorporation by reference in this part and the sections affected are as follows:

American Petroleum Institute (API), 1220 L Street NW., Washington, DC 20005

API Specification 9A, Specification for Wire Rope, Section 3, Properties and Tests for Wire and Wire Rope, May 28, 1984 ..... 164.74

American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103

ASTM D4268–93, Standard Test Method for Testing Fiber Ropes 164.74

Cordage Institute, 350 Lincoln Street, Hingham, MA 02043

CIA–3, Standard Test Methods for Fiber Rope Including Standard Terminations, Revised, June 1980 ..... 164.74

International Maritime Organization (IMO), 4 Albert Embankment, London SE1 7SR, U.K.

IMO Resolution A342(IX), Recommendation on Performance Standards for Automatic Pilots, adopted November 12, 1975 ..... 164.13

International Telecommunication Union Radiocommunication Bureau (ITU–R), Place de Nations CH–1211 Geneva 20 Switzerland

(1) ITU–R Recommendation M.821, Optional Expansion of the Digital Selective-Calling System for Use in the Maritime Mobile Service, 1992 ..... 164.43

(2) ITU–R Recommendation M.825, Characteristics of a Transponder System Using Digital Selective-Calling Techniques for Use with Vessel Traffic Services and Ship-to-Ship Identification, 1992 ..... 164.43

Radio Technical Commission for Maritime Services, 655 Fifteenth Street, NW., Suite 300, Washington, DC 20005

(1) RTCM Paper 12–78/DO–100, Minimum Performance Standards, Loran C Receiving Equipment, 1977 ..... 164.41

(2) RTCM Paper 194–93/SC104–STD, RTCM Recommended Standards for Differential NAVSTAR GPS Service, Version 2.1, 1994 ... 164.43

(3) RTCM Paper 71–95/SC112–STD, RTCM Recommended Standards for Marine Radar Equipment Installed on Ships of Less Than 300 Tons Gross Tonnage, Version 1.1, October 10, 1995 ..... 164.72

(4) RTCM Paper 191–93/SC112–X, RTCM Recommended Standards for Maritime Radar Equipment Installed on Ships of 300 Tons Gross Tonnage and Upwards, Version 1.2, December 20, 1993 ..... 164.72

4. Sections 164.70, 164.72, 164.74, 164.76, 164.78, 164.80, and 164.82 added to read as follows:

§ 164.70 Definitions.

For purposes of §§ 164.72 through 164.82, the term—

Current edition means the most recent published version of a publication, chart, or map required by § 164.72.

Currently corrected edition means a current or previous edition of a publication required by § 164.72, corrected with changes that come from Notices to Mariners (NTMs) or Notices to Navigation reasonably available and that apply to the vessel's transit. Hand-annotated river maps from the U.S. Army Corps of Engineers (ACOE) are currently corrected editions if issued within the previous 5 years.

Great Lakes means the Great Lakes and their connecting and tributary waters including the Calumet River as far as the Thomas J. O'Brien Lock and Controlling Works (between miles 326 and 327), the Chicago River as far as the east side of the Ashland Avenue Bridge (between miles 321 and 322), and the Saint Lawrence River as far east as the lower exit of Saint Lambert Lock.

Swing-meter means an electronic or electric device that indicates the rate of turn of the vessel on board which it is installed.

Towing vessel means a commercial vessel engaged in or intending to engage in pulling, pushing or hauling alongside, or any combination of pulling, pushing, or hauling alongside.

Western Rivers means the Mississippi River, its tributaries, South Pass, and Southwest Pass, to the navigational-demarcation lines dividing the high seas from harbors, rivers, and other inland waters of the United States, and the Port Allen-Morgan City Alternative Route, and that part of the Atchafalaya River above its junction with the Port Allen-Morgan City Alternative Route

including the Old River and the Red River and those waters specified by §§ 89.25 and 89.27 of this chapter, and such other, similar waters as are designated by the COTP.

§ 164.72 Navigational-safety equipment, charts or maps, and publications required on towing vessels.

(a) Except as provided by § 164.01(b), each towing vessel must be equipped with the following navigational-safety equipment:

(1) *Marine Radar.* By August 2, 1997, a marine radar that meets the following applicable requirements:

(i) For a vessel of less than 300 tons gross tonnage that engages in towing on navigable waters of the U.S., including Western Rivers, the radar must meet—

(A) The requirements of the Federal Communications Commission (FCC) specified by 47 CFR part 80; and

(B) RTCM Standard for Marine Radar Equipment Installed on Ships of Less Than 300 Tons Gross Tonnage, RTCM Paper 71–95/SC112–STD, Version 1.1, display Category II and stabilization Category Bravo.

(ii) For a vessel of less than 300 tons gross tonnage that engages in towing seaward of navigable waters of the U.S. or more than three nautical miles from shore on the Great Lakes, the radar must meet—

(A) The requirements of the FCC specified by 47 CFR part 80; and

(B) RTCM Standard for Marine Radar Equipment Installed on Ships of Less Than 300 Tons Gross Tonnage, RTCM Paper 71–95/SC112–STD, Version 1.1, display Category I and stabilization Category Alpha.

(iii) For a vessel of 300 tons gross tonnage or more that engages in towing, the radar must meet RTCM Recommended Standards for Marine Radar Equipment Installed on Ships of 300 Tons Gross tonnage and Upwards, RTCM Paper 191–93/SC112–X, Version 1.2.

(iv) A vessel with an existing radar must meet the applicable requirements of paragraphs (a)(1) (i) through (iii) of this section by August 2, 1998; except that a vessel with an existing radar must meet the display and stabilization requirements of paragraph (a)(1)(ii)(B) of this section by August 2, 2001.

(2) *Searchlight.* A searchlight, directable from the vessel's main steering station and capable of illuminating objects at a distance of at least two times the length of the tow.

(3) *VHF–FM Radio.* An installation or multiple installations of VHF–FM radios as prescribed by part 26 of this chapter and 47 CFR part 80, to maintain a continuous listening watch on the designated calling channel, VHF–FM Channel 13 (except on portions of the Lower Mississippi River, where VHF–FM Channel 67 is the designated calling channel), and to separately monitor the International Distress and Calling Channel, VHF–FM Channel 16, except when transmitting or receiving traffic on other VHF–FM channels or when participating in a Vessel Traffic Service (VTS) or monitoring a channel of a VTS. (Each U.S. towing vessel of 26 feet (about 8 meters) or more in length, except a public vessel, must hold a ship-radio-station license for radio transmitters (including radar and EPIRBs), and each operator must hold a restricted operator's license or higher. To get an application for either license, call (800) 418–FORM or (202) 418–FORM, or write to the FCC; Wireless Bureau, Licensing Division; 1270 Fairfield Road; Gettysburg, PA 17325–7245.)

(4) *Magnetic Compass.* Either—

(i) An illuminated swing-meter or an illuminated car-type magnetic steering compass readable from the vessel's main steering station, if the vessel engages in towing exclusively on Western Rivers; or

(ii) An illuminated card-type magnetic steering compass readable from the vessel's main steering station.

(5) *Echo Depth-Sounding Device.* By August 2, 2001, an echo depth-sounding device readable from the vessel's main steering station, unless the vessel engages in towing exclusively on Western Rivers.

(6) *Electronic Position-Fixing Device.* An electronic position-fixing device, either a LORAN–C receiver or a satellite navigational system such as the Global Positioning System (GPS) as required by § 164.41, if the vessel engages in towing seaward of navigable waters of the U.S. or more than three nautical miles from shore on the Great Lakes.

(b) Each towing vessel must carry on board and maintain the following:

(1) *Charts or maps.* Marine charts or maps of the areas to be transited, published by the National Ocean Service (NOS), the ACOE, or a river authority that satisfy the following requirements:

(i) The charts or maps must be of a large enough scale and have enough detail to make safe navigation of the areas possible.

(ii) The charts or maps must be either—

(A) Current editions or currently corrected editions, if the vessel engages in towing exclusively on navigable waters of the U.S., including Western Rivers; or

(B) Currently corrected editions, if the vessel engages in towing seaward of navigable waters of the U.S. or more than three nautical miles from shore on the Great Lakes.

(iii) The charts or maps may be, instead of charts or maps required by paragraphs (b)(1) (i) and (ii) of this section, currently corrected marine charts or maps, or applicable extracts, published by a foreign government. These charts or maps, or applicable extracts, must contain information similar to that on the charts or maps required by paragraphs (b)(1) (i) and (ii) of this section, be of large enough scale, and have enough detail to make safe navigation of the areas possible, and must be currently corrected.

(3) *General publications.* A currently corrected edition of, or an applicable currently corrected extract from, each of the following publications for the area to be transited:

(i) If the vessel is engaged in towing exclusively on Western Rivers—

(A) U.S. Coast Guard Light List;

(B) Applicable Notices to Navigation published by the ACOE, or Local Notices to Mariners (LNMs) published by the Coast Guard, for the area to be transited, when available; and

(C) River-current tables published by the ACOE or a river authority, if available.

(ii) If the vessel is engaged other than in towing exclusively on Western Rivers—

(A) Coast Guard Light List;

(B) Notices to Mariners published by the Defense Mapping Agency, or LNMs published by the Coast Guard;

(C) Tidal-current tables published by the NOS, or river-current tables published by the ACOE or a river authority:

(D) Tide tables published by the NOS; and

(E) U.S. Coast Pilot.

(c) Table 164.72, following, summarizes the navigational-safety equipment, charts or maps, and publications required for towing vessels of 12 meters or more in length:

TABLE 164.72.—EQUIPMENT, CHARTS OR MAPS, AND PUBLICATIONS OF TOWING VESSELS OF 12 METERS OR MORE IN LENGTH

	Western rivers	U.S. navigable waters other than Western rivers	Waters seaward of navigable waters and 3 NM or more from shore on the Great Lakes
Marine Radar:			
Towing vessels of less than 300 GT.	RTCM Paper 71–95/SC112–STD Version 1.1, Display Category II[1] Stabilization Category BRAVO.	RTCM Paper 71–95/SC112–STD Version 1.1, Display Category II[1] Stabilization Category BRAVO.	RTCM Paper 71–95/SC112–STD Version 1.1, Display Category I[2] Stabilization Category ALPHA.
Towing vessels of 300 GT or more.	RTCM Paper 191–93/SC112–X Version 1.2.[1]	RTCM Paper 191–93/SC112–X Version 1.2.[1]	RTCM Paper 191–93/SC112–X Version 1.2.[1]
Searchlight	X	X	X.
VHF–FM radio	X	X	X.
Magnetic compass.	X[3]	X	X.
Swing-meter	X[3]		
Echo depth-sounding device.		X	X.
Electronic position-fixing device.			X.
Charts or maps	(1) Large enough scale (2) Current edition or currently corrected edition.	(1) Large enough scale (2) Current edition or currently corrected edition.	(1) Large enough scale. (2) Currently corrected edition.
General publications.	(1) U.S. Coast Guard Light List	(1) U.S. Coast Guard Light List	(1) U.S. Coast Guard Light List.
	(2) Notices to Navigation or Local Notice to Mariners.	(2) Local Notices to Mariners	(2) Local Notices to Mariners.
	(3) River-current Tables	(3) Tidal-current Tables (4) Tide Tables (5) U.S. Coast Pilot	(3) Tidal-current Tables. (4) Tide Tables. (5) U.S. Coast Pilot.

NOTES:
[1] Towing vessels with existing radar must meet this requirement by August 2, 1998.
[2] Towing vessels with existing radar must meet this requirement by August 2, 1998, but do not need to meet the display and stabilization requirement until August 2, 2001.
[3] A towing vessel may carry either a swing-meter or a magnetic compass.

§ 164.74 Towline and terminal gear for towing astern.

(a) *Towline.* The owner, master, or operator of each vessel towing astern shall ensure that the strength of each towline is adequate for its intended service, considering at least the following factors:

(1) The size and material of each towline must be—

(i) Appropriate for the horsepower or bollard pull of the vessel;

(ii) Appropriate for the static loads and dynamic loads expected during the intended service;

(iii) Appropriate for the sea conditions expected during the intended service;

(iv) Appropriate for exposure to the marine environment and to any chemicals used or carried on board the vessel;

(v) Appropriate for the temperatures of normal stowage and service on board the vessel;

(vi) Compatible with associated navigational-safety equipment; and

(vii) Appropriate for the likelihood of mechanical damage.

(2) Each towline as rigged must be—

(i) Free of knots;

(ii) Spliced with a thimble, or have a poured socket at its end; and

(iii) Free of wire clips except for temporary repair, for which the towline must have a thimble and either five wire clips or as many wire clips as the manufacturer specifies for the nominal diameter and construction of the towline, whichever is more.

(3) The condition of each towline must be monitored through the—

(i) Keeping on board the towing vessel or in company files of a record of the towline's initial minimum breaking strength as determined by the manufacturer, by a classification (''class'') society authorized in § 157.04 of this chapter, or by a tensile test that meets API Specification 9A, Specification for Wire Rope, Section 3; ASTM D4268–93, Standard Test Method for Testing Fiber Ropes; or Cordage Institute CIA 3, Standard Test Methods for Fiber Rope Including Standard Terminations;

(ii) If the towline is purchased from another owner, master, or operator of a vessel with the intent to use it as a towline or if it is retested for any reason, keeping on board the towing vessel or in company files of a record of each retest of the towline's minimum breaking strength as determined by a class society authorized in § 157.04 of this chapter or by a tensile test that meets API Specification 9A, Section 3; ASTM D4268–93; or Cordage Institute CIA 3, Standard Test Methods;

(iii) Conducting visual inspections of the towline in accordance with the manufacturer's recommendations, or at least monthly, and whenever the serviceability of the towline is in doubt (the inspections being conducted by the owner, master, or operator, or by a person on whom the owner, master, or operator confers the responsibility to take corrective measures appropriate for the use of the towline);

(iv) Evaluating the serviceability of the whole towline or any part of the towline, and removing the whole or part from service either as recommended by the manufacturer or a class society authorized in § 157.04 of this chapter or in accordance with a replacement schedule developed by the owner, master, or operator that accounts for at least the—

(A) Nautical miles on, or time in service of, the towline;

(B) Operating conditions experienced by the towline;

(C) History of loading of the towline;

(D) Surface condition, including corrosion and discoloration, of the towline;

(E) Amount of visible damage to the towline;

(F) Amount of material deterioration indicated by measurements of diameter and, if applicable, measurements of lay extension of the towline; and

(G) Point at which a tensile test proves the minimum breaking strength of the towline inadequate by the standards of paragraph (a)(1) of this section, if necessary; and

(v) Keeping on board the towing vessel or in company files of a record of the material condition of the towline when inspected under paragraphs (a)(3)(iii) and (iv) of this section. Once this record lapses for three months or more, except when a vessel is laid up or out of service or has not deployed its towline, the owner, master, or operator shall retest the towline or remove it from service.

(b) *Terminal gear.* The owner, master, or operator of each vessel towing astern shall ensure that the gear used to control, protect, and connect each towline meets the following criteria:

(1) The material and size of the terminal gear are appropriate for the strength and anticipated loading of the towline and for the environment;

(2) Each connection is secured by at least one nut with at least one cotter pin or other means of preventing its failure;

(3) The lead of the towline is appropriate to prevent sharp bends in the towline from fairlead blocks, chocks, or tackle;

(4) There is provided a method, whether mechanical or non-mechanical, that does not endanger operating personnel but that easily releases the towline;

(5) The towline is protected from abrasion or chafing by chafing gear, lagging, or other means;

(6) Except on board a vessel towing in ice on Western Rivers or one using a towline of synthetic or natural fiber, there is fitted a winch that evenly spools and tightly winds the towline; and

(7) If a winch is fitted, there is attached to the main drum a brake that has holding power appropriate for the horsepower or bollard pull of the vessel and can be operated without power to the winch.

§ 164.76 Towline and terminal gear for towing alongside and pushing ahead.

The owner, master, or operator of each vessel towing alongside or pushing ahead shall ensure that the face wires, spring lines, and push gear used—

(a) Are appropriate for the vessel's horsepower;

(b) Are appropriate for the arrangement of the tow;

(c) Are frequently inspected; and

(d) Remain serviceable.

§ 164.78 Navigation under way: Towing vessels.

(a) The owner, master, or operator of each vessel towing shall ensure that each person directing and controlling the movement of the vessel—

(1) Understands the arrangement of the tow and the effects of maneuvering on the vessel towing and on the vessel, barge, or object being towed;

(2) Can fix the position of the vessel using installed navigational equipment, aids to navigation, geographic reference-points, and hydrographic contours;

(3) Does not fix the position of the vessel using buoys alone (Buoys are aids to navigation placed in approximate positions either to alert mariners to hazards to navigation or to indicate the orientation of a channel. They may not maintain exact charted positions, because strong or varying currents, heavy seas, ice, and collisions with vessels can move or sink them or set them adrift. Although they may corroborate a position fixed by other means, they cannot fix a position; however, if no other aids are available, buoys alone may establish an estimated position.);

(4) Evaluates the danger of each closing visual or radar contact;

(5) Knows and applies the variation and deviation, where a magnetic compass is fitted and where charts or maps have enough detail to enable this type of correction;

(6) Knows the speed and direction of the current, set, drift, and tidal state for the area to be transited; and

(7) Proceeds at a speed prudent for the weather, visibility, traffic density, tow draft, possibility of wake damage, speed of the current, and local speed-limits.

(b) The owner, master, or operator of each vessel towing shall ensure that the tests and inspections required by § 164.80 are conducted and that the results are entered in the log or other record carried on board.

§ 164.80 Tests and inspections.

(a) The owner, master, or operator of each towing vessel of less than 1,600 GT shall ensure that the following tests and inspections of gear occur before the vessel embarks on a voyage of more than 24 hours or when each new master or operator assumes command:

(1) *Steering-systems.* A test of the steering-gear-control system; a test of the main steering gear from the alternative power supply, if installed; a verification of the rudder-angle indicator relative to the actual position of the rudder; and a visual inspection of the steering gear and its linkage.

(2) *Navigational equipment.* A test of all installed navigational equipment.

(3) *Communications.* Operation of all internal vessel control communications and vessel-control alarms, if installed.

(4) *Lights.* Operation of all navigational lights and all searchlights.

(5) *Terminal gear.* Visual inspection of tackle; of connections of bridle and towing pendant, if applicable; of chafing gear; and of the winch brake, if installed.

(6) *Propulsion systems.* Visual inspection of the spaces for main propulsion machinery, of machinery, and of devices for monitoring machinery.

(b) The owner, master, or operator of each towing vessel of 1,600 GT or more shall ensure that the following tests of equipment occur at the frequency required by § 164.25 and that the following inspections of gear occur before the vessel embarks on a voyage of more than 24 hours or when each new master or operator assumes command:

(1) *Navigational equipment.* Tests of onboard equipment as required by § 164.25.

(2) *Terminal gear.* Visual inspection of tackle; of connections of bridle and towing pendant, if applicable; of chafing gear; and of the winch brake, if installed.

§ 164.82 Maintenance, failure, and reporting.

(a) *Maintenance.* The owner, master, or operator of each towing vessel shall maintain operative the navigational-safety equipment required by § 164.72.

(b) *Failure.* If any of the navigational-safety equipment required by § 164.72 fails during a voyage, the owner, master, or operator of the towing vessel shall exercise due diligence to repair it at the earliest practicable time. He or she shall enter its failure in the log or other record carried on board. The failure of equipment, in itself, does not constitute a violation of this rule; nor does it constitute unseaworthiness; nor does it obligate an owner, master, or operator to moor or anchor the vessel. However, the owner, master, or operator shall consider the state of the equipment—along with such factors as weather, visibility, traffic, and the dictates of good seamanship—in deciding whether it is safe for the vessel to proceed.

(c) *Reporting.* The owner, master, or operator of each towing vessel whose

equipment is inoperative or otherwise impaired while the vessel is operating within a Vessel Traffic Service (VTS) Area shall report the fact as required by 33 CFR 161.124. (33 CFR 161.124 requires that each user of a VTS report to the Vessel Traffic Center as soon as practicable:

(1) Any absence or malfunction of vessel-operating equipment for navigational safety, such as propulsion machinery, steering gear, radar, gyrocompass, echo depth-sounding or other sounding device, automatic dependent surveillance equipment, or navigational lighting;

(2) Any condition on board the vessel likely to impair navigation, such as shortage of personnel or lack of current nautical charts or maps, or publications; and

(3) Any characteristics of the vessel that affect or restrict the maneuverability of the vessel, such as arrangement of cargo, trim, loaded condition, under-keel clearance, and speed.)

(d) *Deviation and authorization.* The owner, master, or operator of each towing vessel unable to repair within 96 hours an inoperative marine radar required by § 164.72(a) shall so notify the Captain of the Port (COTP) and shall seek from the COTP both a deviation from the requirements of this section and an authorization for continued operation in the area to be transited. Failure of redundant navigational-safety equipment, including but not limited to failure of one of two installed radars, where each satisfies § 164.72(a), does not necessitate either a deviation or an authorization.

(1) The initial notice and request for a deviation and an authorization may be spoken, but the request must also be written. The written request must explain why immediate repair is impracticable, and state when and by whom the repair will be made.

(2) The COTP, upon receiving even a spoken request, may grant a deviation and an authorization from any of the provisions of §§ 164.70 through 164.82 for a specified time if he or she decides that they would not impair the safe navigation of the vessel under anticipated conditions.

Dated: June 26, 1996.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Marine Safety and Environmental Protection.

[FR Doc. 96–16892 Filed 7–2–96; 8:45 am]

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Federal Register

Wednesday
July 3, 1996

Part IX

The President

Presidential Determination No. 96–36—Delegation of Authority To Identify Germany Under Title VII and Modify or Restrict Title VII Trade Action Taken Against Germany

Federal Register
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Wednesday, July 3, 1996

Presidential Documents

Title 3—

The President

Presidential Determination No. 96-36 of June 28, 1996

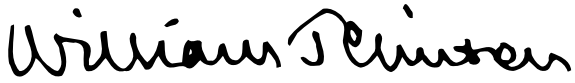
Delegation of Authority To Identify Germany Under Title VII and Modify or Restrict Title VII Trade Action Taken Against Germany

Memorandum for the United States Trade Representative

By the authority vested in me by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to the United States Trade Representative the powers granted the President:

(1) in section 305(g)(1)(A) of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2515(g)(1)(A) (the ''Act'')), to formally identify Germany as a country that discriminates against U.S. products or services in government procurement of heavy electrical equipment; and

(2) in section 305(g)(2) of the Act to impose, modify, or restrict sanctions in response to the discrimination so identified.You are authorized and directed to publish this memorandum in the Federal Register.



THE WHITE HOUSE,
Washington, June 28, 1996.

[FR Doc. 96–17241
Filed 7–2–96; 11:40 am]
Billing code 3190–01–P

Federal Register

Wednesday
July 3, 1996

Part X

Office of the United States Trade Representative

Determination Under Section 305 of the Trade Agreements Act of 1979; Notice

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Under Section 305 of the Trade Agreements Act of 1979

AGENCY: Office of the United States Trade Representative.

ACTION: Determination Under Section 305 of the Trade Agreements Act of 1979.

Pursuant to section 305(g)(1) of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2515(g)(1)(A)), and the authority vested in me by the President pursuant to Presidential Determination 96–36, I hereby identify Germany as a country that maintains in government procurement, a significant and persistent pattern or practice of discrimination against United States products or services which results in identifiable harm to United States businesses. Pursuant to section 305(g)(2) of the Trade Agreements Act of 1979, as amended, on behalf of the President, I hereby determine that immediate imposition of the sanctions specified in section 305(g)(1)(B) of the Act would harm the public interest of the United States, and accordingly postpone imposition of those sanctions so that they will take effect September 30, 1996.

Reasons for a Determination

On April 30, 1996, in the Administration's annual report to the Congress under Title VII of the Omnibus Trade and Competitiveness Act of 1988 (section 305 of the Trade Agreements Act of 1979, as amended), the Administration identified Germany for discrimination in the procurement of heavy electrical equipment. Specifically cited was the failure of Germany to implement the provisions of the 1993 U.S.-European Union (EU) Memorandum of Understanding on Government Procurement (MOU), which requires Germany, among other things, to give U.S. suppliers access to an effective remedies system.

If the 60-day period of consultations specified in the statute is not successful in resolving U.S. concerns, the President is required to make this determination. Although the United States held consultations with the Commission of the European Communities, representing Germany, to address the practices cited in the Title VII report, U.S. concerns have not yet been addressed by Germany in a satisfactory manner. Therefore, pursuant to the requirements of the statute, I have determined to identify Germany. However, in light of progress in these consultations, I am postponing implementation of the sanctions until September 30, 1996, to provide an opportunity to resolve remaining U.S. concerns by then.

This determination shall be published in the Federal Register.

Ambassador Charlene Barshefsky,

Acting United States Trade Representative.

[FR Doc. 96–17240 Filed 7–2–96; 11:33 am]

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LIST OF PUBLIC LAWS

This is a list of public bills from the 104th Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as ''slip laws'') from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 3029/P.L. 104–151

To designate the United States courthouse in Washington, District of Columbia, as the ''E. Barrett Prettyman United States Courthouse''. (July 1, 1996; 110 Stat. 1383)

Last List June 5, 1996