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Presidential Documents

Title 3—

The President

Executive Order 13013 of August 6, 1996

Amending Executive Order No. 10163, the Armed Forces Reserve Medal

By the authority vested in me as President by the Constitution and the laws of the United States, including my authority as Commander in Chief of the Armed Forces of the United States, it is hereby ordered that Executive Order No. 10163, as amended, is further amended by striking out sections 3 and 4 and inserting in lieu thereof the following new sections 3 and 4:

''3. The Armed Forces Reserve Medal may be awarded to members or former members of the reserve components of the Armed Forces of the United States who meet one or more of the following three criteria.

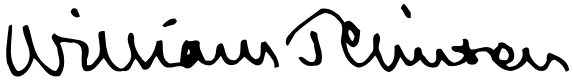
a. The member has completed a total of 10 years of honorable service in one or more of such reserve components, including annual active duty and inactive duty training as required by appropriate regulations, provided that (1) such 10 years of service was performed within a period of 12 consecutive years, (2) such service shall not include service in a regular component of the armed forces, including the Coast Guard, but (A) service in a reserve component that is concurrent, in whole or in part, with service in a regular component of the armed forces shall be included in computing the required 10 years of reserve service, and (B) any period of time during which reserve service is interrupted by service in a regular component of the armed forces shall be excluded in computing, and shall not be considered a break in, the said period of 12 consecutive years, and (3) such service shall not include service for which the Naval Reserve Medal or the Marine Corps Reserve Medal has been or may be awarded.

b. On or after August 1, 1990, the member was called to active duty and served under sections 12301(a), 12302, 12304, 12406 (formerly sections 672(a), 673, 673b, 3500, and 8500) and Chapter 15 of title 10, United States Code, or, in the case of the United States Coast Guard Reserve, section 712 of title 14, United States Code.

c. On or after August 1, 1990, the member volunteered and served on active duty in support of specific U.S. military operations or contingencies designated by the Secretary of Defense.

4. Not more than one Armed Forces Reserve Medal may be awarded to any one person. The member shall receive the medal with the distinctive design of the reserve component with which the person served at the time of award or in which such person last served. The medal is awarded with the appropriate appurtenance that denotes the manner in which the award was earned, either through completion of 10 years of service, mobilization, or volunteering for, and serving on, active duty in support of operations or contingencies designated by the Secretary of Defense. For each succeeding mobilization, volunteering for, and serving on, active duty in support of operations or contingencies, or 10-year period of service as above described,

and a suitable appurtenance may be awarded, to be worn with the medal in accordance with appropriate regulations.''



THE WHITE HOUSE,
August 6, 1996.

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Rules and Regulations

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

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

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1620

Nonappropriated Fund Employees

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Interim rule with request for comments.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing interim regulations governing Thrift Savings Plan (TSP) participation by certain persons who move between Federal civil service positions and positions with Nonappropriated Fund (NAF) instrumentalities of the Department of Defense (DOD) and U.S. Coast Guard (Coast Guard). These interim regulations implement sections 10, 11, 13 and 14 of the Portability of Benefits for Nonappropriated Fund Employees Act of 1990 (1990 Portability Act), as amended by section 1043 of the National Defense Authorization Act for Fiscal Year 1996 (Defense Authorization Act).

DATES: These interim rules are effective on August 10, 1996. Comments must be received on or before October 10, 1996.

ADDRESSES: Comments may be submitted to the Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Patrick J. Forrest, Federal Retirement Thrift Investment Board, 1250 H Street, N.W., Washington, D.C. 20005. Telephone: (202) 942–1662. Telefacsimile: (202) 942–1676.

SUPPLEMENTARY INFORMATION: The Board administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Pub. L. 99–335, 101 Stat. 514 (1986), which has been codified, as amended, largely at 5 U.S.C. 8401–8479 (1994). The TSP is a tax-deferred retirement savings plan for Federal employees that is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code.

The 1990 Portability Act, Pub. L. 101–508, 104 Stat. 1388, 1388–335 to 1388–341 (codified largely at 5 U.S.C. 8347(p)(1) and 8461(n)(1)), as amended by section 1043 of the Defense Authorization Act, Pub. L. 104–106, 110 Stat. 186, 434–439, provides that certain employees who move from Federal service to NAF instrumentalities are eligible to participate in the TSP by virtue of their election to be covered by the Civil Service Retirement System (CSRS) or the Federal Employees' Retirement System (FERS). These regulations set forth the rules and procedures which the NAF instrumentality must follow for its employees who are eligible to participate in the TSP pursuant to the 1990 Portability Act, as amended. Different rules apply depending on whether the employee moved on or after August 10, 1996, and whether he or she elects to be covered by CSRS or FERS. The regulations also address an employee's eligibility to participate in the TSP if the employee moves from a NAF instrumentality to a Federal Government agency.

The 1990 Portability Act permitted CSRS and FERS employees of the Department of Defense and the U.S. Coast Guard who moved on or after January 1, 1987, to a NAF instrumentality to elect to maintain their CSRS or FERS retirement coverage after the move. On June 10, 1991, the Board published an interim rule with request for comments in the Federal Register (56 FR 26,722) implementing the 1990 Portability Act as it pertained to the TSP. The Board received no comments on the interim rule.

Section 1043 of the 1996 Defense Authorization Act amended the 1990 Portability Act by expanding the eligibility requirement for employees of NAF instrumentalities in two ways. First, all Federal employees moving to a NAF instrumentality, not just those from the Department of Defense and U.S. Coast Guard, are eligible to continue their CSRS or FERS retirement coverage after their move. Second, the amendment changed the threshold for being eligible for CSRS or FERS retirement coverage from employees who moved to a NAF instrumentality after December 31, 1986, to employees who made the move after December 31, 1965. The Board's NAF regulations are being revised to implement this amendment to the 1990 Portability Act. The revised regulations do not change the procedures for retroactive participation in the TSP by affected employees of NAF instrumentalities.

Sections 1620.93 (a)(2) and (a)(3) pertain to ''an employee who moved to a NAF instrumentality on or after August 10, 1996, but after December 31, 1965, elects to be covered by FERS * * *.'' The 1990 Portability Act, as amended, does not change the current Federal law which provides that FERS coverage can only begin on or after January 1, 1987. However, under Office of Personnel Management regulations, eligible employees who transferred to a NAF instrumentality prior to January 1, 1987, may elect FERS coverage to be retroactively effective on or after January 1, 1987.

Section 1620.93(c) provides that employees who are covered by a NAF retirement plan are not eligible to participate in the TSP. Under section 1620.93, some employees who are covered under CSRS or FERS can elect retroactive NAF retirement coverage. If a TSP participant elects retroactive NAF retirement coverage, there could be contributions in his or her account which relate to a period during which he or she was ineligible to participate in the TSP. The 1990 Portability Act, as amended, does not provide for the transfer of funds between the TSP and a NAF defined contribution plan. Therefore, these contributions must be removed from the TSP under the Board's error correction regulations at 5 CFR part 1605.

Section 1620.93(d) pertains to employees who elected CSRS or FERS coverage under the 1990 Portability Act before the effective date of these regulations. Their TSP elections are valid if they were properly implemented by the NAF instrumentality under then-effective regulations. In all other respects, these regulations apply to those employees. The Board is also making several changes to the interim regulations which are unrelated to the Defense Authorization Act amendments. The Board has received questions from employees moving from NAF

instrumentalities to Federal civil service positions regarding when they are eligible to participate in the TSP. The 1990 Portability Act, as amended, does not change the eligibility requirements set forth in FERSA. Section 1620.94 is being revised to explain those requirements. In addition, since this subpart was first published on June 10, 1991, the Board has changed the manner by which an employing agency is required to transmit employee separation data to the TSP recordkeeper. *See* TSP Bulletin 94–29, Elimination of Form TSP–18, Validation of Retirement Information, and New Procedures for Submitting Form TSP–3, Designation of Beneficiary. Section 1620.97 is being amended to reflect this change.

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.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waiver of Notice of Proposed Rulemaking and 30-Day Delay of Effective Date

Under 5 U.S.C. 553 (b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days because section 1043 of the Defense Authorization Act, 110 Stat. at 434–435, requires these regulations to be effective on or before August 10, 1996.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, sec. 201, Pub. L. 104–4, 109 Stat. 48, 64, the effect of this regulation on State, local, and tribal governments and on the private sector has been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by any State, local, or tribal governments in the aggregate or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64–65, is not required.

Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA), as amended by the Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121, tit. II, 110 Stat. 847, 857–875 (5 U.S.C. 801(a)(1)(A)), the Board 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 the publication of this rule in today's Federal Register. This rule is not a ''major rule'' as defined in section 804(2) of the APA as amended (5 U.S.C. 804(2)).

List of Subjects in 5 CFR Part 1620

Employee benefit plan, Government employees, Pensions, Retirement.

Federal Retirement Thrift Investment Board

Roger W. Mehle,

Executive Director.

For the reasons set out in the preamble, Part 1620 of chapter VI, Title 5 of the Code of Federal Regulations is amended as follows:

PART 1620—CONTINUATION OF ELIGIBILITY

1. The authority citation for Part 1620 is revised to read as follows:

Authority: 5 U.S.C. 8474 and 8432b; Pub. L. 99–591, 100 Stat. 3341; Pub. L. 100–238, 101 Stat. 1744; Pub. L. 100–659, 102 Stat. 3910; Pub. L. 101–508, 104 Stat. 1388; Pub. L. 104–106, 110 Stat. 186.

2. Subpart G of part 1620 is revised to read as follows:

Subpart G—Nonappropriated Fund Employees

Sec.

1620.90 Scope.
1620.91 Definitions.
1620.92 Employees who move to a NAF instrumentality on or after August 10, 1996.
1620.93 Employees who moved to a NAF instrumentality prior to August 10, 1996, but after December 31, 1965.
1620.94 Employees who move from a NAF Instrumentality to a Federal Government agency.
1620.95 Payment of TSP contributions.
1620.96 Loan payments.
1620.97 Transmission of information.
1620.98 Notices.
1620.99 Other regulations.

Subpart G—Nonappropriated Fund Employees

§ 1620.90 Scope.

This subpart applies to any employee of a Nonappropriated Fund (NAF) instrumentality of the Department of Defense (DOD) or the U.S. Coast Guard who elects to be covered by the Civil Service Retirement System (CSRS) or the Federal Employees' Retirement System (FERS) and to any employee in a CSRS or FERS covered position who elects to be covered by a retirement plan established for employees of a NAF instrumentality pursuant to the Portability of Benefits for Nonappropriated Fund Employees Act of 1990, Pub. L. 101–508, 104 Stat. 1388, 1388–335 to 1388–341 (codified largely at 5 U.S.C. 8347(p)(1) and 8461(n)(1) (1994)), as amended by section 1043 of the National Defense Authorization Act for Fiscal Year 1996, Pub. L. 104–106, 110 Stat. 186, 434–439.

§ 1620.91 Definitions.

As used in this subpart, the terms—

Basic pay means the pay from the NAF instrumentality used to compute the amount the individual is required to contribute to the Civil Service Retirement and Disability Fund as a condition for participating in CSRS or FERS, as the case may be.

Covered by means paying contributions to the Civil Service Retirement and Disability Fund under either CSRS or FERS.

Move means moving from a position covered by CSRS or FERS to a NAF instrumentality of the DOD or Coast Guard, or *vice versa*, without a break in service of more than 1 year.

Thrift Savings Plan (TSP) election means a request by an employee to start contributing to the TSP, to terminate contributions to the TSP, to change the amount of contributions made to the TSP each pay period, or to change the allocation of future TSP contributions among the investment funds and made effective pursuant to 5 CFR part 1600.

§ 1620.92 Employees who move to a NAF instrumentality on or after August 10, 1996.

(a) Any Thrift Savings Plan (TSP) elections:

(1) Made during a previous employment by an employee who moves to a NAF instrumentality on or after August 10, 1996, and who elects to continue to be covered by CSRS or FERS; and

(2) Which is still in effect as of the date of the move shall be implemented by the NAF instrumentality and shall begin with the date of the move.

(b) If an employee who moves to a NAF instrumentality on or after August 10, 1996, does not have a current election to contribute to the TSP, he or she shall be permitted to make such an election during the first TSP Open Season, as described in 5 CFR 1600.2, during which he or she is eligible to do so under 5 U.S.C. 8432.

(c) An employee who moves to a NAF instrumentality on or after August 10, 1996, and who elects to continue to be covered by CSRS or FERS must be permitted during the appropriate Open Seasons to elect under 5 U.S.C. 8351(b)(2) or 8432(a), as applicable, to make future contributions to the Thrift Savings Fund from his or her basic pay.

(d) For an employee who moves to a NAF instrumentality on or after August 10, 1996, and who elects to continue to be covered by FERS, the NAF instrumentality must also contribute each pay period to the Thrift Savings Fund in accordance with Board procedures on behalf of such employee any amounts which the employee is eligible to receive under 5 U.S.C. 8432(c).

(e) In the case of an employee who moves to a NAF instrumentality on or after August 10, 1996, and who elects to continue to be covered by CSRS or FERS, any TSP contributions described in 5 U.S.C. 8351(b)(2) or 8432(a), as applicable, for which such employee is eligible and which are not made in accordance with this section because the employee moves to the NAF instrumentality but does not make an immediate election to be covered by CSRS or FERS, shall be made up according to the error correction procedures contained in 5 CFR part 1605.

§ 1620.93 Employees who moved to a NAF instrumentality prior to August 10, 1996, but after December 31, 1965.

(a) *Future TSP contributions.* (1) *Employee Contributions.* An employee who moved to a NAF instrumentality prior to August 10, 1996, but after December 31, 1965, and who elects to be covered by CSRS or FERS as of the date of such move may elect to make any future contributions to the TSP in accordance with 5 U.S.C. 8351(b)(2) or 8432(a), as applicable, within 30 days of the date of his or her election to be covered by CSRS or FERS. Such contributions shall begin being deducted from the employee's pay no later than the pay period following the election to contribute to the TSP. Any TSP election which may have been in effect at the time of the employee's move will not be effective for any future contributions.

(2) *Agency Automatic (1%) Contributions.* If an employee who moved to a NAF instrumentality prior to August 10, 1996, but after December 31, 1965, elects to be covered by FERS, the NAF instrumentality must also contribute each pay period to the Thrift Savings Fund on behalf of such employee any amounts which the employee is eligible to receive under 5 U.S.C. 8432(c)(1), beginning no later than the pay period following the employee's election to be covered by FERS.

(3) *Agency Matching Contributions.* If an employee who moved to a NAF instrumentality prior to August 10, 1996, but after December 31, 1965, elects to be covered by FERS and also elects to make contributions to the TSP pursuant to paragraph (a)(1) of this section, the NAF instrumentality must also contribute each pay period to the Thrift Savings Fund on behalf of such employee any amounts which the employee is eligible to receive under 5 U.S.C. 8432(c)(2), beginning at the same time as the employee's contributions are made pursuant to paragraph (a)(l) of this section.

(b) *Retroactive TSP Contributions.* (1) Without regard to any election to contribute to the TSP under paragraph (a)(l) of this section, the NAF instrumentality shall take the following actions with respect to an employee who moved to a NAF instrumentality prior to August 10, 1996, but after December 31, 1965, and who elects to be covered by CSRS or FERS as of the date of the move:

(i) *Agency Automatic (1%) Make-up Contributions.* The NAF instrumentality shall, within 30 days of the date of the employee's election to be covered by FERS, contribute to the Thrift Savings Fund an amount representing the Agency Automatic (1%) Contribution for all pay periods during which the employee would have been eligible to receive the Agency Automatic (1%) Contribution under 5 U.S.C. 8432, beginning with the date of the move and ending with the date that Agency Automatic (1%) Contributions begin under paragraph (a)(2) of this section. Lost earnings will not be paid on these contributions unless they are not made by the NAF instrumentality within the time frames required by these regulations.

(ii) *Employee Make-up Contributions.* (A) Within 60 days of the election to be covered by FERS, an employee who moved to a NAF instrumentality prior to August 10, 1996, but after December 31, 1965, and who elects to be covered by FERS, may make an election regarding Employee Make-up Contributions. The employee may elect to contribute all or a percentage of the amount of Employee Contributions which the employee would have been eligible to make under 5 U.S.C. 8432 between the date of the move and the date Employee Contributions begin under paragraph (a)(1) of this section or, if no such election is made under paragraph (a)(1) of this section, the date that Agency Automatic (1%) Contributions begin under paragraph (a)(2) of this section.

(B) Within 60 days of the election to be covered under CSRS, an employee who moved to an NAF instrumentality prior to August 10, 1996, but after December 31, 1965, and who elects to be covered by CSRS, may make an election regarding make-up contributions. The employee may elect to contribute all or a percentage of the amount of Employee Contributions which the employee would have been eligible to make under 5 U.S.C. 8351 between the date of the move and the date Employee Contributions begin under paragraph (a)(1) of this section or, if no such election is made under paragraph (a)(1) of this section, the pay period following the date the election to be covered by CSRS is made.

(C) Deductions made from the employee's pay pursuant to an employee's election under paragraph (b)(1)(ii) (A) or (B) of this section, as appropriate, shall be made according to a schedule that meets the requirements of paragraphs (b) (2) and (3) of this section.

(iii) *Agency Matching Make-up Contributions.* The NAF instrumentality must pay to the Thrift Savings Fund any Matching Contributions attributable to Employee Contributions made under paragraph (b)(1)(ii)(A) of this section that the NAF instrumentality would have been required to make under 5 U.S.C. 8432(c), at the same time that such Employee Contributions are contributed to the Fund.

(2) The NAF instrumentality may set a ceiling on the number of pay periods over which the contributions referred to in paragraph (b)(1)(ii) of this section may be made; however, this ceiling may not be less than two times the number of pay periods in which the payments could have been made. The payment schedule must begin no later than the pay period following the date the employee elects such schedule and it may not contain more than four times the number of pay periods in which the payment could have been made. When setting the number of payments, the employee's remaining period of employment with the Federal Government should be considered to ensure that the employee will have sufficient time to make up these contributions.

(3) If the agreed-upon payment schedule cannot be met because the employee has insufficient net pay or because the employee has reached an annual ceiling for tax-deferred contributions under 26 U.S.C. 402(g) or 415, the payment schedule will be suspended until the employee is again able to make full payments through payroll deductions. Pay periods for which an employee is unable to make payments because of insufficient net pay or a ceiling on tax-deferred contributions, will not be counted against the maximum number of pay periods applicable to the schedule and

the maximum number of applicable pay periods must be extended accordingly.

(4) If an employee chooses to contribute the make-up amount, he or she may subsequently terminate that decision at any time and that termination shall be irrevocable. If an employee separates from Federal or covered NAF employment, the employee may accelerate the contribution by lump sum payment from the final salary payment. If the employee dies, the retroactive contributions of the deceased employee will be terminated as of the final salary payment.

(5) The make-up payment amount is not subject to the maximum pay period contribution limitations; however, these amounts must be included when determining amounts subject to annual ceilings on contributions under 26 U.S.C. 402(g) or 415.

(6) In the event an employee does not have sufficient net pay to make all of the TSP deductions, the employee's regular TSP deduction shall take precedence over the employee's payment schedule contribution.

(7) Make-up contributions shall be reported for investment by the NAF instrumentality when contributed, according to the employee's election for current TSP contributions. If the employee is not making current contributions, the retroactive contributions shall be invested according to an election form (TSP–1–NAF) filed specifically for that purpose.

(c) An employee who is covered by a NAF retirement plan is not eligible to participate in the TSP. Any TSP contributions relating to a period for which an employee elects retroactive NAF retirement coverage shall be removed from the TSP as required by the regulations at 5 CFR part 1605.

(d) A TSP election made by an employee of a NAF instrumentality who elected to be covered by CSRS or FERS prior to August 10, 1996, which was properly implemented by the NAF instrumentality because it was valid under then-effective regulations, is effective under the regulations in this subpart.

§ 1620.94 Employees who move from a NAF instrumentality to a Federal Government agency.

(a) An employee of a NAF instrumentality who moves from a NAF instrumentality to a Federal Government agency and who elects to be covered by a NAF retirement system is not eligible to participate in the TSP. Any TSP contributions relating to a period for which an employee elects retroactive NAF retirement coverage shall be removed from the TSP as required by the regulations at 5 CFR part 1605.

(b) An employee of a NAF instrumentality who moves from a NAF instrumentality to a Federal Government agency and who elects to be covered by CSRS or FERS will become eligible to participate in the TSP as follows:

(1) If the employee was previously eligible to participate in the TSP under a prior period of Federal Government service, the employee will be eligible to participate in the TSP the first Open Season (as determined in accordance with 5 CFR 1600.3(d)) beginning after the effective date of the CSRS and FERS coverage.

(2) If the employee was not previously eligible to participate in the TSP, the employee will be eligible to contribute to the TSP in the second Open Season (as determined in accordance with 5 CFR 1600.3(d)) beginning after the effective date of the CSRS or FERS coverage.

§ 1620.95 Payment of TSP contributions.

The NAF instrumentality shall deduct any Employee Contributions authorized under this section from the pay of the employee each pay period and shall remit such amounts to the Thrift Savings Fund in accordance with this subpart and Board procedures. The NAF instrumentality shall contribute any future Agency Automatic (1%) Contributions and Agency Matching Contributions to the Thrift Savings Fund each pay period in accordance with this subpart and Board procedures. The NAF instrumentality shall contribute make-up contributions to the Thrift Savings Fund in accordance with this subpart and Board procedures.

§ 1620.96 Loan payments.

NAF instrumentalities shall deduct and transmit TSP loan payments for employees who elect to be covered by CSRS or FERS to the recordkeeper in accordance with 5 CFR part 1655 and Board procedures. Loan payments may not be deducted and transmitted for employees who elect to be covered by the NAF retirement system. Such employees will be considered to have separated from Government service and must prepay their loans or a taxable distribution will be declared.

§ 1620.97 Transmission of information.

Any employee who moves to a NAF instrumentality shall be reported by the losing Federal Government employing agency to the TSP recordkeeper as having transferred to a NAF instrumentality of the DOD or Coast Guard rather than as having separated from Government service. If the employee subsequently elects not to be covered by CSRS or FERS, the NAF instrumentality must submit an Employee Data Record to report the employee as having separated from Federal Government service as of the date of the move.

§ 1620.98 Notices.

All NAF instrumentalities employing any individuals covered by § 1620.90 must notify affected employees of the application of the regulations in this subpart as soon as practicable.

§ 1620.99 Other regulations.

NAF instrumentalities and individuals covered by § 1620.90 are governed by the regulations in this chapter, to the extent that the regulations in this chapter are not inconsistent with this subpart.

[FR Doc. 96–20129 Filed 8–8–96; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1005, 1007, 1011, and 1046

[Docket No. AO–388–A9, et al.; DA–96–08]

Milk in the Carolina and Certain Other Marketing Areas; Interim Amendment of Orders

7 CFR part	Marketing area	Docket No.
1005 ...	Carolina	AO–388–A9.
1007 ...	Southeast	AO–366–A38.
1011 ...	Tennessee Valley	AO–251–A40.
1046 ...	Louisville-Lexington-Evansville.	AO–123–A67.

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim amendment of rules.

SUMMARY: This interim rule amends, on an emergency basis, four Federal milk orders in the Southeastern United States. The amendments establish a transportation credit balancing fund from which to reimburse handlers for the cost of importing bulk milk into these markets for fluid use when local supplies are insufficient to meet fluid needs. The amendments also establish a monthly assessment to maintain the solvency of the fund and a methodology for computation of the transportation credits. The rules are based upon proposals that were considered at a public hearing held May 15–16, 1996, in

Charlotte, North Carolina. More than the required two-thirds of the producers in each of the affected marketing areas have approved the issuance of the interim amendments.

EFFECTIVE DATE: August 10, 1996.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P. O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: This administrative rule is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the agency to examine the impact of a rule on small entities. Pursuant to 5 U.S.C. 605(b), the Agricultural Marketing Service has determined that this rule will not have a significant economic impact on a substantial number of small entities. No new entities will be regulated as a result of the proposed rules, and any changes experienced by handlers will be of a minor nature.

The amended orders will promote orderly marketing of milk by producers and regulated handlers by providing transportation credits to assist them in bringing supplemental milk to the market for fluid use. There will be a modest assessment on handlers to provide funds for the proposed new transportation credits, but this assessment will not exceed 6 cents per hundredweight of Class I producer milk. The assessment will be reduced or waived completely once the balance in the transportation credit balancing fund is sufficient to cover six months' credits. The 6-cent per hundredweight assessment translates to less than one-half cent per gallon of milk.

At present, all handlers regulated under the four milk orders involved in this proceeding file a monthly report of receipts and utilization with the market administrator. The amendments resulting from this proceeding will add two lines of information to this report. However, only those handlers applying for transportation credits on supplemental milk will have to provide this additional information to the market administrator. The estimated time to collect, aggregate, and report this information, which is already compiled by handlers for other uses, is less than 15 minutes per month.

The net impact of the amendments on dairy farmers should be insignificant. Some dairy farmers may experience a reduction in their blend price during the first year that the new rules are in effect. This reduction, which should amount to less than 5 cents per hundredweight, will occur if the balance in the transportation credit balancing fund is insufficient to cover the current month's transportation credits. Once the fund has been fully endowed, dairy farmers should experience no reduction in the uniform price as a result of transportation credits.

This interim amendment has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Prior Documents in This Proceeding

Notice of Hearing: Issued May 1, 1996; published May 3, 1996 (61 FR 19861).

Tentative Partial Final Decision: Issued July 12, 1996; published July 18, 1996 (61 FR 37628).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the aforesaid orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the aforesaid orders:

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the respective marketing areas.

Upon the basis of the evidence introduced at such hearing and the record thereof it is found that:

(1) The said orders, as hereby amended on an interim basis, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the orders, as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders, as hereby amended on an interim basis, regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

(b) Additional Findings. It is necessary in the public interest to make these interim amendments to the Carolina, Southeast, Tennessee Valley, and Louisville-Lexington-Evansville orders effective one day after publication of this document in the Federal Register. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the aforesaid marketing areas.

The interim amendments to these orders are known to handlers. The tentative partial decision containing the proposed amendments to these orders was issued on July 12, 1996.

The changes that result from these interim amendments will not require extensive preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making these order amendments effective one day after publication in the Federal Register. It would be contrary to the public interest to delay the effective date of these amendments for 30 days after their publication in the Federal Register.

(Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559.)

(c) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within each of the specified marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this interim order amending the said orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in each of the respective orders as hereby amended; and

(3) The issuance of the interim order amending the aforesaid orders is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the respective marketing areas.

List of Subjects in 7 CFR Parts 1005, 1007, 1011, and 1046

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby further amended on an interim basis, as follows:

The authority citation for 7 CFR Parts 1005, 1007, 1011, and 1046 reads as follows:

Authority: 7 U.S.C. 601–674.

PART 1005—MILK IN THE CAROLINA MARKETING AREA

1. In § 1005.30, paragraphs (a) and (c) are revised to read as follows:

§ 1005.30 Reports of receipts and utilization.

* * * * *

(a) Each handler, with respect to each of its pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1005.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Receipts of bulk milk from a plant regulated under another Federal order, except Federal Orders 1007, 1011, and 1046, for which a transportation credit is requested pursuant to § 1005.82;

(6) Receipts of producer milk described in § 1005.82(c)(2), including the identity of the individual producers whose milk is eligible for the transportation credit pursuant to that paragraph;

(7) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1005.40(b)(1); and

(8) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

* * * * *

(c) Each handler described in § 1005.9(b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers;

(2) The utilization or disposition of all such receipts; and

(3) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1005.82, all of the information required in paragraph (a)(5) and (6) of this section.

* * * * *

2. Section 1005.61 is amended by redesignating paragraphs (a)(4) and (a)(5) as paragraphs (a)(5) and (a)(6), paragraphs (b)(5) and (b)(6) as paragraphs (b)(6) and (b)(7), in paragraph (b)(3) by revising the cross references ''(a)(3)'' to read ''(a)(4)'', and ''(a)(4)(ii)'' to read ''(a)(5)(ii)''; in newly redesignated paragraph (b)(6) by revising the cross reference ''(b)(4)'' to read ''(b)(5)'', and in newly redesignated paragraph (b)(7) by revising the cross reference ''(b)(5)'' to read ''(b)(6)'', and adding new paragraphs (a)(4) and (b)(5) to read as follows:

§ 1005.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) * * *

(4) Deduct the amount by which the amount due from the transportation credit balancing fund pursuant to § 1005.82 exceeds the available balance in the transportation credit balancing fund pursuant to § 1005.80.

* * * * *

(b) * * *

(5) Deduct the amount by which the amount due from the transportation credit balancing fund pursuant to § 1005.82 exceeds the available balance in the transportation credit balancing fund pursuant to § 1005.80.

* * * * *

3. Following § 1005.78, a new undesignated center heading and §§ 1005.80, 1005.81, and 1005.82 are added to read as follows:

Marketwide Service Payments

§ 1005.80 Transportation credit balancing fund.

The market administrator shall maintain a separate fund known as the Transportation Credit Balancing Fund into which shall be deposited the payments made by handlers pursuant to § 1005.81 and out of which shall be made the payments due handlers pursuant to § 1005.82. Payments due a handler shall be offset against payments due from the handler.

§ 1005.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I milk assigned pursuant to § 1005.44 by $0.06 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the higher of the following amounts:

(1) The total transportation credits dispensed during the prior July–December period; or

(2) The total transportation credits dispensed during the immediately preceding 6-month period.

(b) On or before the 13th day after the end of the month, the market administrator shall credit the transportation credit balancing fund, from the producer-settlement fund, any amount deducted pursuant to § 1005.61 (a)(4) or (b)(5).

(c) This section is effective August 10, 1996. The market administrator shall announce publicly on or before the 5th day of the month the assessment pursuant to paragraph (a) of this section for the following month, except that for the first month that this section is effective the assessment shall be announced no later than August 9, 1996, and for the first 3 months that this section is effective the assessment pursuant to paragraph (a) of this section shall be 6 cents per hundredweight.

§ 1005.82 Payments from the transportation credit balancing fund.

(a) On or before the 13th day after the end of each of the months of July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1005.30(a)(5), bulk milk transferred from an other

order plant as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1005.30(a)(6), bulk milk directly from producers' farms as specified in paragraph (c)(2) of this section an amount determined pursuant to paragraph (d) of this section. In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1005.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(b) The market administrator may extend the period during which transportation credits are in effect (i.e., the transportation credit period) to any of the months of January through June if the market administrator receives a written request to do so 15 days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. Before making such a finding, the market administrator shall notify the Director of the Dairy Division and all handlers in the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

(c) The transportation credit described in paragraph (a) of this section shall apply to the following milk:

(1) Bulk milk received from a plant regulated under another Federal order, except Federal Orders 1007, 1011, and 1046, and allocated to Class I milk pursuant to § 1005.44; and

(2) Bulk milk classified pro rata as Class I milk pursuant to § 1005.44 received directly from the farms of dairy farmers at pool distributing plants under the following conditions:

(i) The dairy farmer was not a ''producer'' under this order during more than 2 of the immediately preceding months of January through June and not more than 32 days' production of the dairy farmer was received as producer milk under this order during that period; and

(ii) The farm on which the milk was produced is not located within the specified marketing area of this order or the marketing areas of Federal Orders 1007, 1011, or 1046, and, is not within 85 miles of the plant to which its milk is delivered.

(d) Transportation credits shall be computed as follows:

(1) For milk described in paragraph (c)(1) of this section, the market administrator shall:

(i) Determine the shortest hard-surface highway distance between the transferor plant and the transferee plant;

(ii) Multiply the number of miles computed in paragraph (d)(1)(i) of this section by 0.37 cents;

(iii) Subtract the other order's Class I price applicable at the transferor plant's location from the Class I price applicable at the transferee plant as specified in § 1005.53;

(iv) Subtract any positive difference computed in paragraph (d)(1)(iii) of this section from the amount computed in paragraph (d)(1)(ii) of this section; and

(v) Multiply the remainder computed in paragraph (d)(1)(iv) of this section by the hundredweight of milk described in paragraph (c)(1) of this section.

(2) For milk described in paragraph (c)(2) of this section:

(i) Each milk hauler that is transporting the milk of producers described in paragraph (c)(2) of this section may stop at the nearest independently-operated truck stop with a truck scale and obtain a weight certificate indicating the weight of the truck and its contents, the date and time of weighing, and the location of the truck stop. The location of the truck stop shall be used as a starting point for the purpose of measuring the distance to the pool plant receiving that load of milk. If a weight certificate for a supplemental load of milk for which a transportation credit is requested is not available, the market administrator shall use the nearest city to the last producer's farm from which milk was picked up for delivery to the receiving pool plant;

(ii) For each bulk tank load of milk received pursuant to paragraph (d)(2)(i) of this section, the market administrator shall determine the shortest hard-surface highway distance between the receiving pool plant and the truck stop or city, as the case may be;

(iii) Multiply the number of miles computed in paragraph (d)(2)(ii) of this section by 0.37 cents;

(iv) Subtract this order's Class I price applicable at the origination point determined pursuant to paragraph (d)(2)(ii) of this section (as if this point were a plant) from the Class I price applicable at the distributing plant receiving the milk;

(v) Subtract any positive difference computed in paragraph (d)(2)(iv) of this section from the amount computed in paragraph (d)(2)(iii) of this section; and

(vi) Multiply the number computed in paragraph (d)(2)(v) of this section by the hundredweight of milk described in paragraph (c)(2) of this section.

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

4. In § 1007.30, paragraphs (a) and (c) are revised to read as follows:

§ 1007.30 Reports of receipts and utilization.

* * * * *

(a) Each handler, with respect to each of its pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1007.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Receipts of bulk milk from a plant regulated under another Federal order, except Federal Orders 1005, 1011, and 1046, for which a transportation credit is requested pursuant to § 1007.82;

(6) Receipts of producer milk described in § 1007.82(c)(2), including the identity of the individual producers whose milk is eligible for the transportation credit pursuant to that paragraph;

(7) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1007.40(b)(1); and

(8) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

* * * * *

(c) Each handler described in § 1007.9(b) and (c) shall report:

(1) The quantities of skim milk and butterfat contained in receipts of milk from producers;

(2) The utilization or disposition of all such receipts; and

(3) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1007.82, all of the information required in paragraph (a)(5) and (6) of this section.

* * * * *

5. Section 1007.61 is amended by redesignating paragraphs (a)(4) and (a)(5) as paragraphs (a)(5) and (a)(6), paragraphs (b)(5) and (b)(6) as paragraphs (b)(6) and (b)(7), in

paragraph (b)(3) by revising the cross references ''(a)(3)'' to read ''(a)(4)'', and ''(a)(4)(ii)'' to read ''(a)(5)(ii)''; in newly redesignated paragraph (b)(6) by revising the cross reference ''(b)(4)'' to read ''(b)(5)'', and in newly redesignated paragraph (b)(7) by revising the cross reference ''(b)(5)'' to read ''(b)(6)'', and adding new paragraphs (a)(4) and (b)(5) to read as follows:

§ 1007.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) * * *

(4) Deduct the amount by which the amount due from the transportation credit balancing fund pursuant to § 1007.82 exceeds the available balance in the transportation credit balancing fund pursuant to § 1007.80.

* * * * *

(b) * * *

(5) Deduct the amount by which the amount due from the transportation credit balancing fund pursuant to § 1007.82 exceeds the available balance in the transportation credit balancing fund pursuant to § 1007.80.

* * * * *

6. Following § 1007.78, a new undesignated center heading and §§ 1007.80, 1007.81, and 1007.82 are added to read as follows:

Marketwide Service Payments

§ 1007.80 Transportation credit balancing fund.

The market administrator shall maintain a separate fund known as the Transportation Credit Balancing Fund into which shall be deposited the payments made by handlers pursuant to § 1007.81 and out of which shall be made the payments due handlers pursuant to § 1007.82. Payments due a handler shall be offset against payments due from the handler.

§ 1007.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I milk assigned pursuant to § 1007.44 by $0.06 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the higher of the following amounts:

(1) The total transportation credits dispensed during the prior July–December period; or

(2) The total transportation credits dispensed during the immediately preceding 6-month period.

(b) On or before the 13th day after the end of the month, the market administrator shall credit the transportation credit balancing fund, from the producer-settlement fund, any amount deducted pursuant to § 1007.61(a)(4) or (b)(5).

(c) This section is effective August 10, 1996. The market administrator shall announce publicly on or before the 5th day of the month the assessment pursuant to paragraph (a) of this section for the following month, except that for the first month that this section is effective the assessment shall be announced no later than August 9, 1996, and for the first 3 months that this section is effective the assessment pursuant to paragraph (a) of this section shall be 6 cents per hundredweight.

§ 1007.82 Payments from the transportation credit balancing fund.

(a) On or before the 13th day after the end of each of the months of July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1007.30(a)(5), bulk milk transferred from another order plant as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1007.30(a)(6), bulk milk directly from producers' farms as specified in paragraph (c)(2) of this section an amount determined pursuant to paragraph (d) of this section. In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1007.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(b) The market administrator may extend the period during which transportation credits are in effect (i.e., the transportation credit period) to any of the months of January through June if the market administrator receives a written request to do so 15 days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. Before making such a finding, the market administrator shall notify the Director of the Dairy Division and all handlers in the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

(c) The transportation credit described in paragraph (a) of this section shall apply to the following milk:

(1) Bulk milk received from a plant regulated under another Federal order, except Federal Orders 1005, 1011, and 1046 allocated to Class I milk pursuant to § 1007.44; and

(2) Bulk milk classified pro rata as Class I milk pursuant to § 1007.44 received directly from the farms of dairy farmers at pool distributing plants under the following conditions:

(i) The dairy farmer was not a ''producer'' under this order during more than 2 of the immediately preceding months of January through June and not more than 32 days' production of the dairy farmer was received as producer milk under this order during that period; and

(ii) The farm on which the milk was produced is not located within the specified marketing area of this order or the marketing areas of Federal Orders 1005, 1011 or 1046, and, is not within 85 miles of the plant to which its milk is delivered.

(d) Transportation credits shall be computed as follows:

(1) For milk described in paragraph (c)(1) of this section, the market administrator shall:

(i) Determine the shortest hard-surface highway distance between the transferor plant and the transferee plant;

(ii) Multiply the number of miles computed in paragraph (d)(1)(i) of this section by 0.37 cents;

(iii) Subtract the other order's Class I price applicable at the transferor plant's location from the Class I price applicable at the transferee plant as specified in § 1007.52;

(iv) Subtract any positive difference computed in paragraph (d)(1)(iii) of this section from the amount computed in paragraph (d)(1)(ii) of this section; and

(v) Multiply the remainder computed in paragraph (d)(1)(iv) of this section by the hundredweight of milk described in paragraph (c)(1) of this section.

(2) For milk described in paragraph (c)(2) of this section:

(i) Each milk hauler that is transporting the milk of producers described in paragraph (c)(2) of this section may stop at the nearest independently-operated truck stop with a truck scale and obtain a weight certificate indicating the weight of the truck and its contents, the date and time of weighing, and the location of the

truck stop. The location of the truck stop shall be used as a starting point for the purpose of measuring the distance to the pool plant receiving that load of milk. If a weight certificate for a supplemental load of milk for which a transportation credit is requested is not available, the market administrator shall use the nearest city to the last producer's farm from which milk was picked up for delivery to the receiving pool plant.

(ii) For each bulk tank load of milk received pursuant to paragraph (d)(2)(i) of this section, the market administrator shall determine the shortest hard-surface highway distance between the receiving pool plant and the truck stop or city, as the case may be;

(iii) Multiply the number of miles computed in paragraph (d)(2)(ii) of this section by 0.37 cents;

(iv) Subtract the order's Class I price applicable at the origination point determined pursuant to paragraph (d)(2)(ii) of this section (as if this point were a plant) from the Class I price applicable at the distributing plant receiving the milk;

(v) Subtract any positive difference computed in paragraph (d)(2)(iv) of this section from the amount computed in paragraph (d)(2)(iii) of this section; and

(vi) Multiply the number computed in paragraph (d)(2)(v) of this section by the hundredweight of milk described in paragraph (c)(2) of this section.

PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

7. In § 1011.30, paragraphs (a) and (c) are revised to read as follows:

§ 1011.30 Reports of receipts and utilization.

* * * * *

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1011.9(c);

(3) Receipts of milk from handlers described in 1011.9(d);

(4) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(5) Receipts of other source milk;

(6) Receipts of bulk milk from a plant regulated under another Federal order, except Federal Orders 1005, 1007, and 1046, for which a transportation credit is requested pursuant to § 1011.82;

(7) Receipts of producer milk described in § 1011.82(c)(2), including the identity of the individual producers whose milk is eligible for the transportation credit pursuant to that paragraph;

(8) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1011.40(b)(1); and

(9) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

* * * * *

(c) Each handler described in § 1011.9(b), (c) and (d) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers;

(2) The utilization or disposition of all such receipts; and

(3) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1011.82, all of the information required in paragraph (a)(6) and (7) of this section.

* * * * *

8. Section 1011.61 is amended by redesignating paragraphs (a)(4) and (a)(5) as paragraphs (a)(5) and (a)(6), paragraphs (b)(5) and (b)(6) as paragraphs (b)(6) and (b)(7), in paragraph (b)(3) by revising the cross references ''(3)'' to read ''(a)(4)'', and ''(a)(4)(ii)'' to read ''(a)(5)(ii)''; in newly redesignated paragraph (b)(6) by revising the cross reference ''(b)(4)'' to read ''(b)(5)'', and in newly redesignated paragraph (b)(7) by revising the cross reference ''(b)(5)'' to read ''(b)(6)'', and adding new paragraphs (a)(4) and (b)(5) to read as follows:

§ 1011.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) * * *

(4) Deduct the amount by which the amount due from the transportation credit balancing fund pursuant to § 1011.82 exceeds the available balance in the transportation credit balancing fund pursuant to § 1011.80.

* * * * *

(b) * * *

(5) Deduct the amount by which the amount due from the transportation credit balancing fund pursuant to § 1011.82 exceeds the available balance in the transportation credit balancing fund pursuant to § 1011.80.

* * * * *

9. Following § 1011.77, a new undesignated center heading and §§ 1011.80, 1011.81, and 1011.82 are added to read as follows:

Marketwide Service Payments

§ 1011.80 Transportation credit balancing fund.

The market administrator shall maintain a separate fund known as the Transportation Credit Balancing Fund into which shall be deposited the payments made by handlers pursuant to § 1011.81 and out of which shall be made the payments due handlers pursuant to § 1011.82. Payments due a handler shall be offset against payments due from the handler.

§ 1011.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I milk assigned pursuant to § 1011.44 by $0.06 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the higher of the following amounts:

(1) The total transportation credits dispensed during the prior July–December period; or

(2) The total transportation credits dispensed during the immediately preceding 6-month period.

(b) On or before the 13th day after the end of the month, the market administrator shall credit the transportation credit balancing fund, from the producer-settlement fund, any amount deducted pursuant to § 1011.61(a)(4) or (b)(5).

(c) This section is effective August 10, 1996. The market administrator shall announce publicly on or before the 5th day of the month the assessment pursuant to paragraph (a) of this section for the following month, except that for the first month that this section is effective the assessment shall be announced no later than August 9, 1996, and for the first 3 months that this section is effective the assessment pursuant to paragraph (a) of this section shall be 6 cents per hundredweight.

§ 1011.82 Payments from the transportation credit balancing fund.

(a) On or before the 13th day after the end of each of the months of July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1011.30(a)(6), bulk milk transferred from an other order plant as described in paragraph (c)(1) of this section or that received, and reported pursuant to

§ 1011.30(a)(7), bulk milk directly from producers' farms as specified in paragraph (c)(2) of this section an amount determined pursuant to paragraph (d) of this section. In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1011.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(b) The market administrator may extend the period during which transportation credits are in effect (i.e., the transportation credit period) to any of the months of January through June if the market administrator receives a written request to do so 15 days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. Before making such a finding, the market administrator shall notify the Director of the Dairy Division and all handlers in the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

(c) The transportation credit described in paragraph (a) of this section shall apply to the following milk:

(1) Bulk milk received from a plant regulated under another Federal order, except Federal Orders 1005, 1007, and 1046, and allocated to Class I milk pursuant to § 1011.44; and

(2) Bulk milk classified pro rata as Class I milk pursuant to § 1011.44 received directly from the farms of dairy farmers at pool distributing plants under the following conditions:

(i) The dairy farmer was not a ''producer'' under this order during more than 2 of the immediately preceding months of January through June and not more than 32 days' production of the dairy farmer was received as producer milk under this order during that period; and

(ii) The farm on which the milk was produced is not located within the specified marketing area of this order or the marketing areas of Federal Orders 1005, 1007, or 1046, and, is not within 85 miles of the plant to which its milk is delivered.

(d) Transportation credits shall be computed as follows:

(1) For milk described in paragraph (c)(1) of this section, the market administrator shall:

(i) Determine the shortest hard-surface highway distance between the transferor plant and the transferee plant;

(ii) Multiply the number of miles computed in paragraph (d)(1)(i) of this section by 0.37 cents;

(iii) Subtract the other order's Class I price applicable at the transferor plant's location from the Class I price applicable at the transferee plant as specified in § 1011.52;

(iv) Subtract any positive difference computed in paragraph (d)(1)(iii) of this section from the amount computed in paragraph (d)(1)(ii) of this section; and

(v) Multiply the remainder computed in paragraph (d)(1)(iv) of this section by the hundredweight of milk described in paragraph (c)(1) of this section.

(2) For milk described in paragraph (c)(2) of this section:

(i) Each milk hauler that is transporting the milk of producers described in paragraph (c)(2) of this section may stop at the nearest independently-operated truck stop with a truck scale and obtain a weight certificate indicating the weight of the truck and its contents, the date and time of weighing, and the location of the truck stop. The location of the truck stop shall be used as a starting point for the purpose of measuring the distance to the pool plant receiving that load of milk. If a weight certificate for a supplemental load of milk for which a transportation credit is requested is not available, the market administrator shall use the nearest city to the last producer's farm from which milk was picked up for delivery to the receiving pool plant.

(ii) For each bulk tank load of milk received pursuant to paragraph (d)(2)(i) of this section, the market administrator shall determine the shortest hard-surface highway distance between the receiving pool plant and the truck stop or city, as the case may be;

(iii) Multiply the number of miles computed in paragraph (d)(2)(ii) of this section by 0.37 cents;

(iv) Subtract this order's Class I price applicable at the origination point determined pursuant to paragraph (d)(2)(ii) of this section (as if this point were a plant) from the Class I price applicable at the distributing plant receiving the milk;

(v) Subtract any positive difference computed in paragraph (d)(2)(iv) of this section from the amount computed in paragraph (d)(2)(iii) of this section; and

(vi) Multiply the number computed in paragraph (d)(2)(iii) of this section by the hundredweight of milk described in paragraph (c)(2) of this section.

PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

10. In § 1046.30, paragraphs (a) and (c) are revised to read as follows:

§ 1046.30 Reports of receipts and utilization.

* * * * *

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1046.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Receipts of bulk milk from a plant regulated under another Federal order, except Federal Orders 1005, 1007, and 1011, for which a transportation credit is requested pursuant to § 1046.82;

(6) Receipts of producer milk described in § 1046.82(c)(2), including the identity of the individual producers whose milk is eligible for the transportation credit pursuant to that paragraph;

(7) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1046.40(b)(1); and

(8) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

* * * * *

(c) Each handler described in § 1046.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers;

(2) The utilization or disposition of all such receipts; and

(3) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1046.82, all of the information required in paragraph (a) (5) and (6) of this section.

* * * * *

11. Section 1046.61 is amended by redesignating paragraphs (a)(4) and (a)(5) as paragraphs (a)(5) and (a)(6), paragraphs (b)(5) and (b)(6) as paragraphs (b)(6) and (b)(7), in paragraph (b)(3) by revising the cross

references ''(3)'' to read ''(a)(4)'', and ''(a)(4)(ii)'' to read ''(a)(5)(ii)''; in newly redesignated paragraph (b)(6) by revising the cross reference ''(b)(4)'' to read ''(b)(5)'', and in newly redesignated paragraph (b)(7) by revising the cross reference ''(b)(5)'' to read ''(b)(6)'', and adding new paragraphs (a)(4) and (b)(5) to read as follows:

§ 1046.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) * * *

(4) Deduct the amount by which the amount due from the transportation credit balancing fund pursuant to § 1046.82 exceeds the available balance in the transportation credit balancing fund pursuant to § 1046.80.

* * * * *

(b) * * *

(5) Deduct the amount by which the amount due from the transportation credit balancing fund pursuant to § 1046.82 exceeds the available balance in the transportation credit balancing fund pursuant to § 1046.80.

* * * * *

12. In § 1046.73, paragraph (f)(2) is revised to read as follows:

§ 1046.73 Payments to producers and to cooperative associations.

* * * * *

(f) * * *

(1) * * *

(2) On or before the 10th day after the end of the following month for milk received during the month an amount computed at not less than the value of such milk at the minimum prices for milk in each class, as adjusted by the butterfat differential specified in § 1046.74 applicable at the location of the receiving handler's pool plant and any transportation credit that is due the cooperative association pursuant to § 1046.82(a), less the payment made pursuant to paragraph (f)(1) of this section.

13. Following § 1046.78, a new undesignated center heading and §§ 1046.80, 1046.81, and 1046.82 are added to read as follows:

Marketwide Service Payments

§ 1046.80 Transportation credit balancing fund.

The market administrator shall maintain a separate fund known as the Transportation Credit Balancing Fund into which shall be deposited the payments made by handlers pursuant to § 1046.81 and out of which shall be made the payments due handlers pursuant to § 1046.82. Payments due a handler shall be offset against payments due from the handler.

§ 1046.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I milk assigned pursuant to § 1046.44 by $0.06 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the higher of the following amounts:

(1) The total transportation credits dispensed during the prior July–December period; or

(2) The total transportation credits dispensed during the immediately preceding 6-month period.

(b) On or before the 13th day after the end of the month, the market administrator shall credit the transportation credit balancing fund, from the producer-settlement fund, any amount deducted pursuant to § 1046.61(a)(4) or (b)(5).

(c) This section is effective August 10, 1996. The market administrator shall announce publicly on or before the 5th day of the month the assessment pursuant to paragraph (a) of this section for the following month, except that for the first month that this section is effective the assessment shall be announced no later than August 9, 1996, and for the first 3 months that this section is effective the assessment pursuant to paragraph (a) of this section shall be 6 cents per hundredweight.

§ 1046.82 Payments from the transportation credit balancing fund.

(a) On or before the 13th day after the end of each of the months of July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1046.30(a)(5), bulk milk transferred from another order plant as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1046.30(a)(6), bulk milk directly from producers' farms as specified in paragraph (c)(2) of this section an amount determined pursuant to paragraph (d) of this section. In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1046.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this section shall be paid to such cooperative association by the pool plant operator pursuant to § 1046.73(f)(2).

(b) The market administrator may extend the period during which transportation credits are in effect (i.e., the transportation credit period) to any of the months of January through June if the market administrator receives a written request to do so 15 days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. Before making such a finding, the market administrator shall notify the Director of the Dairy Division and all handlers in the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

(c) The transportation credit described in paragraph (a) of this section shall apply to the following milk:

(1) Bulk milk received from a plant regulated under another Federal order, except Federal Orders 1005, 1007, and 1011, and allocated to Class I milk pursuant to § 1046.44; and

(2) Bulk milk classified pro rata as Class I milk pursuant to § 1046.44 received directly from the farms of dairy farmers at pool distributing plants under the following conditions:

(i) The dairy farmer was not a ''producer'' under this order during more than 2 of the immediately preceding months of January through June and not more than 32 days' production of the dairy farmer was received as producer milk under this order during that period; and

(ii) The farm on which the milk was produced is not located within the specified marketing area of this order or the marketing areas of Federal Orders 1005, 1007, or 1011, and, is not within 85 miles of the plant to which its milk is delivered.

(d) Transportation credits shall be computed as follows:

(1) For milk described in paragraph (c)(1) of this section, the market administrator shall:

(i) Determine the shortest hard-surface highway distance between the transferor plant and the transferee plant;

(ii) Multiply the number of miles computed in paragraph (d)(1)(i) of this section by 0.37 cents;

(iii) Subtract the other order's Class I price applicable at the transferor plant's location from the Class I price applicable at the transferee plant as specified in § 1046.52;

(iv) Subtract any positive difference computed in paragraph (d)(1)(iii) of this section from the amount computed in paragraph (d)(1)(ii) of this section; and

(v) Multiply the remainder computed in paragraph (d)(1)(iv) of this section by the hundredweight of milk described in paragraph (c)(1) of this section.

(2) For milk described in paragraph (c)(2) of this section:

(i) Each milk hauler that is transporting the milk of producers described in paragraph (c)(2) of this section may stop at the nearest independently-operated truck stop with a truck scale and obtain a weight certificate indicating the weight of the truck and its contents, the date and time of weighing, and the location of the truck stop. The location of the truck stop shall be used as a starting point for the purpose of measuring the distance to the pool plant receiving that load of milk. If a weight certificate for a supplemental load of milk for which a transportation credit is requested is not available, the market administrator shall use the nearest city to the last producer's farm from which milk was picked up for delivery to the receiving pool plant.

(ii) For each bulk tank load of milk received pursuant to paragraph (d)(2)(i) of this section, the market administrator shall determine the shortest hard-surface highway distance between the receiving pool plant and the truck stop or city, as the case may be;

(iii) Multiply the number of miles computed in paragraph (d)(2)(ii) of this section by 0.37 cents;

(iv) Subtract this order's Class I price applicable at the origination point determined pursuant to paragraph (d)(2)(ii) of this section (as if this point were a plant) from the Class I price applicable at the distributing plant receiving the milk;

(v) Subtract any positive difference computed in paragraph (d)(2)(iv) of this section from the amount computed in paragraph (d)(2)(iii) of this section; and

(vi) Multiply the number computed in paragraph (d)(2)(v) of this section by the hundredweight of milk described in paragraph (c)(2) of this section.

Dated: August 2, 1996.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 96–20203 Filed 8–8–96; 8:45 am]

BILLING CODE 3410–02–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies; Correction

AGENCY: Small Business Administration.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations that were published Wednesday, January 31, 1996, (61 FR 3177).

EFFECTIVE DATE: January 31, 1996.

FOR FURTHER INFORMATION CONTACT: Leonard Fagan, Office of Investment, (202) 205–6510.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections concern policies applicable to financing of small businesses by licensees and participating securities leverage under the Small Business Investment Company program.

Need for Correction

As published, the final regulations contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

Accordingly, 13 CFR Part 107 is corrected by making the following correcting amendments:

1. The authority citation for Part 107 continues to read as follows:

Authority: 15 U.S.C. 681 *et seq.*, 683, 687(c), 687b, 687d, 687g, and 687m.

§ 107.50 [Corrected]

In § 107.50, in the definition of ''Affiliate or Affiliates'', the citation to ''§ 121.401'' is revised to read ''§ 121.103''.

§ 107.860 [Corrected]

In § 107.860, paragraph (b), the citation to ''§ 107.115'' is revised to read ''107.500''.

§ 107.1530 [Corrected]

In § 107.1530, in the example to paragraph (g)(2)(i), in the brackets following the last sentence, the word ''Rate'' is added after the word ''Treasury''.

In § 107.1530, in paragraph (g)(2)(ii), the portion of the equation ''((.0855×.08)–.08)'' is revised to read ''((.0855–.08)÷.08)''.

Dated: July 30, 1996.

Philip Lader,

Administrator.

[FR Doc. 96–20317 Filed 8–8–96; 8:45 am]

BILLING CODE 8025–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Publicizing of Broker Association Memberships

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') has adopted a new Regulation 156.4 which requires that contract markets make more readily available to the public the identity of members of broker associations at their respective exchanges.

EFFECTIVE DATE: October 8, 1996.

FOR FURTHER INFORMATION CONTACT: David P. Van Wagner, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5481.

SUPPLEMENTARY INFORMATION:

I. Introduction

On May 3, 1996, the Commission published for public comment in the Federal Register a proposed new Regulation 156.4 which would require that contract markets make more readily available to the public the identity of members of broker associations at their respective exchanges.[1]

II. Comments Received

The Commission received five letters from commenters which addressed the proposed rulemaking regarding the

[1] 61 FR 19869 (May 3, 1996). In that same Federal Register release, the Commission also published for public comment a proposed new Regulation 1.69 which would prohibit members of self-regulatory organization governing boards, disciplinary committees and oversight panels from deliberating and voting on certain matters where the member had either a relationship with the matter's named party in interest or a financial interest in the matter's outcome. Proposed Regulation 1.69 would implement the statutory directives of Section 5a(a)(17) of the Commodity Exchange Act (''CEA'') as it was amended by Section 217 of the Futures Trading Practices Act of 1992 (''FTPA''). Pub. L. No. 102–546, § 217, 106 Stat. 3590 (1992). The Commission will consider that rulemaking at a future date.

publicizing of the identities of broker association members. The comments were submitted by three futures exchanges (the Coffee, Sugar & Cocoa Exchange, Inc. (''CSC''), the New York Cotton Exchange (''NYCE'') and the New York Mercantile Exchange (''NYMEX'')); a futures trade association (the Future Industry Association (''FIA'')); and, a business and financial news publisher (Dow Jones & Company, Inc. (''Dow Jones'')).

The Commission has carefully reviewed the comments received and has decided to issue Regulation 156.4 as final with slight modifications from the rule as originally proposed. The comments and an explanation of the Commission's decision to adopt Regulation 156.4 are discussed below.

III. Regulation 156.4

A. Proposed Rulemaking

As proposed, Regulation 156.4 required contract markets to post ''in a location accessible to the public'' a list of all registered broker associations at the contract market which identifies for each such association the name of each person who is a member or otherwise has a direct beneficial interest in the association.[2] In discussing what type of location would be ''accessible to the public,'' the Commission explained in the preamble of the proposed rulemaking's Federal Register release that a posting should be made in a place designed to ensure its availability to the general public ''such as an exchange's lobby or other common access area.''[3]

The Commission emphasized in its release, that the information which proposed Regulation 156.4 would require contract markets to post already was being maintained by the contract markets pursuant to Commission Regulation 156.2(b) which requires the members of such associations to be registered.[4]

B. Comments Received

The CSC commented that under the proposed rulemaking most of the trading public would not have access to a broker association membership list posted in the lobby or common access area of an exchange. The CSC further indicated its belief that floor traders would be the only group of market users who would have ready access to such a list, but that they already would be aware of such information because of their presence on the trading floor. Accordingly, the CSC concluded that a broker association membership list only would serve to ''stigmatize'' broker association members by implying that membership in a broker association was ''relevant to the quality of the execution that (could) be expected.''

NYMEX commented that it did not believe that a posting requirement would provide any measurable benefit to the public. NYMEX indicated that its offices and trading floor are not currently accessible to the public and that it did not believe that members of the public would visit NYMEX for the purpose of reviewing such a posting.

The NYCE did not address the merits of the proposed rulemaking directly, but instead suggested that the Commission defer consideration of the proposal until the Division of Trading and Markets concluded and publicized its current rule enforcement review of broker association oversight at the various futures exchanges.

FIA generally supported the Commission's proposal but commented that if broker association membership information was made available upon request, it might not be necessary to require that such information be physically posted.

Dow Jones commented that the Commission's proposal would enhance each exchange's ability to enforce its broker association trading restrictions because if members of the public had knowledge of broker association memberships they would be able to alert the exchanges about possible violative conduct involving such associations. Dow Jones also commented that the publicizing of broker association memberships would enable the trading public to choose for themselves whether to execute futures transactions through broker association members.

Dow Jones indicated its belief that the information from broker association membership lists would enable it to provide more information to its readers for their trading decisions. Dow Jones also believed that the proposal would further the press' attention to broker association trading activities and that such attention would promote the exchanges' oversight of broker associations.

C. Final Rulemaking

The Commission has carefully considered the comments received and has determined to adopt Regulation 156.4 with slight modifications from the rule as originally proposed.

The Commission believes that the identities of broker associations and their members are useful information, comparable to other information which is currently made available to the public about the capacity in which various industry participants are licensed and the relationships between registrants.

Contrary to the CSC's suggestion, Commission Regulation 156.4 is not intended to imply any judgment of or to ''stigmatize'' broker association members or their activities. Rather, the Commission believes that Commission Regulation 156.4 will provide useful information to market users about relationships among members who handle customer orders. In this connection, the Commission notes that the Division of Trading and Markets (''Division'') released a study of broker associations in January 1990 based upon interviews with broker association members and representatives of other market participants which used the services of broker associations, such as futures commission merchants.[5] In that study, the Division found that some market users ascribed certain benefits to the use of broker associations, including specialized order execution expertise, better capitalization from increased financial resources and uninterrupted customer service.[6] The broker association study, however, reported concerns of other participants that relationships between broker association members could increase the potential for trading abuses, such as providing increased incentives for accommodation trades between members due to their associations' profit- or loss-sharing arrangements.[7] Moreover, the FTPA required the Commission to particularly address the activities of such associations and determine whether to further restrict their activities.[8] Given these perceptions among sophisticated market participants and the Congressional mandate, the Commission believes that the type of information which would be

[2] The Commission adopted its part 156 Regulations in response to Section 102 of the FTPA which amended Section 4j(d) of the CEA to prohibit the knowing execution of a customer order by a floor broker opposite any broker or trader with whom the floor broker has a specified business relationship, unless the Commission adopted rules requiring exchange procedures and standards designed to prevent violations of the CEA attributable to broker association trading. The Part 156 Regulations establish requirements for contract market identification and surveillance of broker associations. *See* 58 FR 31167 (June 1, 1993) for a full description of the Commission's Part 156 Regulations.

[3] 61 FR 19869, 19876.

[4] *Id.* Among other things, Commission Regulation 156.2(b) requires that each contract market maintain registration records for each of its broker associations indicating the ''name of each person who is a member or otherwise has a direct beneficial interest in the association.''

[5] *See* Division of Trading and Markets, Study on Broker Associations (January 4, 1990) (''broker association study''). Copies of this study are available to the public.

[6] Broker Association Study at 53–54.

[7] *Id.* at 60.

[8] *See* CEA Section 4j(d)(2).

disseminated pursuant to Regulation 156.4 may be of use to the general population of market participants when evaluating the execution of their orders.

Similarly, the NYCE's recommendation that the Commission defer adoption of Regulation 156.4 until the Division of Trading and Markets concludes its current rule enforcement review of broker association oversight presumes that Regulation 156.4 addresses some trade practice concern which may or may not be validated by that review. As indicated above, however, Commission Regulation 156.4 is not intended to imply any judgment on broker association members or their activities. The registration of such associations' members was originally undertaken to facilitate surveillance of their activities by the relevant self-regulatory organization. The publication of such relationships as required by this rulemaking is intended to assure that those relationships are not abused. Accordingly, the Commission does not believe there is any reason to defer the adoption of Regulation 156.4 until the conclusion of the Division's rule enforcement review.

Under the proposed version of Commission Regulation 156.4, contract markets would have been required to post their broker association membership lists ''in a location accessible to the public.'' As indicated in the preamble of the proposed rulemaking's Federal Register release, such a location could have included ''an exchange's lobby or other common access area.''[9] The CSC and NYMEX both commented that posting information in an exchange lobby may not be an effective means of dissemination. While the Commission believes that postings in these areas could effectively disseminate information to market users,[10] the Commission never intended that such postings be the exclusive manner of compliance with Regulation 156.4. The primary purpose of this rulemaking always has been to make clear the Commission's view that such information is public information and should be readily accessible to market users.

In order to eliminate any confusion created by proposed Regulation 156.4's reference to posting broker association membership information, the Commission has determined to revise proposed Regulation 156.4 to require that such information be made ''available to the public generally.'' The Commission believes that this approach should provide exchanges with more flexibility in deciding how to make broker association membership information available. As examples of ways to publicize such information, the Commission notes that certain exchanges already publicize information about exchange matters by maintaining home pages on the Internet or widely distributing their newsletters.

In addition to requiring that broker association membership information be made ''available to the public generally,'' final Commission Regulation 156.4 also makes clear that exchanges must make this information available ''upon request.'' Accordingly, no matter how broadly an exchange publicizes its broker associations' memberships in conformance with Regulation 156.4, it also must make the same information available upon particular request by any member of the public.

The Commission may further report on how broker association membership information is made available in the report it is currently undertaking.

IV. Conclusion

The Commission has determined to adopt Regulation 156.4 with slight modifications from the original proposed rulemaking. Upon Regulation 156.4's effective date, the Commission may request that the exchanges inform the Commission of how they intend to comply with Regulation 156.4.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.* (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. Regulation 156.4 will affect contract markets. The Commission has previously determined that contract markets are not ''small entities'' for purposes of the RFA, and that the Commission, therefore, need not consider the effect of proposed rules on contract markets. 47 FR 18618, 18619 (April 30, 1982). Therefore, the Acting Chairman, on behalf of the Commission, hereby certifies, pursuant to Section 3(a) of the RFA, 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (''PRA''), 44 U.S.C. 3501 *et seq.* (1988), imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. As indicated in the Commission's proposed rulemaking, Regulation 156.4 will require contract markets to post a listing of the broker association membership information which they are already required to compile pursuant to Regulation 156.2(b). 61 FR 19869, 19876. Accordingly, Commission Regulation 156.4 will not impose any additional information collection responsibilities.

List of Subjects in 17 CFR Part 156

Broker associations, Commodity futures, Contract markets, Members of contract markets, Registration requirements.

In consideration of the foregoing, and based on the authority contained in the Commodity Exchange Act and, in particular, sections 4b, 4c, 4j(d), 5a(b), and 8a(5) thereof, 7 U.S.C. 6b, 6c, 6j(d), 7a(b) and 12a(5), the Commission hereby amends chapter I of title 17 of the Code of Federal Regulations as follows:

PART 156—BROKER ASSOCIATIONS

1. The authority citation for Part 156 continues to read as follows:

Authority: 7 U.S.C. 6b, 6c, 6j(d), 7a(b) and 12a.

2. Section 156.4 is added to read as follows:

§ 156.4 Disclosure of Broker Association Membership.

Each contract market shall make available to the public generally and upon request a list of all registered broker associations which identifies for each such association the name of each person who is a member or otherwise has a direct beneficial interest in the association. This list shall be updated at least semi-annually.

Issued in Washington, DC, on August 2, 1996, by the Commission.

Catherine D. Dixon,

Assistant to the Secretary.

[FR Doc. 96–20332 Filed 8–8–96; 8:45 am]

BILLING CODE 6351–01–P

[9] 61 FR 19869, 19876.

[10] For instance, the Commission notes that Regulation 9.13, already requires exchanges to post Regulation 9.11 disciplinary notices ''in a conspicuous place on (exchange) premises to which its members and the public regularly have access.''

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Trenbolone Acetate and Estradiol

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Roussel-UCLAF, Division Agro-Veterinaire. The supplemental NADA provides for use of an ear implant containing trenbolone acetate and estradiol in pasture heifers (in addition to a previously approved use in pasture steers) for increased rate of weight gain.

EFFECTIVE DATE: August 9, 1996.

FOR FURTHER INFORMATION CONTACT: Jack Caldwell, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0217.

SUPPLEMENTARY INFORMATION: Roussel-UCLAF, Division Agro-Veterinaire, 163 Avenue Gambetta, 75020 Paris, France, filed supplemental NADA 140–897, which provides for use of Revalor®-G, an ear implant, each dose containing 2 pellets, each pellet containing 20 milligrams (mg) of trenbolone acetate and 4 mg of estradiol. The implant is used in pasture heifers (slaughter, stocker, and feeder) (pasture steers being already approved) for increased rate of weight gain. The supplemental NADA is approved as of July 2, 1996, and the regulations are amended in 21 CFR 522.2477(c)(3) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

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

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval qualifies for a 3-year period of marketing exclusivity beginning on July 2, 1996, because new clinical or field investigations (other than bioequivalence or residue studies) essential to the approval were conducted or sponsored by the applicant.

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

List of Subjects in 21 CFR Part 522

Animal drugs.

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

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

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

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

2. Section 522.2477 is amended by revising the heading of paragraph (c)(3) and paragraph (c)(3)(iii) to read as follows:

§ 522.2477 Trenbolone acetate and estradiol.

* * * * *

(c) * * *

(3) *Pasture cattle (slaughter, stocker, feeder steers, and heifers).*

* * * * *

(iii) *Limitations.* Implant subcutaneously in ear only. Not for use in animals intended for subsequent breeding or in dairy animals.

Dated: July 19, 1996.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 96–20344 Filed 8–8–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

Bureau of Political-Military Affairs

22 CFR Part 126

[Public Notice 2407]

Amendment to the List of Proscribed Destinations

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to reflect that it is no longer the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in Georgia, Kazakstan, Kyrgyzstan, Moldova, Turkmenistan and Uzbekistan. All requests for approval involving items covered by the U.S. Munitions List will be reviewed on a case-by-case basis.

EFFECTIVE DATE: July 17, 1996.

FOR FURTHER INFORMATION CONTACT: Gordon J. Stirling, Office of Arms Transfer and Export Control Policy, Bureau of Political-Military Affairs, Department of State (202/647–0397).

SUPPLEMENTARY INFORMATION: In connection with the President's policy that U.S. laws and regulations be updated to reflect the end of the Cold War, the Department of State is amending the ITAR to reflect that it is no longer the policy of the United States, pursuant to § 126.1, to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in Georgia, Kazakstan, Kyrgyzstan, Moldova, Turkmenistan and Uzbekistan. Requests for licenses or other approvals for these states involving items covered by the U.S. Munitions List (22 CFR part 121) will no longer be presumed to be disapproved.

This amendment to the ITAR involves a foreign affairs function of the United States and thus is excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. This final rule does not contain a new or amended information requirement subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 22 CFR Part 126

Arms and Munitions, Exports.

Accordingly, under the authority of Section 38 of the Arms Export Control Act (22 U.S.C. 2778) and Executive Order 11958, as amended, 22 CFR Subchapter M is amended as follows:

PART 126—[AMENDED]

1. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Arms Export Control Act, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 41 FR 4311; E.O. 11322, 32 FR 119; 22 U.S.C. 2658; 22 U.S.C. 287c; E.O. 12918, 59 FR 28206.

§ 126.1 [Amended]

2. Section 126.1 is amended by removing ''Georgia,'' ''Kazakhstan,'' ''Kyrgyzstan,'' ''Moldova,'' ''Turkmenistan,'' and ''Uzbekistan'' from paragraph (a).

Dated: July 11, 1996.

Lynn E. Davis,

Under Secretary of State for Arms Control and International Security Affairs.

[FR Doc. 96–20373 Filed 8–8–96; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 252 and 290

[Notice No. 835; Re: Notice Numbers 752, 754, 761 and 764]

RIN 1512–AA98 and 1512–AB03

Exportation of Alcoholic Beverages, Denatured Alcohol, Tobacco Products and Cigarette Papers and Tubes (95R–046P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: As part of a regulatory reform initiative, the Bureau of Alcohol, Tobacco and Firearms (ATF) is proposing to revise and recodify the regulations covering exportation of alcoholic beverages, beer concentrate, specially denatured alcohol, tobacco products, and cigarette papers and tubes. Proposed changes include: setting standards for satisfactory evidence of exportation, streamlining export procedures, and reducing the paperwork burden on exporters.

DATES: Written comments must be received by October 8, 1996.

ADDRESSES: Send written comments to: Chief, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221, *Attn: Notice No. 835.* Copies of written comments received in response to this advance notice of proposed rulemaking will be available for public inspection during normal business hours at: ATF Reference Library, Office of Public Affairs and Disclosure, Room 6300, 650 Massachusetts Avenue, NW., Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Marjorie D. Ruhf, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

On February 21, 1995, President Clinton announced a regulatory reform initiative. As part of this initiative, each Federal agency was instructed to conduct a page by page review of all agency regulations to identify those which are obsolete or burdensome and those whose goals could be better achieved through the private sector, self-regulation or state and local governments. In cases where the agency's review disclosed regulations which should be revised or eliminated, the agency would propose administrative changes to its regulations. In addition, on April 13, 1995, the Bureau published Notice 809 (60 FR 18783) requesting comments from the public regarding which ATF regulations could be improved or eliminated. No specific comments were received from the public concerning 27 CFR parts 252 and 290, but the Bureau wishes to substantially revise these parts of the regulations for reasons discussed later in the supplementary information.

Statutory Basis for Regulations

Since ATF wishes to open all areas of the export regulations for comment at this time, we will begin with a brief summary of the underlying statutes. In particular, we note there are some areas where the statutory treatment of different commodities varies widely. Any future regulations will reflect these statutory differences.

Distilled spirits may be withdrawn without payment of tax for exportation (after making such application, filing such bonds, and complying with such other requirements as may by regulations be prescribed), for transfer to foreign-trade zones, for use of certain vessels and aircraft, or for transfer to a customs bonded warehouse for exportation, storage pending exportation, or withdrawal and use by eligible diplomatic personnel. See 26 U.S.C. 5175, 5214 and 5066.

Wine may be withdrawn from bonded premises without payment of tax for export by the proprietor or by any authorized exporter (under such regulations and bonds as the Secretary may deem necessary); for transfer to any foreign-trade zone; for use of certain vessels and aircraft as authorized by law; or for transfer to any customs bonded warehouse. Wine entered into customs bonded warehouses may be withdrawn free of tax by eligible diplomatic personnel. See 26 U.S.C. 5362.

Beer may be removed from brewery premises without payment of tax for exportation, use as supplies for certain vessels and aircraft, or deposit in a foreign trade zone for exportation or storage pending exportation (in such containers and under such regulations, and on the giving of such notices, entries, and bonds and other security, as the Secretary may by regulations prescribe). The brewer may also withdraw beer concentrate without payment of tax for exportation or for deposit in a foreign trade zone. See 19 U.S. C. 81c, 26 U.S.C. 5053.

Distilled spirits may be withdrawn free of tax for exportation after denaturation in the manner prescribed by law. See 26 U.S.C. 5214.

When taxpaid distilled spirits which have been manufactured, produced, bottled, or packaged in the United States and marked especially for export are exported, laden for use as supplies on qualified vessels or aircraft, deposited in a foreign trade zone for exportation or storage pending exportation, or deposited in a customs bonded warehouse for tax free withdrawal and use by accredited foreign diplomatic personnel, the bottler or packager of the spirits may claim drawback of the taxes paid. The Secretary is authorized to prescribe regulations governing the determination and payment or crediting of drawback, including the requirements of such notices, bonds, bills of lading, and other evidence indicating payment and determination of tax and exportation as are deemed necessary. See 19 U.S.C. 81c and 1309, 26 U.S.C. 5062, 5066.

When taxpaid wine which has been manufactured, produced, bottled, or packaged in the United States is exported, laden for use as supplies on qualified vessels or aircraft, or deposited in a foreign trade zone for exportation or storage pending exportation, drawback of tax may be claimed by the proprietor of the bonded wine cellar, taxpaid wine bottling house, or wholesale liquor dealer who withdrew the wine. The Secretary is authorized to prescribe regulations governing the determination and payment or crediting of drawback, including the requirements of such notices, bonds, bills of lading, and other evidence indicating payment and determination of tax and exportation as are deemed necessary. See 19 U.S.C. 81c and 1309, 26 U.S.C. 5062, 5066.

On the exportation of beer which has been brewed or produced in the United States, the brewer thereof shall be allowed a drawback equal in amount to the tax found to have been paid on such beer, to be paid on submission of such

evidence, records and certificates indicating exportation, as the Secretary may by regulations prescribe. Exportation includes delivery for use as supplies on certain vessels or aircraft, or deposit in a foreign trade zone for exportation or for storage pending exportation. See 19 U.S.C. 81c and 1309, 26 U.S.C. 5055.

A manufacturer or export warehouse proprietor may remove tobacco products and cigarette papers and tubes, without payment of tax, for shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States. See 26 U.S.C. 5704(b).

Drawback of tax paid on tobacco products and cigarette papers and tubes which have been exported will be allowed in accordance with the regulations, upon the filing of a bond. See 26 U.S.C. 5706.

Rulemaking History

With minor exceptions, the export regulations for alcoholic beverages and tobacco products date from 1960 and 1966, respectively. The Internal Revenue Service, which administered these regulations at the time, issued Revenue Rulings 71–208 (1971–1 C.B. 480) and 72–300 (1972–1 C.B. 425) to advise exporters that it would consider applications for permission to submit alternative forms of documentation of export. By 1982, ATF identified the need for a major revision of the export regulations and set a policy of allowing such variances as were needed from the existing regulations until the revision could be accomplished. Numerous variances and pilot projects were approved under this policy, at both the district and national level. Revisions to the regulations were discussed and reviewed, but no Federal Register documents were published until 1992.

On September 8, 1992, ATF published advance notices of proposed rulemaking to solicit comments from interested persons on revision and recodification of Part 252, Exportation of liquors (Notice No. 752, 57 FR 40887) and Part 290, Exportation of tobacco products and cigarette papers and tubes, without payment of tax, or with drawback of tax (Notice No. 754, 57 FR 40889). The comment periods, both originally scheduled to close October 8, 1992, were subsequently extended until December 7, 1992, for liquors and March 9, 1993, for tobacco products and cigarette papers and tubes.

First, the advance notices outlined the underlying statutory requirements for exportation of the various commodities they covered. Second, the advance notices suggested liberalizing export documentation rules. Proposals included:

—Using a continuing application and a record of individual withdrawals to be maintained by the proprietor instead of applications or notices covering individual export transactions;
—Having the proprietor submit a monthly summary of export transactions with its monthly operation report instead of sending advance copies of the individual transaction forms;
—Using commercial records in place of ATF forms;
—Accepting certain commercial transaction records in place of Customs certification as evidence of exportation; and
—Allowing exporters to maintain evidence of exportation at their premises rather than sending it to ATF.

The two notices also made suggestions specific to individual commodities, such as permitting dealers in specially denatured spirits to withdraw such spirits free of tax for export and allowing greater flexibility in the export marks placed on tobacco products.

Finally, the two notices solicited general comments on ways to reduce paperwork, simplify procedures, and eliminate unnecessary regulations in this area while continuing to maintain adequate safeguards to the revenue.

Public Comments on Previous ANPRMs

Notice No. 752 concerning liquors received seven comments from alcoholic beverage industry members or their representatives. All comments were generally supportive of the goal of liberalizing export procedures as stated in the notices. However, the suggestion that a monthly summary of exports be submitted to ATF was opposed by two commenters. The Brandy Association of America and the National Association of Beverage Importers, Inc. both commented that this proposal was unnecessary and duplicative. Glen Ellen Winery supported ATF's suggestion that proprietors maintain evidence of exportation at their premises instead of sending such evidence to ATF. They further noted that proprietors ''found to have a system lacking in controls could be required to continue submitting documents each month.'' We will discuss these issues in greater detail in the sections of this document on monthly summaries of export removals and allowing proprietors to maintain evidence of exportation at their own premises.

On another subject, Miller Brewing Company suggested allowing brewers to take credit on their tax returns instead of waiting for ATF to issue a refund check for drawback of tax on exported beer. This is not something ATF can change through rulemaking, since the underlying statute, 26 U.S.C. 5055, which authorizes payment of export drawback on beer, does not authorize credit. Section 5062(b), which covers drawback for wine and spirits, authorizes either credit or payment. Under current law, ATF believes it would be possible to credit proceeds of an allowed claim, pursuant to authorization of the claimant, against tax owed by such claimant. We will propose a regulatory procedure to comply with requests for credit of the proceeds of an allowed claim from brewers. Finally, the alcoholic beverage industry commenters were unanimous and enthusiastic in their endorsement of ATF's proposal to substitute commercial records for ATF export forms.

Notice No. 754 on tobacco products received two comments from tobacco product manufacturers. Both Brown & Williamson Tobacco Corporation and R.J. Reynolds Tobacco Company supported continued use of ATF Form 2149/2150, saying it provided the best method of documenting export removals for both ATF and industry. R.J. Reynolds went on to request clarification of export marking requirements and procedures for shipments of domestic and export tobacco products to Class 9 Customs Bonded Warehouses.

Diversion Problems

As ATF noted in Industry Circular 94–1, dated April 14, 1994, and Industry Circular 95–1, dated January 19, 1995, we have encountered a number of situations in which distilled spirits were withdrawn from bond for exportation overseas, but were smuggled into Canada or remained illegally in the United States. Although these circulars dealt specifically with spirits, other commodities regulated by ATF are also being found outside of legitimate export channels. As a result of these findings, ATF is increasing its investigations of exports, and taking appropriate action where it finds goods have been diverted. Industry Circular 95–1 points out the tax and permit consequences of improperly documenting exports, as well as the potential civil and criminal penalties for violations of Titles 18 and 26 of the U.S. Code.

Summary of Export Variances and Pilot Programs

ATF has approved numerous individual variances and pilot programs for exporters of alcoholic beverages and tobacco products or cigarette papers and tubes. Recently, the Bureau has begun evaluating the component parts of these variances and pilot programs to determine which have been successful for both exporters and the Bureau and which have not. The variances and pilot programs that have been approved by ATF are summarized below. We are requesting comments on whether these procedures should be incorporated into the regulations in the manner described below or with some modifications. While some of the procedures dealt with alcoholic beverages and others with tobacco products, we are interested in comments on whether the procedures should apply to only some of these taxable commodities or should apply equally to alcoholic beverages, denatured alcohol, tobacco products or cigarette papers and tubes destined for exportation.

Substituting Commercial Documents for ATF Forms

Existing regulations require exporters to use ATF forms to record shipments destined for export and obtain certification of export. Under approved variances, some exporters substitute commercial documents containing required minimum information for the ATF forms. This variance has been generally successful. Exporters using this variance have stamped certificate of receipt information on an empty area of the commercial document and obtained appropriate certifications. ATF users (inspectors, auditors, and specialists) found that the commercial records met their needs, except that with a variety of different documents covering different types of shipments, the benefit of serially numbered export documents was no longer available. Since invoices and bills of lading must be generated to cover export shipments anyway, this variance has reduced the paperwork burden on exporters. ATF is considering eliminating the ATF export forms in favor of commercial transaction forms, with minimum information requirements to be set forth in regulations. However, the two commenters on the tobacco export proposals expressed a preference for continued availability of ATF forms. We would like details of instances where ATF forms work better than commercial documents, so that we may determine if they should be retained for certain types of transactions.

Notice and Application Requirements

Under existing regulations, people who export alcoholic beverages, tobacco products, or cigarette papers and tubes without payment of tax file an advance copy (or copies) of the appropriate ATF form as either a notice or an application. Proprietors of DSPs, wineries, breweries and export warehouses, and tobacco product and cigarette paper and tube manufacturers file a notice. Other exporters file an application and a bond which must be approved before the export shipment can be made. Some proprietors who are required by regulation to file a notice have requested and received permission to maintain records of pending exports at their premises, either on the ATF form or on an approved substitute document. The terms and conditions of the individual variances differ, but such variances are granted only to proprietors with maximum bond coverage and good compliance history. Proprietors are asked to submit a monthly summary of export shipments to ATF in lieu of filing individual notices. These variances have generally worked well, and most ATF users of this information feel the notice requirement can be eliminated without jeopardy to the revenue. Exporters appear to prefer maintaining the records of pending export shipments at their premises. ATF is considering a proposal to eliminate the notice requirement for proprietors with maximum bond coverage. The application requirement would be retained, as would the notice requirement for proprietors with less than maximum bond coverage. Comments are solicited on this proposal.

Monthly Summaries of Export Removals

As noted above, two commenters on Notice No. 752 specifically stated they believed the proposed monthly summary of export shipments was an unnecessary burden on the industry. We do not agree such a summary is an added burden, since the exporter must summarize and total export shipments to arrive at the export figure shown in the monthly report of operations. We simply propose that a copy of this workpaper be filed with the report. Further, in ATF's experience, this summary provides needed structure in the absence of notices and serially numbered ATF export forms. Despite the commenters' claim that the information is available elsewhere in the proprietor's records, we believe the preparation of a summary gives both ATF and the exporter a basis to determine if all exports are accounted for. If ATF proposes amending the regulations to eliminate the notice requirement, allow use of commercial documents as evidence of export, and allow proprietors to maintain such evidence at their premises instead of mailing it to ATF, we will also propose requiring submission of some sort of summary of pending export shipments. Additionally, now that certain small wineries are allowed to file annual operational reports and certain small brewers are allowed to file quarterly operational reports, we must consider whether proprietors who file less frequent operational reports should also file less frequent summaries. Commenters who disagree with the summary proposal are requested to provide specific alternative suggestions for insuring that all exports are accounted for.

Allowing Proprietors To Maintain Evidence of Exportation at Their Own Premises

Under variances approved by ATF, some proprietors are maintaining evidence of exportation at their premises instead of sending it to ATF Technical Services in support of export drawback claims or in order to be relieved of liability for shipments withdrawn for export without payment of tax. This variance has presented more administrative problems than any other, but we believe this may be due to an incomplete understanding of the exporter's responsibility under such variances. When the export evidence is filed with ATF, ATF examines the evidence, notes any discrepancies, and follows up with the exporter. Post audits have revealed exporters sometimes rely on evidence which is not approved by ATF, and some proprietors who export without payment of tax do not follow up appropriately if they do not receive evidence of exportation. Even in cases where exportation is ultimately documented, ATF reviewers encounter substantial administrative difficulty in this area.

When ATF examines documentation we receive on products withdrawn without payment of tax for exportation, ATF follows up with the exporter in cases where the evidence of exportation is not received within 90 days of withdrawal for exportation. The exporter is usually given another 45 days to obtain evidence of exportation or make a voluntary payment of tax. After that, if no evidence of exportation is received, ATF will enter an assessment for the tax due. Export proprietors operating under variances

which allow maintenance of export documentation at their premises often do not realize they have the same responsibility to voluntarily pay taxes if evidence of exportation was not received in a reasonable amount of time.

If we are to consider allowing proprietors to maintain their own export documentation at their premises as part of this rulemaking, we believe it will be necessary to include safeguards, such as very specific time limits and instructions as to when tax becomes due on undocumented exports. In addition, if such a liberalization is proposed, we will also propose the delegation of authority to the District Directors and Chiefs, Technical Services to require filing of this documentation with ATF in cases where it is deemed necessary. One further safeguard under consideration is a requirement that exporters submit a summary of shipments withdrawn without payment of tax for export during a given period with their operational reports for that period (as discussed above) and, 90 days later, submit a second copy of the summary showing by a check mark or other notation that each of the summarized shipments has been documented. For those exports which are not documented at the time, the 45-day notice and assessment process would begin. We will also propose adding procedures for claiming refund of any taxes paid in these circumstances (subject to the time limits in 26 U.S.C.6511) if exportation is subsequently documented. Comments on these proposals and any alternative suggestions are solicited.

Alternate Evidence of Export

ATF has had mixed results from allowing alternatives to Customs certification as evidence of export. We will discuss some of the major categories below, and then give our proposals.

Export bills of lading signed by a representative of the export carrier or certificates of landing signed by a representative of the destination country have proven to be generally reliable, but there have been exceptions which raise questions about the reliability of any export documentation. One difficulty with these alternate certifications is that there is no standardized way to verify that the person signing is employed by and authorized to sign for the carrier or the receiving country. We request input from industry members on commercial safeguards available to assure the validity of such receipts. ATF may be able to adapt any such safeguards for use in verifying export certifications.

In some cases we approved variances allowing evidence of payment by the foreign customer to be used as evidence of exportation, but we found that this variance was not always successful. Some foreign customers paid a foreign subsidiary of the U.S. exporter, and the financial record offered as evidence of export was an internal company document or, conversely, the U.S. exporter was paid by a U.S. subsidiary of the foreign customer, or even by an unrelated broker located in the U.S. The anticipated safeguard of a foreign source of funds unrelated to the exporter was not present, so these forms of documentation, by themselves, have not been adequate. If we propose to accept evidence of payment at all, we will propose limitations on the types of transactions where it can be used. We solicit comments on this approach.

In some post-audits, exporters presented facsimile transmitted copies of signed export bills of lading or copies of unsigned computer printouts of bills of lading from shipping companies as evidence of exportation where the original document was unavailable. We are considering what circumstances would warrant the use of such forms, and what evidence might be available to assure that these facsimile records represent true copies of the original documents. ATF must be able to rely on any documents accepted. We solicit comments on both the need for facsimile copies and computer generated forms to document exportation, and any appropriate safeguards.

Proposals on Export Documentation

As discussed above, we have found problems with some of the forms of export documentation which we allowed under variances. As we analyze the reports of investigation, we have tried to define the features or characteristics we want to see in future export documentation. Here is a list of proposed standards:

—The document should clearly relate to the goods in question;
—Certification should come from someone other than the exporter or its affiliate; and
—Certification should come from someone with firsthand knowledge that the goods were exported.

Exporters have offered such items as the Commerce Department's Shipper's Export Declaration or inland bills of lading with export shipping instructions attached, both of which are prepared by the exporter alone, or a freight bill from the export carrier, which may not identify the merchandise well enough for our purposes, or a broker's certification, which may not be based on firsthand knowledge. In addition to ATF's revenue protection interest in assuring these goods were actually exported, exporters have their own commercial reasons for wanting reliable shipping documents. We request examples or descriptions of documents or records generated as part of export transactions which may meet the standards proposed above or otherwise provide assurance that goods destined for export did, in fact, leave the country. Finally, we solicit comments on whether exporters would prefer a list of specific documents which would be acceptable (with the option of applying for permission to use other specific documents), or a more general statement of standards which must be met by any document used as evidence of export.

Export Transportation, Consignment and Ownership

Another important safeguard built into the requirement that ATF receive and review copies of all export transaction forms was our ability to screen export shipments to insure that the export transaction warranted such status. As we review records retained at their premises by exporters operating under a variance, we find that there are misunderstandings in two areas: eligibility for exportation without payment of tax, and need for permits and special taxes on the part of some purchasers. We believe that clarification of the regulations in these areas will improve compliance.

Eligibility for Export Without Payment of Tax

Some exporters were found to be making withdrawals of merchandise without payment of tax for export, and then failing to transport the merchandise directly to the foreign destination or place it under Customs supervision. In addition, ATF has received applications for permission to store, repack or consolidate shipments of products withdrawn without payment of tax for export while such products were in transit to the point of export. ATF's main concern in reviewing these arrangements is that the locations where the storage, repacking or consolidation occur are not covered by an ATF bond, and are not under the supervision of the Customs Service. ATF is concerned that these arrangements do not afford adequate protection to the revenue and they present administrative problems, in that ATF would have to regulate many temporary storage facilities.

Under the current law and regulations, the storage, repacking or consolidation of taxable products withdrawn for exportation without payment of tax can only occur on ATF bonded premises, in a customs bonded warehouse, in a foreign trade zone, or at the port of export under the supervision of the District Director of the Customs Service. However, there is no such restriction on storage, repacking or consolidation of taxpaid export shipments in transit.

If commenters wish to request that ATF reconsider its position on this matter, we request suggestions as to appropriate safeguards to assure protection to the revenue without placing undue restrictions on persons transporting taxable merchandise in bond. Should there be limitations on allowable location, responsible persons, or time spent in storage? Are records generated during repacking or consolidation which would permit positive identification of the shipment and a ''paper trail'' for both commercial and regulatory purposes? What sort of permit or bonding requirement should be imposed on facilities where untaxpaid merchandise is stored, repacked or consolidated while in transit?

Wholesaler's Basic Permits and Special Tax Requirements for Purchasers

A second issue noted during ATF review of documentation retained at exporters' premises is the need for wholesalers' permits and payment of special (occupational) tax when someone other than the producer exports alcoholic beverages. Revenue Ruling 60–299 (1960–2 C.B. 619) stated:

> A ship chandler who engages in the domestic purchase of distilled spirits, wine or beer for sale (even though he sells them exclusively to vessels engaged in foreign trade) for use as ships supplies must obtain a basic permit as a wholesaler. * * *
>
> A ship chandler who withdraws alcoholic beverages for sale to a ship which is engaged in foreign trade and which uses them as ships' supplies solely outside the jurisdictional limits of the United States, is not subject to special tax as a wholesale dealer since such vessel is not considered a dealer within the meaning of section 5112(a) of the Code, and the sale of spirits to such vessel is not a sale to another dealer as provided in section 5112(b) and (c) of the Code. Such a ship chandler is, however, subject to the special tax as a retail dealer.

ATF believes information on this requirement should be incorporated into the revised regulations.

Other Changes Under Consideration

ATF is considering allowing exporters to claim drawback on ATF Form 5620.8 (2635), a general-purpose claim form, using commercial documents to show exportation instead of the ATF export drawback claim forms. There are several variances in place to permit exporters to maintain full evidence of exportation at their premises and submit a summary of the export shipments covered by a given claim. ATF is evaluating the success of these variances from its own point of view, and solicits industry comments on this subject. As with evidence of exports without payment of tax, if ATF decides to propose allowing exporters to maintain export documentation at their premises, we will propose authority for the District Director and Chief, Technical Services to require submission of the forms where it is deemed necessary. Where the export drawback claimant is also a taxpayer, we are considering allowing the claimant the option of requesting that the proceeds of an approved claim be credited against tax owed by such claimant.

Under existing regulations, all wine exporters must prepare two documents, an export form, and a certificate of tax determination, Form 2605. ATF plans to eliminate the certificate requirement for exports by the bottler who makes the tax determination, and only require such a certificate when the exporter is not the bottler.

Under current alcohol and tobacco export regulations and approved variances, the marks showing that goods are destined for export are sometimes required and sometimes not. The only statutory requirement for export marks applies to taxpaid distilled spirits exported subject to drawback, but many sections of the regulations require export marks. The marking requirements have historically been viewed as a useful enforcement tool. For instance, a consumer may report finding products marked for export on domestic retail shelves. Such ''leads'' may result in the government's apprehension of a smuggler or enhance a producer's ability to identify an individual who is selling returned goods which should have been destroyed for quality control reasons. ATF is considering whether export marks should be mandatory in all situations and whether any product so marked that is found in domestic commerce should be subject to forfeiture as property used in violation of the internal revenue laws. Accordingly, we solicit comments from interested persons concerning the advantages or disadvantages of export markings.

In ATF's review of its own regulations, we noted that there was considerable duplication of regulatory language because there are separate parts of the regulations which cover exportation of ''liquors'' (alcoholic beverages and denatured alcohol) and tobacco products and cigarette papers and tubes. Since the concepts of tax liability, bond coverage and need for evidence of exportation are the same for all these commodities, and some exporters handle both alcoholic beverages and tobacco products, we solicit comments on the idea of merging the export provisions for alcoholic beverages and denatured alcohol, currently in part 252, and those for tobacco products and cigarette papers and tubes, currently in part 290, into a single part. The export warehouse qualification and operation requirements, which are also in part 290, may then be retained as a separate part or merged into part 270, Manufacture of Tobacco Products, since the qualification, bonding and operational requirements for these activities are closely related and derived from the same or similar sections of the law. Interested persons are invited to comment on these alternatives.

Verification of Evidence Presented

ATF is developing methods of verifying the accuracy of any piece of export documentation presented in support of an export without payment of tax or an export drawback claim by confirming that such shipment was received through legitimate channels at the stated destination. Such confirmation will be done by contacting appropriate officials at the stated destination, either under a bilateral agreement with the destination country under 26 U.S.C. 6103(k)(4) or pursuant to new regulations which ATF is considering adding to the export regulations under the provisions of 26 U.S.C. 6103(k)(6). This section allows disclosure of tax information for investigative purposes in such situations and under such conditions as the Secretary may prescribe by regulations.

Administrative Provisions

The tobacco export regulations at 27 CFR part 290 clearly noted ATF's right of entry and examination and assessment authority, but the liquor export regulations in 27 CFR part 252 do not. We plan to propose such provisions as a part of the revised regulations, along with a reference to the criminal penalties imposed by Titles 18 and 26 of the U.S. Code for falsification or fraudulent execution of export documentation.

Transition to New Rules

When new export rules are implemented, they will supersede existing regulations and all variances under those regulations. Since there are so many different arrangements in place, we understand that a period of transition will be needed. We believe that allowing two months from publication of the final rule to its effective date should provide adequate time for exporters to change to the new procedures. We solicit comments on this subject.

Public Participation

ATF requests comments from all interested persons on the proposals presented in this advance notice. We particularly request statements from exporters on the significance and reliability of available commercial documentation. We also solicit comments on any additional issues related to exportation of alcoholic beverages, denatured alcohol, tobacco products, or paper tubes.

Comments received on or before the closing date will be carefully considered. Comments received after the closing date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF will not recognize any material or comments as confidential. All comments submitted in response to this notice will be available for public inspection. Any material that the commenter considers confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting the comment is not exempt from disclosure.

Executive Order 12866

It has been determined that this document is not a major regulation as defined in E.O. 12866; therefore, a regulatory impact analysis is not required. The proposals discussed in this advance notice of proposed rulemaking, if adopted in regulations, will not have an annual effect on the economy of $100 million or more, will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Drafting Information: The principal author of this document is Marjorie D. Ruhf of the Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 252

Aircraft, Alcohol and alcoholic beverages, Armed Forces, Authority delegations (government agencies), Beer, Claims, Excise taxes, Exports, Fishing vessels, Foreign trade zones, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses, Wine.

27 CFR Part 290

Administrative practice and procedure, Aircraft, Authority delegations (government agencies), Cigarette papers and tubes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Penalties, Surety bonds, Vessels, Warehouses.

Authority: This advance notice of proposed rulemaking is issued under the authority in 26 U.S.C. 7805.

Signed: May 13, 1996.

John W. Magaw,

Director.

Approved: June 5, 1996.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 96–20327 Filed 8–8–96; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD08–96–038]

RIN 2115–AE46

Special Local Regulations; Lansing Fish Days, Upper Mississippi River Mile 663.0—663.5, Lansing, IA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Lansing Fish Days Celebration. This event will be held on August 10 and 11, 1996 at Lansing, Iowa. These regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations are effective from 9 p.m. to 11 p.m. local time on August 10, 1996, and from 2 p.m. to 4 p.m. local time on August 11, 1996.

FOR FURTHER INFORMATION CONTACT: SCPO J. R. Van Reese, U.S. Coast Guard, Marine Safety Detachment, PO Box 65428, St. Paul, MN 55165–0428. Tel: (612) 290–3991.

SUPPLEMENTARY INFORMATION:

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking for these regulations has not been published and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, the details of the event were not finalized until July 8, 1996, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Background and Purpose

The marine event requiring this regulation is a lighted venetian boat parade and professional water ski show. The event is sponsored by the Lansing Lions Club, Inc. of Lansing, Iowa. Spectators are to maintain a safe distance which will be determined by event sponsor and controlled by Coast Guard patrol commander.

Regulatory Evaluation

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

Federalism Assessment

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

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.C. of Commandant Instruction M16475.1B, (as revised by 61 FR 13563; March 27,

1996) this rule is excluded from further environmental documentation.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary rule will not have a significant economic impact on a substantial number of small entities because of the event's short duration.

Collection of Information

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

List of Subjects in 33 CFR Part 100

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

Temporary Regulations

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

PART 100—[AMENDED]

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

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

2. A temporary § 100.35 T08–038 is added to read as follows:

§ 100.35 T08–038 Upper Mississippi River near Lansing, Iowa.

(a) *Regulated area.* Mississippi River mile 663.0 to Mississippi River mile 663.5.

(b) *Special local regulation.* All persons and vessels not registered with the sponsors as participants or official patrol vessels are considered spectators. The ''official patrol'' consists of any Coast Guard, public, state or local law enforcement or sponsor provided vessels assigned to patrol the event.

(1) No spectators shall anchor, block, loiter in or impede the through transit of participants or official patrol vessels in the regulated area during effective dates and times, unless cleared for such entry by or through an official patrol vessel.

(2) When hailed or signaled, by an official patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions given; failure to do so may result in a citation.

(3) The Patrol Commander may control the movement of all vessels in the regulated area. The Patrol Commander may terminate the event at any time it is deemed necessary for the protection of life or property and can be reached on VHF–FM Channel 16 by using the call sign ''PATCOM''.

(c) *Effective Date:* This section is effective from 9 p.m. to 11 p.m. local time on August 10, 1996, and from 2 p.m. to 4 p.m. local time on August 11, 1996.

Dated: July 24, 1996.

T.W. Josiah,

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

[FR Doc. 96–20274 Filed 8–8–96; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD08–96–034]

RIN 2115–AE46

Special Local Regulations; Inland Seafood Festival Jet Boat Races, Ohio River Mile 469.5 to 471.2, Cincinnati, Ohio

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Inland Seafood Festival Jet Boat Races. This event will be held on August 10, 1996 from 3:30 p.m. until 6:30 p.m. at Cincinnati, Ohio. These regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations are effective from 3:30 p.m. until 6:30 p.m., on August 10, 1996.

FOR FURTHER INFORMATION CONTACT: LT Gregory A. Howard, Chief, Port Operations Department, USCG Marine Safety Office, Louisville, Kentucky at (502) 582–5194 ext. 39.

SUPPLEMENTARY INFORMATION:

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rule making for these regulations has not been published, and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rule making procedures would be impracticable. The details of the event were not finalized in sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Background and Purpose

The marine event requiring this regulation is a series of jet boat races. The event is sponsored by the Motor Sport Management. The course to be followed by the race participants will be marked by marker buoys positioned at various points along the course.

Regulatory Evaluation

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

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*) that this temporary rule will not have a significant economic impact on a substantial number of small entities because of the event's short duration.

Collection of Information

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

Federalism Assessment

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

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.C. of Commandant Instruction M16475.1B, (as revised by 61 FR 13563; March 27, 1996) this rule is excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

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

Temporary Regulations

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

PART 100—[AMENDED]

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

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

2. A temporary section 100.35 T08–034 is added to read as follows:

§ 100.35 T08–034 Ohio River at Cincinnati, Ohio.

(a) *Regulated area:* Ohio River Mile 469.5 to Ohio River Mile 471.2.

(b) *Special local regulation:* All persons and vessels not registered with the sponsors as participants or official patrol vessels are considered spectators. ''Participants'' are those persons and vessels identified by the sponsor as taking part in the event. The ''official patrol'' consists of any coast Guard, public, state or local law enforcement or sponsor provided vessel assigned to patrol the event. The Coast Guard ''Patrol Commander'' is a Coast Guard commissioned, warrant, or petty officer who has been designated by Commanding Officer, Coast Guard Marine Safety Office Louisville.

(1) No vessel shall anchor, block, loiter in, or impede the through transit of participants or official patrol vessels in the regulated area during effective dates and times, unless cleared for such entry by or through an official patrol vessel.

(2) When hailed or signaled by an official patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions given; failure to do so may result in a citation.

(3) The Patrol Commander may control the movement of all vessels in the regulated area. The Patrol Commander may terminate the event at any time it is deemed necessary for the protection of life or property and can be reached on VHF–FM Channel 16 by using the call sign ''PATCOM''.

(c) *Effective Date:* These regulations are effective from 3:30 p.m. to 6:30 p.m. August 10, 1996.

Dated: July 24, 1996.

T.W. Josiah,

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

[FR Doc. 96–20273 Filed 8–8–96; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 211

National Commission on Wildfire Disasters

AGENCY: Forest Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: The National Wildfire Commission was established pursuant to the Wildfire Disaster Recovery Act of 1989 to study the effects of disastrous wildfires. The Act provided that the Commission would be dissolved following submission of the Commission's final report. The final report was filed in May 1994, and the commission dissolved; therefore, the regulation governing donations to support the work of the Commission is no longer needed and is being removed. The Agency identified the need to remove this obsolete regulation during a review of regulations undertaken as part of the President's Regulatory Reinvention Initiative.

EFFECTIVE DATE: August 9, 1996.

FOR FURTHER INFORMATION CONTACT: Laurie Perrett, Fire and Aviation Management Staff, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090, (202) 205–1511.

SUPPLEMENTARY INFORMATION:

Background

The Wildfire Disaster Recovery Act of 1989 (16 U.S.C. 551 note) directed the Secretary of Agriculture to establish a National Commission on Wildfire Disasters. Section 105 of the Act provided that the Secretary could receive donations to support the work of the Commission.

The Department published an interim rule in the Federal Register on October 7, 1991, (56 FR 50512) to establish uniform administrative procedures for receiving and processing contributions to the Commission. Regulations were needed to assure adherence to the statutory limitation on contributions.

The Commission completed its study and published its report in May 1994. The Commission was disbanded following publication of its report.

Following a review of Forest Service regulations under the President's Regulatory Reinvention Initiative, the Agency identified this regulation as no longer needed, and, accordingly, by this amendment, is removing the rule from the Code of Federal Regulations. Because of the narrow scope and limited effect of this action, the Agency has determined that this amendment is a technical amendment for which notice and comment pursuant to the Administrative Procedures Act (5 U.S.C. 553) is neither practicable nor necessary.

Regulatory Impact

This rule is a technical amendment to remove an obsolete regulation and, as such, has no substantive effect, nor is it subject to review under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. Accordingly, this rule is not subject to OMB review under Executive Order 12866.

Moreover, because good cause exists to exempt his rule from notice and comment pursuant to 5 U.S.C. 553, this rule is exempt from further analysis under the Unfunded Mandates Reform Act of 1995; Executive Order 12778, Civil Justice Reform; Executive Order 12630, Takings Implications; or the Paperwork Reduction Act of 1995.

List of Subjects in 36 CFR Part 211

Administrative practice and procedure, Fire prevention, Intergovernmental relations, National forests.

Therefore, for the reasons set forth in the preamble, Part 211 of Title 36 of the Code of Federal Regulations is hereby amended as follows:

PART 211—[AMENDED]

1. The authority citation for Part 211 continues to read as follows:

Authority: 30 Stat. 35, as amended, sec. 1, 33 Stat. 628 (16 U.S.C. 551, 472).

§ 211.6 [Removed]

2. Remove section 211.6.

Dated: August 6, 1996.

David G. Unger,

Associate Chief.

[FR Doc. 96–20326 Filed 8–8–96; 8:45 am]

BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[FRL–5543–5]

Underground Storage Tank Program: Approved State Program for Connecticut

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The Resource Conservation and Recovery Act of 1976, as amended (RCRA), authorizes the Environmental Protection Agency (EPA) to grant approval to states to operate their underground storage tank programs in lieu of the federal program. 40 CFR Part 282 codifies EPA's decision to approve state programs and incorporates by reference those provisions of the state statutes and regulations that will be subject to EPA's inspection and enforcement authorities under Sections 9005 and 9006 of RCRA Subtitle I and other applicable statutory and regulatory provisions. This rule codifies

in 40 CFR Part 282 the prior approval of Connecticut's underground storage tank program and incorporates by reference appropriate provisions of state statutes and regulations.

DATES: This regulation is effective October 8, 1996, unless EPA publishes a prior Federal Register notice withdrawing this immediate final rule. All comments on the codification of Connecticut's underground storage tank program must be received by the close of business September 9, 1996. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of October 8, 1996, in accordance with 5 U.S.C. 552(a).

ADDRESSES: Comments may be mailed to the Docket Clerk (Docket No. UST 5–4), Underground Storage Tank Program, HBO, U.S. EPA-New England, J.F.K. Federal Building, Boston, MA 02203–2211. Comments received by EPA may be inspected in the public docket, located in the Office of Site Remediation & Restoration Record Center, 90 Canal St., Boston, MA 02203 from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Jonathan Walker, Underground Storage Tank Program, HBO, U.S. EPA-New England, J.F.K. Federal Building, Boston, MA 02203–2211. Phone: (617) 573–9602.

SUPPLEMENTARY INFORMATION:

Background

Section 9004 of the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), 42 U.S.C. 6991c, allows the U.S. Environmental Protection Agency to approve state underground storage tank programs to operate in the state in lieu of the federal underground storage tank program. EPA published a Federal Register document announcing its decision to grant approval to Connecticut. (60 FR 34879, July 5, 1995). Approval was effective on August 4, 1995.

EPA codifies its approval of state programs in 40 CFR Part 282 and incorporates by reference therein the state statutes and regulations that will be subject to EPA's inspection and enforcement authorities under Sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions. Today's rulemaking codifies EPA's approval of the Connecticut underground storage tank program. This codification reflects only the state underground storage tank program in effect at the time EPA granted Connecticut approval under section 9004(a), 42 U.S.C. 6991c(a). EPA provided notice and opportunity for comment earlier during the Agency's decision to approve the Connecticut program. EPA is not now reopening that decision nor requesting comment on it.

Codification provides clear notice to the public of the scope of the approved program in each state. By codifying the approved Connecticut program and by amending the Code of Federal Regulations whenever a new or different set of requirements is approved in Connecticut, the status of federally approved requirements of the Connecticut program will be readily discernible. Only those provisions of the Connecticut underground storage tank program for which approval has been granted by EPA will be incorporated by reference for enforcement purposes.

To codify EPA's approval of Connecticut's underground storage tank program, EPA has added Section 282.56 to Title 40 of the Code of Federal Regulations. Section 282.56 incorporates by reference for enforcement purposes the state's statutes and regulations. Section 282.56 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the underground storage tank program under Subtitle I of RCRA.

The Agency retains the authority under Sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions in approved states. With respect to such an enforcement action, EPA will rely on federal sanctions, federal inspection authorities, and federal procedures rather than the state authorized analogs to these provisions. Therefore, the approved Connecticut enforcement authorities will not be incorporated by reference. Forty CFR Section 282.56 lists those approved Connecticut authorities that would fall into this category.

The public also needs to be aware that some provisions of Connecticut's underground storage tank program are not part of the federally approved state program. These include:

- Section 22a–449(d)–1, Control of the Nonresidential Underground Storage and Handling of Oil and Petroleum Liquids; and,
- Requirements, including those for registration and permanent closure, for tanks greater than 2,100 gallons containing heating oil consumed on the premises where stored.

These non-approved provisions are not part of the RCRA Subtitle I program, because they are ''broader in scope'' than Subtitle I of RCRA. See 40 CFR 281.12(a)(3)(ii). As a result, state provisions which are ''broader in scope'' than the federal program are not incorporated by reference for purposes of enforcement in 40 CFR part 282 or included as part of this codification. Included under CFR 282.56 for purposes of reference and clarity is a list of those Connecticut statutory and regulatory provisions which are ''broader in scope'' than the federal program. ''Broader in scope'' provisions cannot be enforced by EPA. The State, however, will continue to enforce such provisions.

Certification Under the Regulatory Flexibility Act

EPA has determined that this codification will not have a significant economic impact on a substantial number of small entities. Such small entities which own and/or operate USTs are already subject to the state requirements authorized by EPA under 40 CFR Part 281. EPA's codification does not impose any additional burdens on these small entities. This is because EPA's codification would simply result in an administrative change, rather than a change in the substantive requirements imposed on small entities. Moreover, this codification will eliminate any confusion that owners and operators of USTs in [State] may have regarding which set of requirements they must comply with in Connecticut.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this codification will not have a significant economic impact on a substantial number of small entities. This codification incorporates Connecticut's requirements, which have been authorized by EPA under 40 CFR Part 281, into the Code of Federal Regulations, thereby eliminating any confusion over the applicable requirements for owners and operators of USTs in Connecticut. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 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 section 804(2) of the APA as amended.

Compliance With Executive Order 12866

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

Paperwork Reduction Act

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

List of Subjects in 40 CFR Part 282

Environmental protection, Hazardous substances, Incorporation by reference, Intergovernmental relations, State program approval, Underground storage tanks, Water pollution control.

Dated: May 10, 1996.

John P. DeVillars,

Regional Administrator.

For the reasons set forth in the preamble, 40 CFR part 282 is amended as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

Subpart B—Approved State Programs

2. Subpart B is amended by adding § 282.56 to read as follows:

§ 282.56 Connecticut State-Administered Program.

(a) The State of Connecticut is approved to administer and enforce an underground storage tank program in lieu of the federal program under Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State's program, as administered by the Connecticut Department of Environmental Protection, was approved by EPA pursuant to 42 U.S.C. 6991c and 40 CFR part 281. EPA approved the Connecticut program on June 27, 1995, and the approval was effective on August 4, 1995.

(b) Connecticut has primary responsibility for enforcing its underground storage tank program. However, EPA retains the authority to exercise its inspection and enforcement authorities under Sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, as well as under other statutory and regulatory provisions.

(c) To retain program approval, Connecticut must revise its approved program to adopt new changes to the federal Subtitle I program which make it more stringent, in accordance with Section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If Connecticut obtains approval for the revised requirements pursuant to Section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the Federal Register.

(d) Connecticut has final approval for the following elements submitted to EPA in Connecticut's program application for final approval EPA and approved by EPA on June 27, 1995, effective on August 4, 1995. Copies may be obtained from the Underground Storage Tank Program, Connecticut Department of Environmental Protection, 79 Elm Street, Hartford, CT 06106. The elements are listed as follows:

(1) *State statutes and regulations.* (i) The provisions cited in this paragraph are incorporated by reference as part of the underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(A) Connecticut Statutory Requirements Applicable to the Underground Storage Tank Program, 1996.

(B) Connecticut Regulatory Requirements Applicable to the Underground Storage Tank Program, 1996.

(ii) The following statutes and regulations are part of the approved state program, although not incorporated by reference herein for enforcement purposes.

(A) The statutory provisions include:

(*1*) *Legal Authorities for Compliance Monitoring and Inspections.* Connecticut General Statutes, Sections 22a–6(a)(5), 22a–336, 54–33a.

(*2*) *Legal Authorities for Enforcement Response.* Connecticut 22a–430(d), 22a–431, 22a–432, 22a–433, 22a–435, 22a–438, 52–471, 52–473, 52–474, 52–480 and 52–481.

(*3*) *Public Participation in the State Enforcement Process.* Connecticut General Statutes, Sections 4–177a, 22a–6, 22a–16, 22a–18, 22a–19, 52–107, and 52–474.

(B) Regulatory provisions include: *Public Participation in the State Enforcement Process.* (R.C.S.A.) Sections 22a–3a–6–(k).

(iii) The following statutory and regulatory provisions are broader in scope than the federal program, are not part of the approved program, and are not incorporated by reference herein for enforcement purposes:

(A) Section 22a–449(d)–1 of the Regulations of Connecticut State Agencies for the Control of the Nonresidential Underground Storage and Handling of Oil and Petroleum Liquids; and

(B) Requirements, including those for registration and permanent closure, for tanks greater than 2,100 gallons containing heating oil consumed on the premises where stored.

(2) *Statement of legal authority.* (i) ''Attorney General's Statement for Final Approval,'' signed by the Attorney General of Connecticut on December 21, 1994, though not incorporated by reference, is referenced as part of the State's approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(ii) Letter from the Attorney General of Connecticut to EPA, December 21, 1994, though not incorporated by reference, is referenced as part of the State's approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The ''Demonstration of Procedures for Adequate Enforcement'' submitted as part of the original application in December 1994, though not incorporated by reference, is referenced as part of the State's approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program Description.* The program description and any other material submitted as part of the original application in December 1994, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* On October 16, 1995, EPA and the Connecticut Department of Environmental Protection signed the Memorandum of Agreement. Though not incorporated by reference, the Memorandum of Agreement is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

3. Appendix A to 40 CFR part 282 is amended by adding in alphabetical order ''Connecticut'' and its listing as follows:

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

* * * * *

Connecticut

(a) The statutory provisions include Connecticut's General Statutes, Chapter 446k, Section 22a–449(d), Duties and Powers of Commissioner, January 1, 1995.

(b) The regulatory provisions include Regulations of Connecticut State Agencies (''R.C.S.A.'') Sections 22a–449(d)–101 through 113, Underground Storage Tank System Management, July 28, 1994:

Section 22a–449(d)–101 Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks—Program Scope and Interim Prohibition

(a) Applicability of Sections 22a–449(d)–101 through 22a–449(d)–113.
(b) Interim Prohibition for deferred UST systems.
(c) General.
(d) Definition.

Section 22a–449(d)–102 UST Systems: Design, Construction, Installation, and Notification

(a) Performance standards for new UST systems.
(b) Notification Requirements.

Section 22a–449(d)–103 General Operating Requirements

(a) Spill and overflow control.
(b) Operating and maintenance of corrosion protection.
(c) Compatibility.
(d) Repairs allowed.
(e) Reporting and recordkeeping.

Section 22a–449(d)–104 Release Detection

(a) General requirements for all UST systems.
(b) Additional requirements.
(c) Requirements for petroleum UST systems.
(d) Requirements for hazardous substance UST systems.
(e) Methods of release detection for tanks.
(f) Methods of release detection for piping.
(g) Release detection recordkeeping.

Section 22a–449(d)–105 Release Reporting, Investigation, and Confirmation

(a) Reporting of suspected releases.
(b) Investigation due to off-site impacts.
(c) Release investigation and confirmation steps.
(d) Reporting and cleanup of spills and overfills.

Section 22a–449(d)–106 Release Response and Corrective Action for UST Systems Containing Petroleum or Hazardous Substances

(a) General.
(b) Additional requirements.
(c) Initial response.
(d) Initial abatement measures and site check.
(e) Initial site characterization.
(f) Free product removal.
(g) Investigations for soil and ground-water cleanup.
(h) Corrective action plan.
(i) Public participation.

Section 22a–449(d)–107 Out-of-service UST Systems and Closure

(a) Temporary closure.
(b) Permanent closure.
(c) Assessing the site at closure.
(d) Applicability to previously closed UST systems.
(e) Closure records.

Section 22a–449(d)–108 Reserved

Section 22a–449(d)–109 Financial Responsibility

(a) Applicability.
(b) Compliance dates.
(c) Definition of terms.
(d) Amount and scope of required financial responsibility.
(e) Allowable mechanisms and combinations of mechanisms.
(f) Financial test of self-insurance.
(g) Guarantee.
(h) Insurance risk retention group coverage.
(i) Surety bond.
(j) Letter of credit.
(k) Use of state-required mechanism.
(l) State fund and other state assurance.
(m) Trust fund.
(n) Standby trust fund.
(o) Substitution of financial assurance mechanisms by owner or operator.
(p) Cancellation or non-renewal by a provider of financial assurance.
(q) Reporting by owner or operator.
(r) Record keeping.
(s) Drawing of financial assurance mechanisms.
(t) Release from the requirements.
(u) Bankruptcy or other incapacity of owner or operator or provider of financial assurance.
(v) Replenishment of guarantees, letters of credit, or, surety bonds.
(w) Suspension of enforcement [reserved].
(x) 40 CFR Part 280 Appendix I is incorporated by reference, in its entirety.
(y) Appendix II to 40 CFR Part 280—List of Agencies Designed to Receive Notification.
(z) Appendix III to 40 CFR Part 280—Statement for Shipping Tickets and Invoices.

Section 22a–449(d)–110 UST system upgrading, abandonment and removal date

(a) Petroleum UST system of which construction or installation began prior to November 1, 1985.
(b) Hazardous substance UST system of which construction or installation began prior to December 22, 1988.
(c) UST systems which comply with the standards specified in subsection 22a–449(d)–102(a) of these regulations.

Section 22a–449(d)–111 Life Expectancy

(a) How life expectancy determinations shall be conducted
(b) Life expectancy shall be as follows:
(c) The life expectancy of an UST system component.

Section 22a–449(d)–112 UST System Location Transfer

Section 22a–449(d)–113 Transfer of UST System Ownership, Possession, or Control

(a) Disclosure to transferee.
(b) Information submitted to the commissioner pursuant to section 22a–449(d)–102 of these regulations.

[FR Doc. 96–20366 Filed 8–8–96; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95–88, Notice 02]

RIN 2127–AG02

Federal Motor Vehicle Safety Standards; Brake Hoses; Whip Resistance Test

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: As the result of an inquiry from Earl's Performance Products, this document amends Standard No. 106, *Brake Hoses,* by revising the whip resistance test conditions. As amended, the test conditions permit the use of a supplemental support in attaching certain brake hose assemblies for the purpose of compliance testing. This rulemaking amends a provision that had the unintended consequence of prohibiting the manufacture and sale for use on the public roads of a type of brake hose assembly that may have safety advantages.

DATES: *Effective Date:* The amendments become effective on October 8, 1996.

Petitions for Reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA no later than September 23, 1996.

ADDRESSES: Petitions for reconsideration of this rule should refer to Docket 93–54; Notice 3 and should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

For non-legal issues: Mr. Richard Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (202–366–5274).

For legal issues: Mr. Marvin L. Shaw, NCC–20, Rulemaking Division, Office of

Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–2992).

SUPPLEMENTARY INFORMATION:

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I. Background
II. Request for Interpretation and NHTSA's Response
III. Agency Proposal
IV. Comments on the Proposal
V. NHTSA Determination

I. Background

Standard No. 106, *Brake Hoses,* specifies labeling and performance requirements for motor vehicle brake hoses, brake hose assemblies, and brake hose end fittings. The Standard includes several requirements, including one for whip resistance. Section S5.3.3, *Whip resistance,* specifies that ''(a) hydraulic brake hose assembly shall not rupture when run continuously on a flexing machine for 35 hours.'' The purpose of the whip resistance requirement is to replicate the bending cycles that a brake hose experiences when mounted on a vehicle's front axle. The flexing machine simulates the turning of the front wheels combined with the jounce and rebound of the wheels on rough roads.

Section S6.3 specifies the test conditions and procedures for the whip resistance test, including the testing apparatus, test preparation, and test operation. The standard specifies that the testing apparatus is equipped with capped end fittings that permit mounting at each end point. The present specifications for the whip test apparatus are patterned after an existing Society of Automotive Engineers' (SAE's) Recommended Practice, J1401, *Hydraulic Brake Hose Assemblies for Use with Nonpetroleum Based Hydraulic Fluids* (June 1990).

II. Request for Interpretation and NHTSA's Response

On December 8, 1994, Earl's Performance Products (Earl's) asked the agency to issue an interpretation of the whip resistance requirements in Standard No. 106. Specifically, that company asked about the permissibility of using an alternative whip resistance test apparatus for testing hydraulic brake hose, since its hose will not pass the present whip resistance test. Earl's has manufactured its armored brake hose assembly for use in off-road, high performance race cars since the 1960s. That company sought permission to use the alternative fixture because it wished to begin selling its armored brake hose for use on the public roads. It claimed that its product is of very high quality and easily meets all of the requirements in Standard No. 106, except for the whip resistance test. Earl's brake hose is a hose armored with braided stainless steel. In contrast, most current brake hoses are made from rubber tubing alone.

Earl's armored brake hose is installed differently than a conventional hose. An Earl's hose, unlike a conventional hose, passes through and is held in place by a supplemental support (consisting of a ball bearing with a hole in it and the ball bearing housing) which cannot be removed from the hose. The support slides into and is held in place by a bracket which is attached to the vehicle frame or some other solid vehicle structure.

The alternative test apparatus includes means of simulating the attachment of the supplemental support to a vehicle. The apparatus is patterned after the way in which Earl's brake hose is currently mounted on racing vehicles and the way in which Earl's anticipates attaching the brake hose on vehicles used on the public roads, if the agency adopted its requested amendment.

If the supplemental support is not properly attached or mounted to the vehicle, Earl's product would fail the whip resistance test due to cyclic stress at the interface between the hose and the swaged collar at the fixed end of the hose assembly. Earl's claimed that such cyclic stress could occur in the real world, but does not pose a problem in that environment when the hose is protected by the supplemental support.

Earl's further indicated that it had successfully tested hose assemblies from 9 inches to 24 inches long, using its alternative test fixture. In describing its test fixture, that company stated that—

> * * * the whip dampener consists of a spherical bearing enclosed in a machined housing. The housing clips into the OEM bracket where the OEM hard brake tubing joins to the flexible brake hose. The flexible brake hose of stainless armored teflon is inserted through the bearing on assembly and cannot be removed. Suitable threaded couplings * * * are provided at each end of the assembly to match the OEM threads at the end of the hard lines and at the caliper of the wheel cylinder * * *

On April 24, 1995, NHTSA responded to Earl's request for an interpretation, concluding that the agency could not use a supplemental support to mount Earl's brake hose when conducting the whip test. NHTSA stated that—

> Section S6.3 cannot be interpreted to permit mounting the brake hose at the ''whip dampener.'' S6.3.1 *Apparatus* specifies a test apparatus that mounts the brake hose at ''capped end fittings'' on one end and ''open end fittings'' on the other, and specifies no mounting points in between. Thus a test apparatus that mounts the brake hose at a ''whip dampener,'' which is not an end fitting would not meet Standard No. 106.

The agency then stated that it would initiate rulemaking to further consider whether to amend the whip resistance test to permit the use of a supplemental support.

III. Agency Proposal

On November 16, 1995, NHTSA issued a notice of proposed rulemaking (NPRM) in which it proposed amending the whip resistance test of Standard No. 106. (60 FR 57562) Under that proposal, section S6.3.2 would be amended to permit an optional way to mount certain brake hose assemblies during the test through the use of a supplemental support. Without such an amendment, those armored brake hoses would remain prohibited because they cannot comply with the current whip resistance test. The proposed amendment was intended to allow the attaching of Earl's brake hose assembly in the test apparatus in the same way that it would be mounted in the real world on a vehicle. The agency stated that the proposal would apply to those brake hose assemblies that are fitted with a supplemental support that cannot be removed intact from the hose without destroying the hose. The supplemental support would be positioned and attached or mounted in a bracket that would simulate the way the support would be attached or mounted to a vehicle, in accordance with the recommendation of the brake hose assembly manufacturer. The agency invited comments about the appropriateness of the proposed modification to the whip resistance test.

NHTSA stated its tentative conclusion that Earl's brake hose has significant safety advantages. Among those safety advantages are the elimination of hose swell under pressure which results in a significant reduction in brake pedal travel and a much firmer brake pedal feel. A firmer pedal is desirable because it allows the driver to modulate braking force more precisely. The agency stated that armored brake hoses are designed to withstand operating conditions, such as those experienced in racing environments, that are more severe than those experienced in typical road environments. Brake hoses of this type are typically high quality and more expensive than those normally installed for use on the public roads.

IV. Comments on the Proposal

NHTSA received comments on the proposed amendment to the whip

resistance test from vehicle manufacturers (BMW and Chrysler) and brake hose manufacturers (Earl's, Titeflex, Continental Hose Company, and Stuart Goodridge (UK) Ltd).

BMW, Chrysler, and Earl's supported the proposed amendment to Standard No. 106. These commenters stated that the proposed amendment duplicates the manner in which these armored hoses are currently installed in many racing vehicles.

The brake hose manufacturers, other than Earl's, commented that the proposed amendment does not replicate the way in which a brake hose is supported in the real world. Both Titeflex and Goodridge complained that Earl's was attempting to circumvent the whip resistance requirements. These manufacturers stated that they had invested significant capital to develop stainless steel hoses that comply with the whip resistance test. Continental Hose, Goodridge, and Titeflex were also concerned about the safety of the supplemental support. Titeflex alleged that Earl's armored hose is unsafe, particularly in terms of its long term performance capability.

V. NHTSA Decision

After reviewing the comments and other available information, NHTSA has decided to amend the whip resistance test conditions in Standard No. 106 so that in setting up the test for a brake hose assembly designed to be installed with the use of a supplemental support, the method of installing those brake hose assemblies in the real world is replicated. Specifically, section S6.3.2 is amended to permit the use of a supplemental support and attachment bracket as an optional way of attaching those brake hose assemblies during the whip resistance test. The agency has concluded that it is appropriate and in the interests of safety to modify the provision that has prohibited certain armored brake hose assemblies until now. The agency emphasizes that the alternative test condition is applicable only to those brake hose assemblies that are fitted with a supplemental support that cannot be removed intact from the hose without destroying the hose and which are designed to be installed in vehicles with the supplemental support firmly attached to the vehicle structure. In the case of this type of brake hose manufactured for use on vehicles other than those originally designed for and equipped with such brake hose, there must be an add-on bracket that is used to modify those vehicles to accept this type of hose, that is an integral part of the hose assembly and that cannot be removed from the hose without destroying it.

Continental Hose and Goodridge asked the agency to clarify how a brake hose assembly with a permanent supplemental support would be mounted. Continental Hose was uncertain whether the supplemental support is to be put on the header end or both the header and caliper ends of the whip test apparatus.

NHTSA notes that the new whip resistance test conditions, as amended by today's notice, are generally the same as the ones previously set forth in the standard. Both ends of the brake hose will continue to be threaded into each end of the whip test machine header. The only difference is that today's amendment allows the addition of a supplemental support that extends out from the stationary header end of the whip test machine. This modification is consistent with the petitioner's request that the agency permit a supplemental support that is mounted on the fixed, non-rotating side of the whip test machine.

In response to Continental Hose's question, the agency notes that only the end of the brake hose assembly by the stationary header is fitted with a supplemental support. The end attached to the caliper is not equipped with such a supplemental support.

In the NPRM, NHTSA stated that the amendment would allow a brake hose assembly such as one like Earl's to be mounted during compliance testing in the same way that it is fitted to the vehicle in the real world. Several commenters were concerned that this amendment would not replicate real world conditions for brake hose assemblies installed on some vehicles in the aftermarket. Goodridge indicated that additional amendments were needed to ensure that, with respect to the supplemental support, the Standard would replicate the manner in which Earl's brake hoses are mounted in vehicles sold to the public. Goodridge stated that the requested modification does not always replicate how the brake hose is supported in the real world.

In response to these comments, Earl's stated that in most cases, the supplemental support is an integral part of the vehicle as it is newly manufactured. It further stated that the supplemental support to be used in testing correctly simulates the ''real world'' movement of the brake assembly during turning and suspension movement.

NHTSA has decided to amend Standard No. 106 by adding a provision in section S5.1 and S5.2.3 to ensure that the supplemental support and method of attachment to the vehicle that is used in the whip resistance test is the same as that which will be installed in vehicles in the real world. Accordingly, the test condition will replicate how the brake hose is installed in vehicles in the real world.

However, the agency believes that it is necessary to distinguish between brake hose manufactured for a vehicle that is equipped with a supplemental support as original equipment, and brake hose manufactured for a vehicle that needs to be modified by the addition of an aftermarket add-on mounting bracket in order to provide a means of attaching the supplemental support on the Earl's brake hose assembly to the vehicle. Brake hose such as Earl's brake hose would presumably fail the whip resistance test unless its supplemental support were properly attached.

In the case of a brake hose assembly designed with an unremovable supplemental support and manufactured as a replacement assembly for a vehicle equipped, as an integral part of its original design, with a means of attaching the support to the vehicle, that assembly is required to be sold in a package that is clearly marked or labeled as follows: ''FOR USE ON [*insert Manufacturer, Model Name*] ONLY.'' This requirement serves to inform an aftermarket purchaser that the brake hose assembly should only be used on a specific vehicle and does not have a universal application.

In the case of a brake hose assembly designed with an unremovable supplemental support and manufactured as a replacement assembly for a vehicle not equipped, as an integral part of its original design, with a means of attaching the support to the vehicle, NHTSA has decided to require that those brake hose assemblies be equipped with an add-on mounting bracket that is integrally attached to the supplemental support, along with instructions explaining how the mounting bracket is to be fastened to the vehicle and the consequences of not attaching the bracket to the vehicle. If the bracket were not used to attach the supplemental support to the vehicle, the brake hose assembly on such vehicles would not be capable of withstanding real world conditions. The agency believes that these additional requirements adequately respond to commenters' concerns that the petitioner's brake hose assembly was potentially unsafe and that the proposed test procedure was not representative of how such brake hose assemblies are supported in the real world.

Continental was concerned that the supplemental support would be prone

to failure, which might cause partial brake system failure. It stated that failure of the supplemental support would subject the interface between the brake hose and the swaged collar to the cyclic stress that causes failure.

NHTSA believes that there is no information to support Continental Hose's speculation that the supplemental support which Earl's expects to use is prone to failure. If such failures were to occur, the agency would treat them the same way it treats any other safety-related failure of a motor vehicle or item of motor vehicle equipment. The agency would expect the manufacturer to conduct a recall if one were appropriate.

Titeflex stated that Earl's brake hose assembly is an inferior design that poses a safety hazard in terms of its long term performance capability. Titeflex also stated that it developed and produced a stainless steel brake hose that complies with the standards under the current test conditions for the whip resistance test. This led Titeflex to state:

> We wish to contrast our philosophy of full compliance and safety assurance through proprietary technology to a weak attempt to meet the letter of the law merely to sell one's own product. A rhetorical question, therefore is appropriate: Why would and should Titeflex have invested the tremendous amount of time, money, and resources in developing patented technology that exceeds Standard No. 106 when NHTSA is considering relaxing those safety standards.

NHTSA recognizes that there are design choices and investments associated with the provisions of Standard No. 106, just as there are with the provisions of each of the agency's standards. The agency recognizes also the impact that amending its standards has on those choices and investments. However, the agency must remain open to amending its standards in response to changing safety needs and changing vehicle technology. NHTSA notes that the agency may, with proper justification, amend a standard provided that the change is consistent with the agency's statutory authority. Foremost among its statutory concerns is not making any amendments that would compromise safety. Titeflex is concerned that Earl's will be selling an inferior product compared to products, such as its own, that comply with Standard No. 106 under the present test conditions. NHTSA has decided that allowing certain brake hose assemblies to be tested in accordance with the new test conditions will not compromise the level of safety performance compared with the current test conditions. Specifically, NHTSA is not aware of any information (and Titeflex did not provide any such information) supporting Titeflex's claim that Earl's brake hose is an inferior design that has inferior long term performance capability. The agency believes that with a supplemental support properly attached and mounted to the vehicle, the brake hose will perform in a manner that is equivalent to brake hoses that are manufactured with end fittings that do not require a supplemental support to comply with the present whip test requirements. Therefore, the agency concludes that there will be no decrease in safety.

Leadtime

As the NPRM explained, the statute requires that each order shall take effect no sooner than 180 days from the date on which the order is issued unless good cause is shown that an earlier effective date is in the public interest. (49 U.S.C. 30111(d)) NHTSA has concluded that there is good cause not to provide the 180 day lead time, given that this amendment imposes no mandatory requirements on any manufacturer. The amendment merely specifies an alternative method of testing certain brake hoses. Based on the above, the agency has concluded that there is good cause for an effective date 60 days after publication of the final rule. The agency is providing a 60 day leadtime rather than the 30 day leadtime proposed in the NPRM, given recent legislation that requires a 60 day leadtime before final rules can take effect. (5 U.S.C. 801(a)(1))

Rulemaking Analyses and Notices

1. Executive Order 12866 (Federal Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking was not reviewed under E.O. 12866. NHTSA has analyzed this rulemaking notice and determined that it is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. The impacts of this rule are so minimal as not to warrant preparation of a full regulatory evaluation. The rule does not mandate the installation of the new type of brake hose assembly. Instead, the rule permits the use of brake hoses that are designed to be installed using a supplemental support, such as the manufactured by the petitioner, i.e., brake hoses armored with braided stainless steel. This rulemaking has no cost impacts other than negligible package labeling costs.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendment does not have a significant economic impact on a substantial number of small entities. Vehicle and brake hose manufacturers typically do not qualify as small entities. Further, as noted above, the amendment has minimal, if any impacts on costs or benefits. Accordingly, no regulatory flexibility analysis has been prepared.

3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws are affected.

4. National Environmental Policy Act

Finally, the agency has considered the environmental implications of this rulemaking in accordance with the National Environmental Policy Act of 1969 and determined that the rulemaking does not significantly affect the human environment.

5. Civil Justice Reform

This rulemaking does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (49 U.S.C. 30111), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (49 U.S.C. 30161) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

6. Paperwork Reduction Act

This rule includes new ''collections of information'' as that term is defined by the Office of Management and Budget (OMB). For Standard No. 106, OMB has previously approved a collection of information (OMB Control Number 2127–0052 ''Brake Hose Manufacturing Identification—Standard No. 106'') for use through August 31, 1998. When NHTSA prepares a future request for an extension of this collection of information approval for an additional three years, the agency will include in the request, an estimate of the new collection of information burden that

results from today's rule. NHTSA would issue a Federal Register document asking for public comment on the request for extension of OMB Control Number 2127–0052.

Pursuant to the Paperwork Reduction Act of 1995 and OMB's regulations at 5 CFR 1320.5(b)(2), NHTSA informs the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. The currently valid OMB control number is displayed above and in NHTSA's regulations at 49 CFR part 509 *OMB Control Numbers for Information Collection Requirements.*

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency has decided to amend Standard No. 106, *Brake Hoses,* in Title 49 of the Code of Federal Regulations at part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.106 is amended by revising S5.1, adding S5.2.3, revising S6.3.2(a) and adding S6.3.2(d) to read as follows:

§ 571.106 Standard No. 106; Brake Hoses.

* * * * *

S5.1 *Construction.* (a) Each hydraulic brake hose assembly shall have permanently attached brake hose end fittings which are attached by deformation of the fitting about the hose by crimping or swaging.

(b) Each hydraulic brake hose assembly that is equipped with a permanent supplemental support integrally attached to the assembly and is manufactured as a replacement for use on a vehicle not equipped, as an integral part of the vehicle's original design, with a means of attaching the support to the vehicle shall be equipped with a bracket that is integrally attached to the supplemental support and that adapts the vehicle to properly accept this type of brake hose assembly.

* * * * *

S5.2.3 *Package labeling for brake hose assemblies designed to be used with a supplemental support* (a) Each hydraulic brake hose assembly that is equipped with a permanent supplemental support integrally attached to the assembly and is manufactured as a replacement assembly for a vehicle equipped, as an integral part of the vehicle's original design, with a means of attaching the support to the vehicle shall be sold in a package that is marked or labeled as follows: ''FOR USE ON [*insert Manufacturer, Model Name*] ONLY'';

(b) Each hydraulic brake hose assembly that is equipped with a permanent supplemental support integrally attached to the assembly and is manufactured as a replacement for use on a vehicle not equipped, as an integral part of the vehicle's original design, with a means of attaching the support to the vehicle shall comply with paragraphs (a) (1) and (2) of this section:

(1) Be sold in a package that is marked or labeled as follows: ''FOR USE ONLY WITH A SUPPLEMENTAL SUPPORT.''

(2) Be accompanied by clear, detailed instructions explaining the proper installation of the brake hose and the supplemental support bracket to the vehicle and the consequences of not attaching the supplemental support bracket to the vehicle. The instructions shall be printed on or included in the package specified in paragraph (a)(1) of this section.

* * * * *

S6.3.2 *Preparation.* (a) Except for the supplemental support specified in S6.3.2(d), remove all external appendages including, but not limited to, hose armor, chafing collars, mounting brackets, date band and spring guards.

* * * * *

(d) In the case of a brake hose assembly equipped with a permanent supplemental support integrally attached to the assembly, the assembly may be mounted using the supplemental support and associated means of simulating its attachment to the vehicle. Mount the supplemental support in the same vertical and horizontal planes as the stationary header end of the whip test fixture described in S6.3.1(b). Mount or attach the supplemental support so that it is positioned in accordance with the recommendation of the assembly manufacturer for attaching the supplemental support on a vehicle.

* * * * *

Issued on: August 5, 1996.

Ricardo Martinez,

Administrator.

[FR Doc. 96–20349 Filed 8–8–96; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

[Docket No. 960723205–6205–01; I.D. 040694C]

Endangered and Threatened Species; Endangered Status for Umpqua River Cutthroat Trout in Oregon

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

ACTION: Final rule.

SUMMARY: NMFS is issuing a final determination that the Umpqua River cutthroat trout (*Oncorhynchus clarki clarki*) is a ''species'' under the Endangered Species Act of 1973, as amended (ESA) and will be listed as endangered. Extremely low, and declining, numbers of adult cutthroat trout counted at Winchester Dam on the North Umpqua River signal a high risk of extinction for the species. Habitat degradation, recreational fishing, and inadequate regulatory mechanisms are factors that have contributed to the species' decline. Habitat degradation and inadequate regulatory mechanisms continue to represent a potential threat to the Umpqua River cutthroat trout's existence.

NMFS will reconsider this determination in 2 years (or as new scientific information becomes available) and will continue to assess the degree to which ongoing Federal, state, and local conservation initiatives reduce the risks faced by Umpqua River cutthroat trout.

EFFECTIVE DATE: September 9, 1996.

ADDRESSES: Garth Griffin, NMFS, Environmental and Technical Services Division, 525 NE Oregon St.—Suite 500, Portland, OR 97232–2737, telephone (503/231–2005); or Marta Nammack, NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, telephone (301/713–1401).

FOR FURTHER INFORMATION CONTACT: Garth Griffin, telephone (503/231–2005), or Marta Nammack, telephone (301/713–1401).

SUPPLEMENTARY INFORMATION:

Background

The Umpqua River cutthroat trout is a ''distinct population segment'' under the ESA (hereinafter referred to as an Evolutionarily Significant Unit or ESU (56 FR 58612; November 20, 1991)) of the coastal cutthroat trout

(*Oncorhynchus clarki clarki*). The coastal cutthroat trout subspecies is native to western North America and is found in the coastal temperate rainforests from southeast Alaska to northern California (Trotter 1989). The Umpqua River cutthroat trout ESU inhabits a large coastal basin (drainage area over 12,200 km2) in the southwestern Oregon coast. Spawning sites are located in the North and South Umpqua Rivers and their tributaries, of which Smith River and Calapooya, Elk, and Scholfield Creeks are major tributaries. The estuary of the Umpqua River is one of the largest on the Oregon coast.

Coastal cutthroat trout differ from all other trout by their profusion of small to medium-size spots of irregular shape (Behnke 1992). In addition, they do not develop the brilliant colors associated with inland cutthroat trout (a separate subspecies). In the sea-run (anadromous) form of the coastal cutthroat trout, spots and colors are further obscured by the silvery skin deposit common to anadromous salmonids. Non-anadromous (resident) fish tend to be darker, with a ''coppery or brassy'' sheen (Behnke 1992).

The life history of this subspecies is probably the most complex and flexible of any Pacific salmonid. Unlike other anadromous salmonids, sea-run forms of the coastal cutthroat trout do not overwinter in the ocean and only rarely make long extended migrations across large bodies of water. They migrate in the nearshore marine habitat and usually remain within 10 km of land (Giger 1972; Sumner 1972; Jones 1976; Johnston 1981). While most anadromous cutthroat trout enter seawater as 2- or 3-year olds, some may remain in fresh water up to 5 years before entering the sea (Giger 1972; Sumner 1972). Other cutthroat trout may never outmigrate at all, but remain as residents of small headwater tributaries. Still other cutthroat trout may migrate only into rivers and lakes (Nicholas 1978; Tommasson 1978; Moring et al. 1986; Trotter 1989), even when they have access to the ocean (Tomasson 1978). In the Umpqua River, anadromous, resident, and potamodromous (river-migrating) life-history forms have been reported (Trotter 1989; Loomis and Anglin 1992; Loomis et al. 1993). Details of the coastal cutthroat trout life history and ecology, including aspects particular to the various life forms, can be found in published reviews by Pauley et al. (1989), Trotter (1989), Behnke (1992), and Johnson et al. (1994).

Previous Federal Action

On April 1, 1993, the Secretary of Commerce received a petition from the Oregon Natural Resources Council, Umpqua Valley Audubon Society, and the Wilderness Society to list Umpqua River cutthroat trout as threatened or endangered, and to designate critical habitat under the ESA (16 U.S.C. 1531 *et seq.*). On July 19, 1993, NMFS published a notice indicating its intent to conduct a status review of Umpqua River cutthroat trout (58 FR 38554). To ensure a comprehensive review, NMFS solicited information and data regarding the present and historic status of Umpqua River cutthroat trout and whether this stock qualifies as a ''species'' under the ESA. NMFS also requested information on areas that may qualify as critical habitat for Umpqua River cutthroat trout.

On August 19, 1993, NMFS received a petition from the Oregon Natural Resources Council and the Steamboaters for an emergency listing of Umpqua River cutthroat trout. On December 17, 1993, NMFS published a notice that an emergency listing was not warranted at that time (58 FR 65961).

In June 1994, NMFS published a technical paper entitled ''Status Review for Oregon's Umpqua River Sea-run Cutthroat Trout'' (Johnson et al. 1994), and subsequently published a proposed rule on July 8, 1994 (59 FR 35089) to list Umpqua River cutthroat trout as an endangered species. NMFS cited the precarious status of the remaining anadromous cutthroat trout in the Umpqua River Basin (and possibly other life forms), which have demonstrated a steady decline since at least the mid-1970s. In this finding, NMFS proposed that all cutthroat trout life forms (i.e., resident, anadromous, potamodromous) should be included in the listed Umpqua River cutthroat trout ESU. On September 2, 1994, NMFS published a notice of public hearing and an extension of public comment period (59 FR 45661); a public hearing on the proposed rule was held on September 29, 1994, in Roseburg, OR.

Pursuant to a joint policy issued by NMFS and U.S. Fish and Wildlife Service (USFWS) on July 1, 1994, regarding implementation of the ESA, state government co-managers were involved in the preparation of this final rule.

Summary of Comments

Twenty-two individuals presented testimony at the NMFS public hearing on the proposed rule. During the 90-day public comment period, NMFS received seventeen written comments on the proposed rule from government agencies, non-government organizations, the scientific community, and other individuals. The majority of comments opposed listing Umpqua River cutthroat trout under the ESA. Opposition to the proposed rule was primarily focused on the amount and quality of information on which the proposed rule was based. This final rule takes into account comments received during the public comment period and public hearing. A summary of major comments received during the public comment period and public hearing is presented below.

Issue 1: Sufficiency of Scientific Information

Many individuals commented that there is a general lack of data concerning a variety of factors pertaining to the Umpqua River cutthroat trout (e.g., minimum viable population size, age structure, absolute abundance of juveniles or adults, distribution, redd counts, average time of spawning, genetic evidence of distinctness). Some commenters recommended that listing be delayed until more information can be developed to better support a listing decision.

NMFS recognizes that available information regarding the Umpqua River cutthroat trout is limited. However, the ESA requires that a listing determination be made based ''solely on the basis of the best available commercial and scientific data (16 USC 1533(b)(1); 50 CFR 424.11(b)).'' Such a determination must be made in accordance with the time frames set forth in the ESA. The status review reflects the best scientific information presently available regarding cutthroat trout in the Umpqua River Basin, and indicates that Umpqua River cutthroat trout is an ESU that is endangered. NMFS believes that it would not be prudent to delay listing and risk possible extinction of this species due to the lack of more complete information. Therefore, in accordance with the ESA, NMFS finds it appropriate to make a listing determination at this time. As new scientific information becomes available, NMFS will reconsider the listing status of Umpqua River cutthroat trout.

Issue 2: Life History and Distribution

Several commenters stated that the literature indicates that cutthroat trout exhibit a variety of migratory behaviors: Anadromy, potamodromy, and residency. Other comments suggested that the existence of multiple life forms in the Umpqua River Basin warrants

further study before concluding that listing is warranted.

NMFS concurs that three life forms presently exist in the Umpqua River. Anadromy, a life history characteristic common to Pacific salmonids, is exemplified by a species that migrates from fresh water to the ocean, then returns to fresh water as an adult to spawn. Potamodromy, a relatively uncommon life history trait, is exemplified by a species that undertakes freshwater migrations of varying length without entering the ocean. Residency, a relatively common life history trait, is exemplified by a species that remains within a relatively small freshwater range throughout its entire life cycle. The Oregon Department of Fish and Wildlife (ODFW) stated that recent radio tagging evidence verifies the existence of a potamodromous life form of Umpqua River cutthroat trout.

NMFS believes that recent studies conducted by ODFW represent substantial progress in documenting the life history of cutthroat trout in the Umpqua River Basin and strongly indicate that some cutthroat trout do exhibit the potamodrous life history trait. Although the relationship between the various life forms is currently not well-defined, and further research will be needed to clarify this issue, the best available scientific data indicate that it is unlikely that these life forms are completely isolated reproductively. Therefore, NMFS has determined that all cutthroat trout life forms (i.e., resident, anadromous, potamodromous) should be included in the listed Umpqua River cutthroat trout ESU.

One commenter indicated that the historical range of anadromous fish, including cutthroat trout, extended up to Toketee Falls on the North Umpqua River, not merely to the Soda Springs dam site as indicated in the status review. NMFS agrees with this comment and notes that a more detailed analysis of migrational barriers will be conducted during the designation of critical habitat for Umpqua River cutthroat trout.

Although the NMFS status review reports that historical cutthroat trout runs (upstream migrations) extended from June through January, one comment stated that currently migration is only possible during late July and August. This commenter expressed concern that this was detrimental to the trout because it is the period of highest water temperatures in the Umpqua River, and that the status review does not adequately address this restriction in run timing. NMFS agrees that adult cutthroat trout experience delays during the spawning migration from the lower Umpqua River estuary to the North and South Umpqua Rivers and concurs with the commenter that elevated water temperatures in the mainstem Umpqua River in late July and August may have had a significant impact on the survival and time of arrival of cutthroat trout at Winchester Dam. Ongoing ODFW radio-tagging studies are expected to provide more insight into this problem.

Issue 3: Status of the Umpqua River Cutthroat Trout

Some commenters stated that cutthroat trout are a good indicator of habitat quality and that their existence in areas of the Umpqua River Basin considered to be severely degraded suggests that habitat alterations are not significant risk factors.

While it is possible that cutthroat trout may be ''an indicator of habitat quality,'' NMFS has found no published studies to support this characterization. Although exceptions may exist, NMFS believes that available research has established that cutthroat trout and other salmonids have declined throughout their range due to logging and other forest and rangeland management practices (for an extensive treatment, see Meehan 1991). For example, Connolly and Hall (1994) found that the abundance of cutthroat trout in logged areas of coastal Oregon streams varied considerably based upon differences in scour and cover afforded by large woody debris and by the differences in light and nutrient inputs afforded by deciduous versus conifer trees in the riparian zone. These authors found that woody debris left in streams in logged areas often resulted in significant increases in resident cutthroat trout abundance for up to 30 years. However, because prospects for future recruitment of large woody debris decrease after this period, the period between 40 to 60 years after logging appears to be a time during which cutthroat trout abundances are likely to decline as a result of degraded habitat conditions. Therefore, short-term increases in cutthroat trout abundance may be expected after logging because of associated increases in large woody debris (if the increases are not offset by other impacts such as siltation, scouring, high water temperatures). However, over the long-term, logging would likely lead to cutthroat trout population declines.

Several commenters stated that Winchester Dam counts are not representative of the status of migrating Umpqua River cutthroat trout, because they only account for those fish entering the North Umpqua River and ignore fish in the South and mainstem Umpqua River. In contrast, one commenter stated that the abundance trend information provided by Winchester Dam counts is probably as good as any information available on the West Coast for cutthroat trout.

NMFS has determined that Winchester Dam counts are currently the best quantitative measures of cutthroat trout abundance in the Umpqua River Basin. Although the dam is located on the North Umpqua River, there are several reasons to believe that the North Umpqua River has larger and healthier populations of cutthroat trout than the South Umpqua River.

For example, while no long-term surveys of cutthroat trout were conducted in the South Umpqua River prior to 1993, a U.S. Forest Service (USFS) report states that ''a very small, wild cutthroat trout population probably exists in the South Umpqua River system'' and that this run was once ''widespread'' and ''dramatically larger than at present'' (United States Department of Agriculture (USDA) 1992).

Several factors have tended to make the South Umpqua River less conducive to cutthroat trout production than the North Umpqua River. The North Umpqua River begins farther inland and flows for a substantial distance at a higher elevation than most other Oregon coastal rivers, including the South Umpqua River. As a result, the North Umpqua River has historically had cooler water temperatures and larger summer water flows than other local rivers. Although the South Umpqua River also begins at a relatively high altitude, it rapidly drops in elevation; consequently, it tends to exhibit higher water temperatures and lower summer flows compared to the North Umpqua River.

In addition to the geomorphological differences in the North and South Umpqua Rivers, different levels of riparian habitat loss have also contributed to temperature differences in these rivers. Beginning in the mid-1950's, summer water temperatures and the frequency of winter flooding increased in the Umpqua River watershed, presumably as a result of poor logging practices. Summer water temperatures were often above the preferred range for cutthroat trout and other salmonid populations (about 7 to 16°C) in portions of the river (Bell 1986). In recent years, the riparian forest canopy has begun to recover in the North Umpqua River watershed, but maximum water temperatures are still higher than those preferred by cutthroat trout. This recovery has been slower in the South Umpqua River watershed and

conditions for cutthroat trout have remained poorer than in the North Umpqua River.

Based on these factors, NMFS believes that historically, the South Umpqua River has been less conducive to cold-water dependent species such as cutthroat trout, relative to the North Umpqua River. In addition, NMFS believes that present conditions in the North Umpqua River are more favorable for cutthroat trout production than those found in the South Umpqua River.

Several commenters stated that resident (nonmigratory) populations of cutthroat trout are healthy in the Umpqua River, and recommended that the condition of these populations be taken into account when determining whether to list the species. ODFW stated that ''resident cutthroat trout populations above natural barriers (e.g., high waterfalls) are in relatively healthy condition and do not warrant an endangered listing (ODFW 1994).''

NMFS notes that there have been no recently published population surveys of cutthroat trout in the Umpqua River Basin. Furthermore, there have been no published population surveys of cutthroat trout above natural barriers to confirm the assertion that resident cutthroat trout populations above natural barriers are healthy. However, Kostow (1995) states that available information has ''raised concerns that anadromous populations in Oregon may be experiencing a widespread decline'' and that resident cutthroat appear to ''remain relatively abundant, even in streams where the abundance of searun fish has sharply declined.''

Anecdotal information suggests that the resident component of the cutthroat trout ESU may be relatively healthy; however, few published scientific data exist to support this conclusion. Furthermore, ladder counts from Winchester Dam indicate that the anadromous component of this ESU has declined to precipitously low levels. These ladder counts represent one of the best long-term data sets for cutthroat trout on the West Coast. Anadromy is considered an important component in the evolutionary legacy of *O. clarki clarki,* therefore inclusion of both the anadromous and resident life history forms in the ESU is warranted (61 FR 2639), based on the present status of the anadromous cutthroat trout life form and the fact that listing of the resident form may increase the anadromous form's chances of survival.

In addition to stating that resident populations of cutthroat trout above natural barriers are healthy, ODFW also stated that ''natural barriers form gene flow barriers,'' resulting in a distinction between resident cutthroat trout populations above natural barriers and migrating populations below such barriers (ODFW 1994). Recent research indicates that some gene flow may occur from cutthroat trout above barriers to below-barrier populations; however, the amount and role of this contribution is presently unknown (Johnston 1981; Behnke 1979; Griswold 1996).

In most cases, genetic flow between cutthroat trout populations above and below barriers would be limited to a one-way flow (fish traveling downstream over falls). The genetic contribution of this flow is not thought to be an important factor for populations separated by long-standing natural barriers, since there would likely be strong selection in the resident populations above barriers against individuals with a tendency to migrate downstream. Therefore, based on available data, NMFS concludes that resident populations of Umpqua River cutthroat trout residing above natural impassable barriers for long periods of time (several hundreds or thousands of years) are not included in the cutthroat trout ESU presently being listed under the ESA.

With respect to manmade impassable barriers, NMFS believes that historically, anadromous cutthroat trout populations inhabited areas above both Soda Springs and Galesville Dams (completed in 1952 and 1987, respectively). While the construction of these dams has resulted in the isolation of cutthroat trout populations for the past several decades, recent studies with sockeye salmon (another salmonid with resident and anadromous life forms) suggest that the anadromous life history trait can be retained by populations above barriers after decades of isolation (Kaeriyama et al. 1992). Based on this, NMFS believes that cutthroat trout species residing above artificial barriers for a period of decades have probably remained genetically similar to those species residing below such barriers. Therefore, NMFS has determined that cutthroat trout populations residing above Galesville and Soda Springs Dams are included in the Umpqua River cutthroat trout ESU and are thus being listed at this time.

Issue 4: Factors Contributing to the Decline of Umpqua River Cutthroat Trout

Many commenters recommended that NMFS consider other factors for decline in addition to those identified in the proposed rule, i.e., recreational fishing and habitat degradation as a result of logging. Additional factors identified by commenters include the following: Predation by marine mammals, birds, and native and non-native fish species; adverse environmental conditions resulting from natural factors such as droughts, floods, and poor ocean conditions; non-point and point source pollution caused by agriculture and urban development; disease outbreaks caused by hatchery introductions and warm water temperatures; mortality resulting from unscreened irrigation inlets; competition in estuaries between native and hatchery cutthroat trout; cumulative loss and alteration of estuarine areas; and loss of habitat caused by the construction of dams.

NMFS acknowledges that there are many factors in addition to logging and recreational fishing that have contributed to the decline of Umpqua River cutthroat trout. However, extensive scientific literature exists regarding the adverse effects of these two activities on anadromous fish populations and their habitat (see references). Further, it is well documented that both of these activities have historically occurred extensively throughout the Umpqua River Basin. Based on available information, NMFS believes that these two activities have significantly contributed to the decline of the cutthroat trout in the Umpqua River Basin. Furthermore, recent legislation, i.e., the ''salvage timber rider'' provisions of the July 1995 Emergency Supplemental Appropriations Act; § 20010 *et seq.* of Public Law 104–19, which suspended certain logging restrictions on Federal lands, has resulted in increased timber harvest in the Umpqua River watershed. NMFS will address these and other factors for decline during the development of a cutthroat trout recovery plan.

Several commenters specifically stated that poor ocean conditions (for example, conditions resulting in reduced marine forage or increased predation) associated with El Nĩno events may have contributed to the decline of this species. Although available literature is limited regarding the importance of the marine component of cutthroat trout, it appears that this species spends a limited amount of time in the marine environment, spending only 2 to 5 months in salt water before returning to fresh water (Behnke 1992). While in the marine environment, cutthroat trout typically stay close to shore, near bays, estuaries and beaches (Pauley et al. 1989; Behnke 1992); however, they have been found as far as 31 km offshore (Loch and Miller 1988).

Based on these estuarine and marine life history characteristics, ocean

conditions would likely have a lesser impact on cutthroat trout than on salmon species that spend more time at sea. However, this is not to say that cutthroat trout do not receive important benefits from marine residence. Poor ocean conditions are likely to impact cutthroat trout abundance; however, during periods of low ocean productivity, the availability of productive freshwater habitat becomes increasingly important to buffer such ocean conditions.

Several commenters stated that current logging practices have dramatically improved over those of the past, decreasing the impact of present-day logging on habitat. Present-day logging practices have improved over those of the past; however, timber harvest is still a major land use in the Umpqua River Basin (currently comprising nearly 70 percent Federal, state, or private timber land) and fish habitat is still recovering from past logging practices. In addition, the incremental impacts of present-day land management practices, when added to impacts of past land management practices and other risk factors, continue to pose a serious threat to Umpqua River cutthroat trout.

One commenter provided data indicating that pH levels in various tributaries of the Umpqua River Basin exceed the State of Oregon's water quality standards and argued that these pH levels can be attributed to the effects of logging. Although limited in scope, these water quality results suggest a possible factor in the decline of cutthroat trout in the Umpqua River Basin. These data warrant further consideration during recovery planning.

Several commenters stated that recreational fishing has had a minimal impact on naturally spawning cutthroat trout stocks and that no basis exists for the statement that recreational fishing has likely contributed to the general decline in Umpqua River cutthroat trout populations. One commenter stated that the scientific literature is replete with studies documenting recreational fishing as having great potential for impacts on native fish stocks.

NMFS agrees that there is no specific documentation that indicates recreational fishing has contributed to the decline of cutthroat trout populations in the Umpqua River Basin. However, there has been a long-standing fishery in the lower mainstem Umpqua River aimed at plants of ''catchable'' Alsea River hatchery-reared cutthroat trout. While there are no studies on the possible impact of these hatchery fish or the fishery for them on native cutthroat trout, there is considerable literature on the susceptibility of cutthroat trout to angling and the potential impacts of recreational fishing on native fish stocks (Behnke 1992; Pauley et al. 1989; Trotter 1989). Furthermore, ODFW has recognized the potential adverse impacts of harvest on this species and closed the Umpqua River to cutthroat trout fishing effective January 1, 1995 (ODFW 1994). NMFS expects that this action will greatly facilitate the species' recovery.

One commenter stated that cutthroat trout are known to interbreed with hatchery rainbow trout and, as a result, introgression has been the major cause of decline of cutthroat trout throughout the western United States. NMFS reviewed information from Behnke (1992), which noted that mass hybridization has occurred in interior portions of the cutthroat trout range (where the species evolved in isolation from other salmonids) following the introduction of rainbow trout. However, meristic and phenotypic assessments suggest that the coastal subspecies of cutthroat trout (which includes Umpqua River cutthroat trout) is far more resistant to hybridization than the interior cutthroat trout subspecies (Behnke 1992). Hence, NMFS does not believe that hybridization has been the major cause of decline of Umpqua River cutthroat trout. Nonetheless, hatchery practices should be reviewed during recovery planning to ensure that there are no adverse effects on cutthroat trout in the future.

One commenter stated that, since cutthroat trout in the Umpqua River Basin are at the southern end of their range, there may be a greater tendency for natural fluctuations in population abundance compared with species at the center of their range. While Umpqua River cutthroat trout are in the southern portion of this species' historic range, cutthroat trout populations have historically occurred as far south as the Eel River in California (Behnke 1992; Trotter 1987). Therefore, NMFS believes Umpqua River cutthroat trout populations are well within the species' range and would not tend to exhibit natural population fluctuations often associated with ''fringe'' populations.

Issue 5: Consideration of Umpqua River Cutthroat Trout as a Species

Several commenters indicated that the historical introduction of Alsea River hatchery-reared cutthroat trout may have resulted in the loss of the native component of cutthroat trout in the Umpqua River.

The effect of Alsea River cutthroat trout hatchery releases from 1961 to 1975 on native cutthroat trout in the Umpqua River is unknown. Counts of adult cutthroat trout crossing Winchester Dam show that the number of fish declined to nearly zero in the mid-1950's, increased dramatically from about 1961 to 1975, and rapidly declined again after about 1976. The period of increase coincides almost exactly with releases of cutthroat trout from the Alsea River Hatchery into the Umpqua River. Although other explanations are possible, the most parsimonious is that the cutthroat trout increases during 1961–75 represent predominantly Alsea River hatchery fish straying to areas above Winchester Dam. Alsea River fish have a slightly later run-timing than the Umpqua River fish, and a shift toward later run-timing can be detected in fish returning to Winchester Dam after 1960. However, there is also evidence of a shift back toward the original run-timing after cessation of the hatchery program.

Although the pattern of abundance and tag-recovery data during this period of supplementation indicate that Alsea River hatchery fish returned as adults to Winchester Dam in some numbers, it is apparent that 15 years of hatchery releases did not result in a viable, self-sustaining population of naturally spawning fish. One possible explanation of this result is that Alsea River hatchery fish are poorly adapted to conditions in the North Umpqua River. This explanation supports NMFS' conclusion of a cutthroat trout ESU in the Umpqua River. Other possible explanations include: (1) The effects of hatchery rearing, rather than poor adaptation, are responsible for the lack of long-term survival of Alsea River hatchery fish, and (2) the decline in Winchester Dam counts following the end of the hatchery program merely reflect deteriorating conditions for cutthroat trout in the North Umpqua River. The relationship of the existing cutthroat trout population to the original population and the introduced hatchery fish is uncertain; however, available evidence from population abundance and run-timing data suggests that a component of the native run persists.

One commenter stated that since cutthroat trout co-evolved with other salmonid species, there should be similarity in the organization of their ESU's. NMFS believes that each salmonid species has had a unique evolutionary history and utilizes ecological niches different from all other species. While there may be similarities across species in salmonid ESU's, there is no reason that this will always be the case. This may be especially true for cutthroat trout, which have a more

complex life history than most Pacific salmonids.

One commenter stated that the amount of straying in cutthroat trout may suggest a greater degree of genetic exchange in coastal populations, thus potentially widening the ESU. While little information is available on straying rates of cutthroat trout, that which is available suggests that most movement of fish into non-natal streams occurs with immature fish. NMFS is not aware of any evidence to suggest that sexually mature, native cutthroat trout wander or stray at a level higher than is typical of native populations of other species of Pacific salmonids.

In reviewing cutthroat trout life history, Pauley et al. (1989) reported that ''homing of native cutthroat trout is extremely precise (Campton and Utter 1987), although hatchery planted fish may stray as much as 30 percent, making survival rates impossible to determine (Johnston and Mercer 1976).'' Giger (1972) found that tagged native fish from streams in the Alsea River did not stray and were recaptured only in their natal streams. However, Giger (1972) also found that over 30 percent of the tagged hatchery fish entered streams up to 133 km from the release stream. Therefore, based on available data, straying is not thought to affect the genetic distinctiveness of the native, naturally spawning fish identified in this ESU.

One commenter stated that coastal cutthroat trout (*Oncorhynchus clarki clarki*), the anadromous component of the cutthroat trout species, is morphologically similar throughout its range and shows no evidence of clinal variation. As reported by Behnke (1992), cutthroat trout populations with direct access to the sea are morphologically similar throughout their range. However, the few genetic studies that have been conducted on cutthroat trout (e.g., Campton and Utter 1987; Currens et al. 1992) show that there can be substantial genetic differentiation even among local populations.

Issue 6: Existing Regulatory Mechanisms

Several commenters maintained that existing regulatory mechanisms and management initiatives (e.g., the Oregon Forest Practices Act and the Umpqua River Basin Fisheries Restoration Initiative) are sufficient for the protection of Umpqua River cutthroat trout. Two commenters stated that existing management initiatives are unproven and lack technical support.

Although several commenters describe the Oregon Forest Practices Act (OFPA) as being capable of protecting cutthroat trout, maintaining fish populations, and preventing the take of any fish, there is little evidence to support these claims. While the OFPA presently endorses fish habitat protection (Oregon Department of Forestry (ODF) 1994), NMFS is concerned that the level of habitat protection may be insufficient to conserve Umpqua River cutthroat trout. However, the OFPA itself provides a process ''to adopt additional basin-specific protection rules for water quality-limited streams or streams with threatened or endangered aquatic species'' (ODF 1994). This process could be employed to great effect in the Umpqua River Basin, which presently has more than 80 river reaches (many spanning from river mouth to headwaters) currently designated as water-quality limited by the Oregon Department of Environmental Quality (Oregon Department of Environmental Quality 1995). Therefore, in response to the listing of cutthroat trout, the Oregon Department of Forestry, in cooperation with Federal land management agencies, could provide special emphasis to habitat areas containing listed cutthroat trout to promote their recovery.

The Umpqua River Basin Fisheries Restoration Initiative (UBFRI) referenced by several commenters is also described as a measure which will aid in the recovery of cutthroat trout. In 1993 the Douglas County Board of Commissioners chartered this initiative to address restoration projects in the Umpqua River Basin. Members of the initiative include county, state, and Federal government, and private industry. Since its inception, the initiative has sponsored extensive habitat surveys in the watershed. Restoration efforts have focused primarily on construction and placement of instream habitat structures. NMFS believes that the UBFRI is a good example of how local groups can work together to restore Pacific salmon. The initiative has made great strides in assessing habitat conditions in the basin. This information will be extremely useful in formulating a recovery plan for this species.

NMFS is also encouraged by Oregon's recent development of a Coastal Salmon Restoration Initiative (CSRI). If successful, this ambitious initiative could provide all stakeholders with a better means by which to achieve the purposes of the ESA; protecting and restoring native fish populations and the ecosystems upon which they depend. While the CSRI is initially focusing on the needs of coastal coho salmon populations (currently proposed as threatened), NMFS expects that significant benefits could also accrue to other salmonids, including Umpqua River cutthroat trout. NMFS encourages the continuation of this and local initiatives as important components of recovery planning for this species.

Summary of Factors Affecting the Species

Section 2(a)(1) of the ESA states that various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation. Section 4(a)(1) of the ESA and NMFS listing regulations (50 CFR part 424) set forth procedures for listing species. The Secretary of Commerce must determine, through the regulatory process, if a species is endangered or threatened based upon any one or a combination of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or human-made factors affecting its continued existence.

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

In general, land use practices have reduced salmonid production in Oregon by decreasing habitat diversity and complexity, and accelerating the frequency and magnitude of natural events such as flooding and drought (Bottom et al. 1985). Extensive documentation regarding the impacts of land use practices on the Umpqua River cutthroat trout is not presently available. However, a recent report from the USFS identifies a close relationship between various fish habitat parameters and the land management history of streams in the Umpqua National Forest (USDA 1995). The report summarizes habitat quality in 28 streams used by anadromous salmonids; 17 streams were rated as having ''low'' or ''very low'' habitat quality. It noted that ''a habitat rating of 'good' or 'very good' is found primarily in drainages that have had relatively little or no history of timber harvest and road construction. Conversely, habitat ratings of 'low' or 'very low' are found in moderately to heavily roaded and harvested watershed.'' Major factors contributing to the latter habitat ratings include a variety of land management-related conditions, such as increased peak flows during storm events, increased

debris torrents, and impacts from valley bottom roads.

These findings, coupled with the fact that silviculture is the predominant land use in the basin (approximately 70 percent of the area) and more than 80 of the basin's river reaches are designated as water quality limited, strongly suggest that silviculture and related activities have degraded water quality and have, therefore, likely contributed to the decline of Umpqua River cutthroat trout. This conclusion is strengthened by reasonable inferences from an array of other scientific studies, including research in other Oregon basins. (For an extensive review, see Meehan 1991).

Removal of forest canopy can cause an increase in both the maximum and the diurnal fluctuation of water temperatures, leading to disease outbreaks, altered timing of migration, and accelerated maturation. The removal of streamside vegetation can deplete the bank area of potential new woody debris that provides cover for cutthroat trout. In addition, loss of riparian areas can result in decreased invertebrate production and detritus sources, both of which are key components of the species' food chain. Siltation is another result of some logging practices, is known to hinder fry emergence from the gravel, and may limit production of benthic invertebrates. Dissolved oxygen content of both surface and intragravel water can decrease as a result of logging operations. Logging can also cause changes in stream flow regimes, resulting in potentially adverse water velocity and depth characteristics.

Degradation of estuarine habitats has likely also contributed to the decline of this species. Estuarine areas are highly productive habitats and play a role in the life cycle of cutthroat trout (Trotter 1989). Dredging, filling, and diking of estuarine areas for agricultural, commercial, or municipal uses have resulted in the loss of many estuarine habitats.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Cutthroat trout are not harvested commercially, and scientific and educational programs have probably had little or no impact on Umpqua River cutthroat trout populations. However, the cutthroat trout is a popular gamefish throughout the Pacific Northwest and available information indicates that recreational fishing has likely contributed to the general decline in Umpqua River cutthroat trout populations. Given the susceptibility of cutthroat trout to angling and the potential impacts of recreational fishing to native fish stocks (Behnke 1992; Pauley et al. 1989; Trotter 1989), it is likely that a long standing fishery in the lower mainstem Umpqua River aimed at hatchery-reared cutthroat trout also promoted an incidental harvest of native Umpqua River cutthroat trout. In response to NMFS' concern regarding harvest mortalities, ODFW has closed the Umpqua River to cutthroat trout fishing effective January 1, 1995 (ODFW 1994). However, undocumented illegal harvest is believed to occur on Umpqua River cutthroat trout. While the severity of this source of mortality is unclear, it may pose a significant threat to depressed populations of cutthroat trout in the Umpqua River. Continued enforcement of existing harvest regulations and increased public outreach and awareness should substantially reduce this threat.

C. Disease or Predation

Disease is not believed to be a factor contributing to the decline of cutthroat trout populations in the Umpqua River. Several non-native fish species introduced to the Umpqua River are known to prey on or compete with salmonids; however, there is no specific information regarding predation impacts by these or native fishes on Umpqua River cutthroat trout.

Abundance of pinnipeds, especially harbor seals and California sea lions, is increasing on the West Coast. However, the extent to which predation is a factor causing the decline of Umpqua River cutthroat trout is unknown.

D. Inadequacy of Existing Regulatory Mechanisms

The significant decline in numbers of cutthroat trout passing Winchester Dam suggests that management plans and practices followed by various state and Federal agencies have not provided adequate protection for this species. Although the State of Oregon listed the Umpqua River cutthroat trout as a sensitive species in 1990, the decline of this species has not been reversed since the designation. Furthermore, the designation has not resulted in protections from adverse effects on the species resulting from Federal actions.

A Federal interagency cooperative program, the Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Spotted Owl (the Northwest Forest Plan, April 1994) has recently been implemented to provide a coordinated management direction for the lands administered by USFS and the U.S. Bureau of Land Management (BLM). The Northwest Forest Plan's region-wide management direction amends existing management plans, including regional guides, forest plans, and resource management plans for lands within the range of the northern spotted owl (including the Umpqua River Basin). As part of the Northwest Forest Plan, implementation of an aquatic conservation strategy is intended to ultimately reverse the trend of aquatic ecosystem degradation and contribute toward recovery of fish habitat; however, this result has yet to be demonstrated. NMFS encourages a continued strong commitment among the action agencies to thoroughly implement the Aquatic Conservation Strategy in order to improve spawning and rearing habitat conditions for listed Umpqua River cutthroat trout. Furthermore, NMFS continues to encourage USFS and BLM to work toward avoiding identified cumulative effects of timber sales sold or awarded prior to implementation of the Northwest Forest Plan.

Recent increased timber harvest on Federal land heightens NMFS' concern regarding the health of aquatic resources in the Umpqua River Basin. The ''emergency salvage timber sale'' provisions of a 1995 appropriations act, P.L. 104–19, have resulted in harvest of at least seven timber sales in the Umpqua River Basin. Prior to this legislation, these sales were unawarded or withdrawn for a variety of reasons. While efforts were made to reduce the direct adverse impacts of these timber sales, NMFS remains concerned about cumulative effects and their impact on baseline environmental quality in the Umpqua River Basin. The impacts of such sales are especially great in the South Umpqua River Basin since existing habitat and water quality conditions are recognized as poor in this area.

NMFS recognizes that the impacts of this legislation have been reduced in some instances by the land management agencies' ability to find replacement timber volume for sales such as these. Furthermore, NMFS recognizes the willingness of some purchasers to accept such replacement harvest in lieu of previously designated sales and encourages USFS, BLM, and private industry to continue these efforts to avoid adverse impacts on native salmonid species. An Inter-agency Recissions Act Team has been convened to study the effects of timber sales in the Basin.

Current ODFW hatchery practices may also play a role in the decline of native cutthroat trout. Extensive releases

of Alsea River hatchery-reared cutthroat trout have occurred near the Umpqua River estuary in the Smith River from 1975 to 1994, and in Scholfield Creek from 1983 to present. Until recently, approximately 12,000 hatchery-reared cutthroat trout per year have been released into the Smith River. Releases of approximately 4,000 hatchery-reared cutthroat trout per year continue to occur into Scholfield Creek. According to ODFW, these fish are released as smolts and as legal-sized, catchable cutthroat trout prior to or during the fishing season. ODFW has suggested that the majority of these fish are caught by anglers, but no data are available to confirm this hypothesis. There is also no information on the possible impact of these fish (or the fishery for them) on native cutthroat trout from the North and South Umpqua Rivers. However, considering the life history of cutthroat trout, their susceptibility to angling (Pauley et al. 1989), and their extensive use of estuaries, the impact of these releases could be substantial.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Drought is the principal natural condition that may have contributed to reduced Umpqua River cutthroat trout production. Drought conditions have prevailed in Oregon for the 7 years prior to 1996, leading to decreased streamflows and increased water temperatures during the summer months.

Determination

Based on its assessment of available scientific and commercial information, NMFS is issuing a final determination that the Umpqua River cutthroat trout (*Oncorhynchus clarki clarki*) constitute a ''species'' under the ESA and should be listed as endangered. The listed ESU for Umpqua River cutthroat trout is defined as all naturally spawning population(s) of cutthroat trout in the mainstem Umpqua River, the North Umpqua River, and the South Umpqua River, and their respective tributaries, residing below long-term, naturally impassable barriers (e.g., natural waterfalls in existence for hundreds or thousands of years). The natural population consists of all fish that are progeny of naturally spawning fish. The offspring of all fish taken from the natural population after the date of listing (for example, for research or enhancement purposes) are also part of the listed ESU.

Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the ESA include recognition, recovery actions, Federal agency consultation requirements, and prohibitions on taking. Recognition through listing promotes public awareness and conservation actions by Federal, state, and local agencies, private organizations, and individuals.

Several recovery efforts are underway that may slow or reverse the decline of Umpqua River cutthroat trout. These include the Northwest Forest Plan, Coastal Salmon Restoration Initiative, and Umpqua River Basin Fisheries Restoration Initiative (all described previously in this document). NMFS is encouraged by these significant efforts, which could provide all stakeholders with a better means by which to achieve the purposes of the ESA by protecting and restoring native fish populations and the ecosystems upon which they depend. NMFS will continue to encourage and support these initiatives as important components of recovery planning for this species and other salmonids in the Umpqua River Basin.

NMFS will reconsider this determination in 2 years (or as new scientific information becomes available) and will continue to assess the degree to which ongoing Federal, state, and local conservation initiatives reduce the risks faced by Umpqua River cutthroat trout. If these or future initiatives clearly ameliorate risk factors and demonstrate that the species is recovering, NMFS will reconsider the listing status of Umpqua River cutthroat trout. Information regarding the efficacy of conservation efforts and any new scientific data regarding Umpqua cutthroat trout should be submitted to NMFS (see **ADDRESSES**).

For listed species, section 7(a)(2) of the ESA requires Federal agencies to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action could affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with NMFS.

Examples of Federal actions most likely to affect Umpqua River cutthroat trout include authorized land management activities of the USFS and BLM, as well as authorized purposes of Umpqua River hydroelectric and storage projects. Such authorized activities include timber sales and harvest, hydroelectric power generation, and flood control. Federal actions, including the U.S. Army Corps of Engineers (COE) section 404 permitting activities under the Clean Water Act, COE permitting activities under the River and Harbors Act and Federal Energy Regulatory Commission licenses for non-Federal development and operation of hydropower, may also require consultation.

NMFS is aware that there are likely to be Federal actions ongoing in the range of the Umpqua River cutthroat trout at the time that this listing becomes effective. Consequently, NMFS is currently reviewing with the Federal agencies all ongoing actions that may affect the listed species, and for which consultation has been requested, and will complete formal or informal consultations for such actions as appropriate, pursuant to ESA section 7(a)(2). Furthermore, NMFS, in conjunction with USFS, BLM and USFWS, plans to complete a programmatic consultation on the Federal Land and Resource Management Plans within the range of the Umpqua River cutthroat trout prior to the listing's effective date.

Section 9(a) of the ESA contains specific prohibitions that apply to all endangered fish and wildlife. With respect to the Umpqua River cutthroat trout, these prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to ''take'' (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of NMFS and state conservation agencies.

Sections 10(a)(1)(A) and 10(a)(1)(B) of the ESA provide NMFS with authority to grant exceptions to the ESA's ''taking'' prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-Federal) conducting research that involves a directed take of listed species. A directed take refers to the intentional take of listed species. NMFS has issued section 10(a)(1)(A) research/enhancement permits for other listed species (e.g., Snake River chinook salmon) for a number of activities, including trapping and tagging, electroshocking to determine population presence and abundance, removal of fish from irrigation ditches, and collection of adult fish for artificial propagation programs. NMFS is aware of several trapping efforts currently underway in the Umpqua River Basin where juvenile cutthroat trout are being

collected for population inventory. Since little scientific research has been conducted on this species, these and other research efforts could provide critical information regarding cutthroat trout life history and population abundance.

Section 10(a)(1)(B) incidental take permits may be issued to non-Federal entities performing activities that may incidentally take listed species. The types of activities potentially requiring a section 10(a)(1)(B) incidental take permit include the operation and release of artificially propagated fish by state operated and funded hatcheries, state or university research not receiving Federal authorization or funding, and the implementation of state fishing regulations.

NMFS requires several months to review permit applications (including a 30-day public comment period) and assess the issuance of section 10 permits. In the fall of 1996, NMFS will hold a workshop to explain the application process for section 10 permits. Prospective applicants should submit permit applications to NMFS at least 120 days prior to the expected start date of their activities. If there are research activities whose interruption would harm efforts to conserve the species, NMFS will consider issuing a permit under the emergency procedure (50 CFR 222.24(e)). Regulations regarding application, issuance and administration of permits are found at 50 CFR parts 217–222.

It is the policy of NMFS and the USFWS, published in the Federal Register on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the ESA. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. NMFS believes that, based on the best available information, the following actions will not result in a violation of section 9:

(1) Possession of Umpqua River cutthroat trout acquired lawfully by permit issued by NMFS pursuant to section 10 of the ESA, or by the terms of an incidental take statement pursuant to section 7 of the ESA.

(2) Federally approved projects that involve activities such as silviculture, grazing, mining, road construction, dam construction and operation, discharge of fill material, stream channelization or diversion for which consultation has been completed, and when such activity is conducted in accordance with any terms and conditions given by NMFS in an incidental take statement accompanied by a biological opinion.

Activities that NMFS believes could potentially harm the Umpqua River cutthroat trout and result in ''take'', include, but are not limited to:

(1) Unauthorized collecting or handling of the species. Permits to conduct these activities are available for purposes of scientific research or to enhance the propagation or survival of the species.

(2) Unauthorized destruction/alteration of the species' habitat such as removal of large woody debris or riparian shade canopy, dredging, discharge of fill material, draining, ditching, diverting, blocking, or altering stream channels or surface or ground water flow.

(3) Discharges or dumping of toxic chemicals or other pollutants (i.e., sewage, oil and gasoline) into waters or riparian areas supporting the species.

(4) Violation of discharge permits.

(5) Pesticide applications in violation of label restrictions.

(6) Interstate and foreign commerce (commerce across State lines and international boundaries) and import/export without prior obtainment of an endangered species permit.

This list is not exhaustive. It is provided to give the reader some examples of the types of activities that would be considered by the NMFS as constituting a ''take'' of Umpqua River cutthroat trout under the ESA and regulations. Questions regarding whether specific activities will constitute a violation of section 9, and general inquiries regarding prohibitions and permits, should be directed to NMFS (see **ADDRESSES**).

Critical Habitat

Section 4(a)(3)(A) of the ESA requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. At the present time, NMFS is placing a higher priority on listings than on critical habitat designations due to staffing and workload constraints resulting from the lifting of the recent listing moratorium. In most cases the substantive protections of critical habitat designations are duplicative of those of listings, however, in cases in which critical habitat designation is deemed essential to the conservation of the species, such a designation could warrant a higher priority. It is NMFS' intention to develop and publish a critical habitat designation for Umpqua River cutthroat trout as time and workload permit.

Classification

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in Pacific Legal Foundation v. Andrus, 675 F. 2d 825 (6th Cir., 1981), NMFS has categorically excluded all ESA listing actions from environmental assessment requirements of NEPA (48 FR 4413; February 6, 1984).

As noted in the Conference Report on the 1982 amendments to the ESA, economic considerations have no relevance to determinations regarding the status of the species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. Similarly, this final rule is exempt from review under E.O. 12866.

References

The complete citations for the references used in this document can be obtained by contacting Garth Griffin, NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 222

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Dated: July 29, 1996.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 222 is amended as follows:

PART 222—ENDANGERED FISH OR WILDLIFE

1. The authority citation of part 222 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 et seq.

§ 222.23 [Amended]

2. In § 222.23, paragraph (a), the second sentence is amended by adding the phrase ''Umpqua River cutthroat trout (*Oncorhynchus clarki clarki*);'' immediately after the phrase ''Snake River sockeye salmon (*Oncorhynchus nerka*),''.

[FR Doc. 96–20029 Filed 8–8–96; 8:45 am]

BILLING CODE 3510–22–F .

50 CFR Part 679

[Docket No. 960129018–6018–01; I.D. 080596B]

Fisheries of the Exclusive Economic Zone Off Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the third seasonal bycatch allowance of Pacific halibut apportioned to the deep-water species fishery in the GOA has been caught.

EFFECTIVE DATES: 1200 hrs, Alaska local time (A.l.t.), August 7, 1996, until 2400 hrs, A.l.t., October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The deep-water species fishery was apportioned 400 mt of Pacific halibut prohibited species catch for the third season, the period July 1, 1996, through September 30, 1996 (61 FR 4304, February 5, 1996). (See § 679.21(d).)

The Director, Alaska Region, NMFS, has determined, in accordance with § 679.21(d)(7)(i), that vessels participating in the trawl deep-water species fishery in the GOA have caught the third seasonal bycatch allowance of Pacific halibut apportioned to that fishery. Therefore, NMFS is prohibiting directed fishing for each species and species group that comprise the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery are: All rockfish of the genera *Sebastes* and *Sebastolobus*, Greenland turbot, Dover sole, Rex sole, arrowtooth flounder, and sablefish.

Maximum retainable bycatch amounts for applicable gear types may be found at § 679.20(e).

Classification

This action is taken under 50 CFR 679.21 and is exempt from review under E.O. 12866.

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

Dated: August 5, 1996.

Richard W. Surdi,

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

[FR Doc. 96–20318 Filed 8–6–96; 11:57 am]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 960401095–6212–02; I.D. 032596A]

RIN 0648–AH61

Fisheries of the Exclusive Economic Zone Off Alaska; Improve Individual Fishing Quota Program

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule amending the regulations implementing the Individual Fishing Quota (IFQ) Program for the Pacific halibut and sablefish fixed gear fisheries in and off of Alaska. This rule also eliminates a prohibition pertaining to IFQ sablefish in the regulations governing the groundfish fisheries in the Gulf of Alaska (GOA). After the first year of the IFQ Program's operation, the North Pacific Fishery Management Council (Council) and NMFS recognize aspects of the Program that need further refinement. This action is necessary to make those refinements and is intended to improve the ability of NMFS to manage the Pacific halibut and sablefish fixed gear fisheries.

EFFECTIVE DATE: September 9, 1996.

ADDRESSES: Copies of the final rule and the Regulatory Impact Review for this action may be obtained from: Fisheries Management Division, Alaska Region, NMFS, Room 453, 709 W. 9th Street, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel.

FOR FURTHER INFORMATION CONTACT: James Hale, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Regulations codified at 50 CFR 679 implement the IFQ Program, a limited access system for management of the Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) fixed gear fisheries in and off of Alaska, under the authority of the Northern Pacific Halibut Act with respect to halibut and the Magnuson Fishery Conservation and Management Act (Magnuson Act) with respect to sablefish. Further information on the rationale for and implementation of the IFQ Program is contained in the preamble to the final rule published in the Federal Register on November 9, 1993 (58 FR 59375).

This action amends various portions of the regulations implementing the IFQ Program and eliminates a prohibition in the groundfish regulations that pertains to IFQ sablefish. These changes are intended to improve the ability of fishermen to conduct fishing operations under the IFQ Program, to refine NMFS' ability to administer the program effectively, and to make the Program more responsive to conservation and management goals for Pacific halibut and sablefish fisheries. A proposed rule was published in the Federal Register, which invited comments through May 24, 1996 (61 FR 18116; April 24, 1996). No comments were received. The following list is a brief description of the regulatory provisions added or amended by this rule. Further information on these changes is contained in the preamble to that proposed rule (61 FR 31228; June 19, 1996).

Elimination of the 72–hour ''Fair Start'' Provision

Section 679.7(b)(2) is removed to eliminate the prohibition against deploying fixed gear during the 72–hour period preceding the opening of fixed gear sablefish fishing seasons. NMFS has determined that this prohibition is no longer necessary. Under the IFQ Program, which lengthened GOA fixed gear sablefish seasons, the problems addressed by the ''fair start'' provision have been resolved.

Revision of the Owner-Aboard Restriction

Section 679.4(d)(6)(ii) is revised to allow fishermen to leave their vessels during the time between their arrival in port and the beginning of landing operations. IFQ regulations formerly required IFQ holders to be aboard vessels used to harvest IFQ fish during all fishing operations to ensure that the catcher vessel fleet remains primarily an owner-operator fleet. As revised the regulation continues to require that IFQ holders be aboard during harvest and landing of IFQ fish, except as allowed by the emergency waiver provision; however, IFQ fishermen no longer have to remain aboard in the interim between

arriving in port and unloading IFQ harvests.

Delivery of IFQ Halibut Bycatch by Salmon Fishers

Exceptions to two landing requirements at § 679.5 are provided to encourage salmon fishermen with halibut IFQ to land incidental catches of halibut. Paragraph (C) is added to § 679.5(l)(1)(i) to relieve salmon trollers of the IFQ Program's 6–hour prior notice of landing requirement for delivery of 500 lb (0.227 metric tons (mt)) or less of IFQ halibut bycatch concurrently with legal salmon landings. Paragraph (*2*) is added to § 679.5(l)(1)(ii)(B) to relieve salmon fishermen of the restriction that IFQ landings be made between the hours of 0600 and 1800 only, when landing 500 lb (0.227 mt) or less of IFQ halibut bycatch concurrently with legal salmon landings.

Revision of Shipment Report Requirement

This action revises § 679.5(l)(2) to modify IFQ Shipment Report requirements. After the first year of the IFQ Program's operation, NMFS finds the current requirement to be unnecessary to monitor and enforce the IFQ Program effectively. This final rule modifies the current regulation to require that the Shipment Report be filled out prior to shipment and submitted to NMFS within 1 week after the date on which the shipment occurred. This action also requires that the Shipment Report or a bill of lading accompany a shipment of IFQ species to the first destination beyond the landing point only. These changes relieve a reporting requirement on shipments of IFQ fish by allowing Shipment Reports to be submitted up to 1 week after the shipment occurred. In addition, a registered buyer is relieved of the requirement to produce multiple copies of the Shipment Report.

Revision of Transshipment Requirements

Section 679.5(l)(2)(v) is revised to clarify requirements governing transshipment of IFQ species. Former regulations providing for transshipment might have been misinterpreted to mean that 24–hour prior notice of a transshipment is sufficient to ''authorize'' a transshipment. This regulatory amendment specifies that authorization from a clearing officer to transship IFQ species must itself be obtained by the prospective transshipper 24 hours before the proposed transshipment could occur. The amendment further requires that the request for authorization specify the date and location of the proposed transshipment.

Tagged Halibut and Sablefish

Paragraph (h) is added to § 679.40 to allow tagged halibut and sablefish to be landed without being debited to a person's IFQ halibut or IFQ sablefish quota. The International Pacific Halibut Commission (IPHC) has requested that the IFQ regulations be amended to encourage the landing of tagged halibut in support of the IPHC's biological research on halibut. Accordingly, NMFS adds to the IFQ regulations a provision that tagged halibut not be counted against an IFQ holder's annual Pacific halibut quota. This provision also applies to the capture of tagged sablefish to promote NMFS' fisheries research.

Elimination of Certified Mail Requirements

Sections 679.40(c)(3) and 679.41(d)(4) are amended to eliminate certified mail requirements. To make the IFQ Program more cost-effective, NMFS eliminates certified mail requirements but retains discretion to use certified mailings when appropriate.

Revisions to the Transfer Process

The transfer process for QS and IFQ is revised to address two issues identified by NMFS and the fishing industry during the first year of fishing under the IFQ Program. First, the provision for leasing QS at § 679.41(b)(1) is revised to allow leasing of IFQ under the same conditions. NMFS determined that allowing the lease of IFQ separate from QS would restore the full benefit of the Council's intent that all persons holding QS assigned to vessel categories B, C, or D be allowed to lease up to 10 percent of that QS for a period of 3 years. Regulations at § 679.41(g) and (h) also are revised to reflect this change.

Second, new paragraphs (k)(1) and (2) are added to § 679.41 to provide for the transfer of all QS and IFQ to the surviving spouse of a deceased individual holder of QS or IFQ by right of survivorship, unless contrary intent was expressed by the deceased holder of QS or IFQ in a probated will. This provision allows the surviving spouse, first, to transfer any current year's IFQ for the duration of the allocation year and, second, to transfer annual allocations of IFQ resulting from the total QS transferred by right of survivorship for 3 calendar years from the date of the death of the deceased holder of QS or IFQ. The new provision allows a surviving spouse to transfer the total IFQ resulting from QS for a period of 3 years and thereby obtain pecuniary benefit from the QS for that period. An Application for Transfer of QS or IFQ to the surviving spouse will be approved by the Director, Alaska Region, NMFS (Regional Director) when sufficient evidence, such as a death certificate, has been provided to verify the death of the holder of QS or IFQ. If the deceased provided for distribution of the QS or IFQ in a will that is probated, then the QS or IFQ will be transferred under the provisions for transfer as a result of court order or operation of law set out in § 679.41(f) and other transfer provisions of § 679.41.

In the interim between publication of the proposed and final rules for this action, the regulations governing fisheries in the Exclusive Economic Zone off Alaska have been consolidated into one new CFR part (50 CFR part 679) as part of the President's Regulatory Reform Initiative (see 61 FR 31228, June 19, 1996). This final rule renumbers and otherwise adjusts the changes contained herein to be consistent with the new disposition of regulations in 50 CFR part 679. There have been no substantive changes from the proposed rule.

Classification

The Regional Director determined that the amendments are necessary for the conservation and management of the IFQ fisheries and that the amendments are consistent with the Magnuson Act, the Northern Pacific Halibut Act, and other applicable laws.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

This action will not require the collection of information not already approved by the Office of Management and Budget (OMB). The collection of information originally authorized for the IFQ Program included in the request for transshipment authorization information regarding the primary port location of the proposed transshipment. The requirement that transshipments take place in primary ports only was subsequently removed from regulations implementing the IFQ Program; the information required remains accounted for and approved by OMB (OMB control number 0648–0272) regarding IFQs for Pacific halibut and sablefish. This action simply reinstates the requirement that requests for transshipment authorization include notice of the location of the proposed transshipment, although that location no longer need be

a primary port. The estimated response time for the transshipment notice is 6 minutes. This action also restates existing requirements for prior notices of landing, shipment reports, and applications for transfer of IFQs, all of which also are approved under OMB control number 0648–0272. The respective estimated response times for these requirements are 12 minutes, 12 minutes, and 2 hours. No additional burden is required of the public for information not already projected for IFQ recordkeeping and reporting requirements.

This final 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 for Advocacy of the Small Business Administration when this rule was proposed that it would not have a significant economic impact on a substantial number of small entities. The reasons were published in the Federal Register on April 24, 1996 (61 FR 18116). As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: August 5, 1996.

C. Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq*, 1801 *et seq.*

2. In § 679.4, paragraph (d)(6)(ii) is revised to read as follows:

§ 679.4 Permits.

* * * * *

(d) * * *

(6) * * *

(ii) *IFQ card*. Except as specified in § 679.42(d), an individual that is issued an IFQ card must remain aboard the vessel used to harvest IFQ halibut or IFQ sablefish with that card during all fishing operations until arrival at the point of landing and during all IFQ landings. The IFQ cardholder must present a copy of the IFQ permit and the original IFQ card for inspection on request of any authorized officer, clearing officer, or registered buyer purchasing IFQ species. Nothing in this paragraph would prevent an individual who is issued an IFQ card from being absent from the vessel used to harvest IFQ halibut or IFQ sablefish between the time the vessel arrives at the point of landing until the commencement of landing.

* * * * *

3. In § 679.5, the introductory text of paragraph (l)(1)(i) and paragraphs (l)(1)(ii)(B), (l)(2)(i), (l)(2)(iii), and (l)(2)(v) are revised; paragraph (l)(1)(i)(C) is added to read as follows:

§ 679.5 Recordkeeping and reporting.

* * * * *

(l) * * *

(1) *IFQ landings report*—(i) *Prior notice of IFQ landing.* Except as provided in paragraph (l)(1)(i)(C) of this section, the operator of any vessel making an IFQ landing must notify the Alaska Region, NMFS, no fewer than 6 hours before landing IFQ halibut or IFQ sablefish, unless permission to commence an IFQ landing within 6 hours of notification is granted by a clearing officer.

* * * * *

(C) The operator of a category B, C, or D vessel, as defined at § 679.40(a)(5), making an IFQ landing of IFQ halibut of 500 lb (0.227 mt) or less of weight determined pursuant to § 679.42(c)(ii) and concurrent with a legal landing of salmon is exempt from the prior notice of landing required by this section.

(ii) * * *

(B) An IFQ landing may commence only between 0600 hours, A.l.t., and 1800 hours, A.l.t., unless:

(*1*) Permission to land at a different time is granted in advance by a clearing officer; or

(*2*) IFQ halibut of 500 lb (0.227 mt) or less of weight determined pursuant to § 679.42(c)(ii) is landed concurrently with a legal landing of salmon by a category B, C, or D vessel, as defined at § 679.40(a)(5).

* * * * *

(2) *IFQ shipment report*—(i) *Applicability*. Each registered buyer, other than those conducting dockside sales, must report on a shipment report any shipments or transfers of IFQ halibut and IFQ sablefish to the first destination beyond the location of the IFQ landing.

* * * * *

(iii) *Registered Buyer.* A registered buyer must:

(A) Complete a Shipment Report for each shipment or transfer from that registered buyer prior to shipment and assure that the Shipment Report is submitted to, and received by, the Alaska Region, NMFS, within 7 days of the date shipment or transfer commenced;

(B) Assure that a copy of the Shipment Report or a bill of lading that contains the same information accompanies the shipment to its first destination beyond the location of the IFQ landing; and

(C) Submit a revised Shipment Report if any information on the original Shipment Report changes prior to the first destination of the shipment. A revised Shipment Report must be clearly labeled ''Revised Shipment Report,'' and must be received by the Alaska Region, NMFS, within 7 days of the change.

* * * * *

(v) *Transshipment.* No person may transship processed IFQ halibut or IFQ sablefish between vessels without authorization by a clearing officer. Authorization from a clearing officer must be obtained for each instance of transshipment at least 24 hours before the transshipment is intended to commence. Requests for authorization must specify the date and location of the transshipment.

* * * * *

§ 679.7 [Amended]

4. In § 679.7, paragraph (b)(2) is removed and reserved.

5. In § 679.40, paragraph (c)(3) is revised, and paragraph (g) is added to read as follows:

§ 679.40 Sablefish and halibut QS.

* * * * *

(c) * * *

(3) *IFQ permit.* The Regional Director shall issue to each QS holder, pursuant to § 679.4, an IFQ permit accompanied by a statement specifying the maximum amount of halibut and sablefish that may be harvested with fixed gear in a specified IFQ regulatory area and vessel category as of January 31 of that year. Such IFQ permits will be mailed to each QS holder at the address on record for that person after the beginning of each fishing year but prior to the start of the annual IFQ fishing season.

* * * * *

(g) *Tagged halibut and sablefish*. (1) Nothing contained in this part shall prohibit any person at any time from retaining and landing a Pacific halibut or sablefish that bears at the time of capture a research tag from any state, Federal, or international agency, provided that the halibut or sablefish is:

(i) A Pacific halibut landed pursuant to 50 CFR 300.18; or

(ii) A sablefish landed in accordance with the Tagged Groundfish Research Program.

(2) Tagged halibut or sablefish landed pursuant to paragraphs (1)(i) or (1)(ii) of this section shall not be calculated as part of an individual's IFQ harvest or be debited against an individual's halibut or sablefish IFQ.

6. In § 679.41, paragraphs (b)(1), (d)(4), (d)(5) introductory text, (g)(1), (g)(2), and (h) are revised, and paragraph (k) is added to read as follows:

§ 679.41 Transfer of QS and IFQ.

* * * * *

(b) *Transfer procedure*—(1) *Application for transfer.* An Application for Transfer of QS/IFQ (Application for Transfer) must be approved by the Regional Director before a person may use IFQ to harvest IFQ halibut or IFQ sablefish, whether the IFQ was the result of a direct transfer or the result of a QS transfer. An Application for Transfer will not be approved until the Regional Director has reviewed and approved the transfer agreement signed by the parties to the transaction. The Regional Director shall provide an Application for Transfer form to any person on request. Persons who submit an Application for Transfer to the Regional Director for approval will receive notification of the Regional Director's decision to approve or disapprove the Application for Transfer, and, if applicable, the reason(s) for disapproval, by mail posted on the date of that decision, unless another communication mode is requested on the Application for Transfer.

* * * * *

(d) * * *

(4) *Notification of approval.* Applicants will be notified by mail of the Regional Director's approval of an application for eligibility.

(5) *Notification of disapproval.* The Regional Director will notify the applicant if an Application for Eligibility is disapproved. This notification of disapproval will include:

* * * * *

(g) *Transfer restrictions.* (1) Except as provided in paragraph (f) or paragraph (g)(2) of this section, only persons who are IFQ crew members or who were initially issued QS assigned to vessel categories B, C, or D, and meet the other requirements in this section, may receive by transfer QS assigned to vessel categories B, C, or D, or the IFQ resulting from it.

(2) Except as provided in paragraph (g)(3) of this section, only persons who are IFQ crew members, and meet the other requirements in this section, may receive by transfer QS assigned to vessel categories B, C, or D, or the IFQ resulting from it, in IFQ regulatory area 2C for halibut or in the IFQ regulatory area east of 140° W. long. for sablefish.

* * * * *

(h) *Transfer of IFQ.* (1) Pursuant to paragraph (a) of this section, an Application for Transfer must be approved by the Regional Director before a person may use any IFQ that results from a direct transfer to harvest halibut or sablefish. After approving the Application for Transfer, the Regional Director will change any IFQ accounts affected by the approved transfer and issue all necessary IFQ permits.

(2) (Applicable until January 2, 1998). A person may transfer no more than 10 percent of the total IFQ resulting from QS held by that person and assigned to vessel categories B, C, or D for any IFQ species in any IFQ regulatory area to one or more persons for any fishing year.

* * * * *

(k) *Transfer to the surviving spouse.* (1) On the death of an individual who holds QS or IFQ, the surviving spouse receives all QS and IFQ held by the decedent by right of survivorship, unless a contrary intent was expressed by the decedent in a will that is probated. The Regional Director will approve an Application for Transfer to the surviving spouse when sufficient evidence has been provided to verify the death of the individual.

(2) The Regional Director will approve, for 3 calendar years following the date of death of an individual, an Application for Transfer of IFQ from the surviving spouse to a person eligible to receive IFQ under the provisions of this section, notwithstanding the limitations on transfers of IFQ in paragraph (g)(2) of this section.

[FR Doc. 96–20319 Filed 8–6–96; 11:57 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 155
Friday, August 9, 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

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Walnut Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of walnuts. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured and to combine the current Walnut Crop Insurance Regulations with the Common Crop Insurance Policy for ease of use and consistency of terms.

DATES: Written comments, data, and opinions on this proposed rule will be accepted until close of business October 8, 1996, and will be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through October 7, 1996.

ADDRESSES: Interested persons are invited to submit written comments to the Chief, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Written comments will be available for public inspection and copying in room 0324, South Building, USDA, 14th and Independence Avenue, SW., Washington, DC, 8:15 a.m.–4:45 p.m., EDT Monday through Friday. For addresses see the Paperwork Reduction Act paragraph under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Arden Routh, Program Analyst, Research and Development Division, Product Development Branch, FCIC, at the Kansas City, MO address listed above. Telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866 and Departmental Regulation 1512–1

This action has been reviewed under United States Department of Agriculture (USDA) procedures established by Executive Order No. 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 30, 2001.

This rule has been determined to be not significant for the purposes of Executive Order No. 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

The information collection requirements contained in the Walnut Crop Insurance Provisions have been submitted to OMB for approval under section 3507(j) of the Paperwork Reduction Act of 1995. This proposed rule will amend the information collection requirements under OMB control number 0563–0003 through September 30, 1998. The Federal Crop Insurance Corporation will be amending the information collection to adjust the estimated reporting hours and revising the usage of FCI–12–P, Pre-Acceptance Perennial Crop Inspection Report as it applies to the Walnut Crop Insurance Provisions.

Section 7 of the 1997 Walnut Crop Provisions adds interplanting as an insurable farming practice as long as it is interplanted with another perennial crop. This practice was not insurable under the previous Walnut Crop Insurance Regulations. Consequently, interplanting information will need to be collected using the FCI–12–P Pre-Acceptance Perennial Crop Inspection Report form for approximately 3 percent (3%) of the walnuts insureds who interplant their walnut crop. Standard interplanting language has been added to most perennial crops. Interplanting is an insurable practice as long as it does not adversely affect the insured crop. This is a benefit to agriculture because insurance is now available for more perennial crop producers and, as a result, less acreage will need to be placed into the noninsured crop disaster assistance program (NAP).

The title of this information collection is ''Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; Walnut Crop Insurance Provisions.'' The information to be collected includes a crop insurance acreage report, insurance application, and a continuous contract. Information collected from the acreage report and application is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are producers of walnuts that are eligible for Federal crop insurance.

The information requested is necessary for the reinsured companies and FCIC to provide insurance and reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums or other monetary amounts, and pay benefits.

All information is reported annually. The reporting burden for this collection of information is estimated to average 25 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,669,970.

FCIC is requesting comments for the following: (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 or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Bonnie Hart, Advisory and Corporate Operations Staff, Regulatory Review Group, Farm Service Agency, P.O. Box 2415, Ag Box 0572, U.S. Department of

Agriculture, Washington, D.C. 20013–2415. Copies of the information collection may be obtained from Bonnie Hart at the above address, telephone (202) 690–2857.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FCIC generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FCIC to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. The insured must certify to the number of acres and production on an annual basis or receive a transitional yield. The producer must maintain the records to support the certified information for at least 3 years. This regulation does not alter those requirements. Therefore, the amount of work required of the insurance companies and FSA offices delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

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

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will not have retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions in 7 CFR parts 11 and 780 must be exhausted before action for judicial review may be brought.

Environmental Evaluation

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

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section 7 CFR 457.122, Walnut Crop Insurance Provisions. The provisions will be effective for the 1997 and succeeding crop years. The proposed provisions will supersede and replace those found at 7 CFR part 446 (Walnut Crop Insurance Regulations). By separate rule, FCIC will revise 7 CFR part 446 to restrict its effect through the 1996 crop year and later remove that part.

This rule makes minor editorial and format changes to improve the Walnut Crop Insurance Regulations' compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring walnuts as follows:

1. Section 1—Add definitions for the terms ''days,'' ''good farming practices,'' ''interplanted,'' ''irrigated practice,'' ''net delivered weight,'' ''non-contiguous land,'' ''pound,'' ''production guarantee (per acre),'' and ''written agreement'' for the purpose of clarification.

2. Section 2—Describe the guidelines under which basic units may be divided into optional units. The definition of ''unit'' under section 1 (tt) of the Basic Provisions (§ 457.8), provides for the division of units in accordance with applicable crop provisions. The current Walnut Crop Insurance Regulations does not provide guidelines for determining optional units. Section 2 of these crop provisions provides guidelines for optional unit division of walnut basic units that are consistent with many other perennial crop provisions. Consistent with the definition of ''unit'' in the Basic Provisions (§ 457.8), section 11 of the Walnut Crop Provisions will provide that, in settling a claim, loss will be determined on a unit basis and all optional units for which acceptable production records were not provided will be combined.

3. Section 2(b)—Add provision that clarifies optional units must be on non-contiguous land. This does not change the walnut unit structure currently in effect.

4. Section 3(a)—Specify that the insured may choose only one price election for all the walnuts in the county insured under the policy, unless the Special Provisions provide different price elections by variety or varietal group, in which case the insured may choose one price election for each walnut variety or varietal group designated in the Special Provisions. The price election the insured chooses for each walnut variety or varietal group must have the same percentage relationship to the maximum price offered. This helps protect against program abuse and simplifies administration of the program.

5. Section 3(b)—Specify that the insured must report any damage, removal of trees, and any change in

practice that may reduce yields. For the first year of acreage interplanted with another crop or anytime the planting pattern of such acreage is changed, the insured must also report the age of any interplanted crop, the planting pattern, and any other information needed to establish the approved yield. The acreage or the yield used to establish the production guarantee, or both, may be adjusted by us when the insurance provider becomes aware of the situation if the insured has not previously reported it. Interplanting is not provided under the current Walnut Crop Insurance Regulations. The change in policy language is based on FCIC's desire to insure the maximum amount of acreage.

6. Section 7—Allow insurance for walnuts interplanted with another perennial crop in order to make insurance available on more acreage and reduce reliance on the noninsured crop disaster assistance program (NAP) for protection for crop losses.

7. Section 8(a)—Clarify that if an application is accepted by us after February 1, insurance will attach on the 10th day after the application is received in the insurance provider's local office. However, full premium will be due for the partial year.

8. Section 8(b)—Add provisions to clarify the procedures for insuring acreage when an insurable share is acquired or relinquished on or before the acreage reporting date.

9. Section 9(b)(1)—Clarify that disease and insect infestation are excluded causes of loss unless adverse weather prevents the proper application of control measures, causes control measures to be ineffective when properly applied, or causes disease or insect infestation for which no effective control mechanism is available.

10. Section 10—Add provisions that require an insured to notify the insurer of damage prior to harvest so that an inspection can be made in order to permit a timely appraisal. The provisions also prohibit the insured from selling or otherwise disposing of any damaged production until consent to do so is provided by the insurer.

11. Section 11(d)—Add provisions for providing quality adjustment for mold damaged walnuts based on net delivered weight. This incorporated recommendations from producers, walnut industry, insurance industry, and FSA field offices. Mold damage is the primary cause of loss in quality and significantly reduces the value of the walnuts.

12. Section 12—Add provisions for providing insurance coverage by written agreement. FCIC has a long-standing policy of permitting modification of certain provisions of insurance contracts by written agreement. Written agreements are not available under the current Walnut Crop Insurance Regulations. The new section will cover application for and duration of written agreements.

List of Subjects in 7 CFR Part 457

Crop insurance, Walnuts.

Proposed Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Common Crop Insurance Regulations (7 CFR part 457), effective for the 1997 and succeeding crop years, as follows:

PART 457—[AMENDED]

1. The authority citation for 7 CFR part 457 continues as follows:

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

2. 7 CFR part 457 is amended by adding a new § 457.122 to read as follows:

§ 457.122 Walnut crop insurance provisions.

The Walnut Crop Insurance Provisions for the 1997 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Walnut Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions, the Special Provisions will control these crop provisions and the Basic Provisions, and these crop provisions will control the Basic Provisions.

1. Definitions

Days—Calendar days.

Good farming practices—The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee, and are those generally recognized by the Cooperative Extension Service as compatible with agronomic and weather conditions in the county.

Harvest—Removal of the walnuts from the orchard.

Interplanted—Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Irrigated practice—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Net delivered weight—Delivered weight of dry, hulled, in-shell walnuts, excluding foreign material.

Non-contiguous land—Any two or more tracts of land whose boundaries do not touch at any point, except that land separated only by a public or private right-of-way, waterway, or an irrigation canal will be considered as contiguous.

Pound—A unit of weight equal to 16 ounces avoirdupois.

Production guarantee (per acre)—The number of pounds (whole in-shell walnuts), determined by multiplying the approved yield per acre by the coverage level percentage you elect.

Written agreement—A written document that alters designated terms of a policy in accordance with section 12.

2. Unit Division

(a) Unless limited by the Special Provisions, a unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), may be divided into optional units if, for each optional unit, you meet all the conditions of this section or if a written agreement to such division exists.

(b) Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, and variety, other than as described in this section.

(c) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined, that portion of the premium paid for the purpose of electing optional units will be refunded to you pro rata for the units combined.

(d) All optional units must be identified on the acreage report for each crop year.

(e) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(2) You must have records of marketed or stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us; and

(3) Each optional unit must be located on non-contiguous land.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(a) You may choose only one price election for all the walnuts in the county insured under this policy unless the Special Provisions provide different price elections by variety or varietal group, in which case you may choose one price election for each

walnut variety or varietal group designated in the Special Provisions. The price elections you choose for each variety or varietal group must have the same percentage relationship to the maximum price offered by us for each variety or varietal group. For example, if you choose 100 percent (100%) of the maximum price election for a specific variety or varietal group, you must also choose 100 percent (100%) of the maximum price election for all other varieties or varietal groups.

(b) You must report, by the production reporting date designated in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), by variety or varietal group if applicable:

(1) Any damage, removal of trees, or change in practices that may reduce the expected yield below the yield upon which the insurance guarantee is based, and the number of affected acres;

(2) The number of bearing trees on insurable and uninsurable acreage;

(3) The age of the trees and the planting pattern; and

(4) For the first year of insurance for acreage interplanted with another perennial crop, and anytime the planting pattern of such acreage is changed:

(i) The age of the interplanted crop, and type if applicable;

(ii) The planting pattern; and

(iii) Any other information that we request in order to establish your approved yield.

We will reduce the yield used to establish your production guarantee as necessary, based on our estimate of the effect of the interplanted perennial crop, removal of trees, damage, or change in practices on the yield potential of the insured crop. If you fail to notify us of any circumstances that may reduce yields from previous levels, we will reduce your production guarantee as necessary at any time we become aware of the circumstances.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is October 31 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are January 31.

6. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the commercially grown English Walnuts (excluding black walnuts) in the county for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That are grown on tree varieties that:

(1) Were commercially available when the trees were set out;

(2) Are adapted to the area; and

(3) Are grown on a root stock that is adapted to the area;

(c) That are grown on trees in an orchard that, if inspected, are considered acceptable by us;

(d) That are grown on trees that have reached at least the ninth growing season after being set out, unless we agree in writing to insure such trees; and

(e) That are in a unit that consists of at least five (5.0) acres, unless we agree in writing to insure a smaller unit.

7. Insurable Acreage

In lieu of the provisions in section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8) that prohibit insurance attaching to a crop planted with another crop, walnuts interplanted with another perennial crop are insurable unless we inspect the acreage and determine it does not meet insurability requirements.

8. Insurance Period

(a) In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) Coverage begins on February 1 of each crop year, except that for the first crop year, if the application is accepted by us after January 31, insurance will attach on the 10th day after the application is received in your insurance provider's local office.

(2) The calendar date for the end of the insurance period for each crop year is November 15.

(b) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) If you acquire an insurable share in any insurable acreage after coverage begins, but on or before the acreage reporting date of any crop year and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period.

(2) If you relinquish your insurable share on any insurable acreage of walnuts on or before the acreage reporting date of any crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due for, such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity or a similar form approved by us is completed by all affected parties; and

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date.

9. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the orchard;

(3) Wildlife;

(4) Earthquake;

(5) Volcanic eruption; or

(6) Failure of irrigation water supply, if caused by an insured peril that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against any damage or loss of production due to:

(1) Disease or insect infestation, unless adverse weather:

(i) Prevents the proper application of control measures or causes properly applied control measures to be ineffective; or

(ii) Causes disease or insect infestation for which no effective control mechanism is available; or

(2) Inability to market the walnuts for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

10. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), if you intend to claim an indemnity on any unit, you must notify us prior to the beginning of harvest so that we may inspect the damaged production. You must not sell or dispose of the damaged crop until after we have given you written consent to do so. If you fail to meet the requirements of this subsection, all such production will be considered undamaged and included as production to count.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide production records:

(1) For any optional unit, we will combine all optional units for which acceptable production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by the respective production guarantee;

(2) Multiplying each result in paragraph (1) by the respective price election for each variety or varietal group;

(3) Totaling the results in paragraph (2);

(4) Multiplying the total production to be counted of each variety or varietal group if applicable, (see subsection 11(c)) by the respective price election;

(5) Totaling the results in paragraph (4);

(6) Subtracting the total in paragraph (5) from the total in paragraph (3); and

(7) Multiplying the result in paragraph (6) by your share.

(c) The total production to count (whole in-shell pounds) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) Damaged solely by uninsured causes; or

(C) For which you fail to provide production records that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production; and

(iv) Potential production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you

agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general in the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

(2) All harvested production from the insurable acreage.

(d) Mature walnut production damaged due to an insurable cause of loss which occurs within the insurance period may be adjusted for quality based on an inspection by the Dried Fruit Association or as determined by us. Walnut production that has mold damage greater than 8 percent (8%), based on the net delivered weight, will be reduced by the factor contained in the Special Provisions. Walnut production that has mold damage greater than 30 percent (30%), based on the net delivered weight, will not be considered as production to count.

12. Written Agreements

Designated terms of this policy may be altered by written agreement. The following conditions will apply:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in subsection 12(e).

(b) The application for written agreement must contain all terms of the contract between the insurance provider and the insured that will be in effect if the written agreement is not approved.

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election.

(d) Each written agreement will only be valid for 1 year. If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy.

(e) An application for written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy provisions.

Signed in Washington D.C., on August 1, 1996.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 96–20194 Filed 8–8–96; 8:45 am]

BILLING CODE 3410–FA–P

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7 CFR Part 457

Common Crop Insurance Regulations; Almond Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of almonds. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured and to combine the current Almond Endorsement with the Common Crop Insurance Policy for ease of use and consistency of terms.

DATES: Written comments, data, and opinions on this proposed rule will be accepted until close of business September 9, 1996, and will be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through October 7, 1996.

ADDRESSES: Interested persons are invited to submit written comments to the Chief, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Written comments will be available for public inspection and copying in room 0324, South Building, USDA, 14th and Independence Avenue, S.W., Washington, D.C., 8:15 a.m.–4:45 p.m., EDT Monday through Friday. For addresses see the Paperwork Reduction Act paragraph under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Arden Routh, Program Analyst, Research and Development Division, Product Development Branch, FCIC, at the Kansas City, MO address listed above. Telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866 and Departmental Regulation 1512–1

This action has been reviewed under United States Department of Agriculture (USDA) procedures established by Executive Order No. 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 30, 2001.

This rule has been determined to be not significant for the purposes of Executive Order No. 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

The information collection requirements contained in the Almond Crop Insurance Provisions have been submitted to OMB for approval under section 3507(j) of the Paperwork Reduction Act of 1995. This proposed rule will amend the information collection requirements under OMB control number 0563–0003 through September 30, 1998. The Federal Crop Insurance Corporation will be amending the information collection to adjust the estimated reporting hours and revising the usage of FCI–12–P, Pre-Acceptance Perennial Crop Inspection Report as it applies to the Almond Crop Insurance Provisions.

Section 7 of the 1998 Almond Crop Provisions adds interplanting as an insurable farming practice as long as it is interplanted with another perennial crop. This practice was not insurable under the previous Almond Endorsement or and the General Crop Insurance Policy to which it attached. Consequently, interplanting information will need to be collected using the FCI–12–P Pre-Acceptance Perennial Crop Inspection Report form for approximately 3 percent (3%) of the almond insureds who interplant their almond crop. Standard interplanting language has been added to most perennial crops. Interplanting is an insurable practice as long as it does not adversely affect the insured crop. This is a benefit to agriculture because insurance is now available for more perennial crop producers and, as a result, less acreage will need to be placed into the noninsured crop disaster assistance program (NAP).

Revised reporting estimates and requirements for usage of OMB control number 0563–0003 will be submitted to OMB for approval under the provisions of 44 U.S.C., chapter 35. Public comments are due by October 7, 1996.

The title of this information collection is ''Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; Almond Crop Insurance Provisions.'' The information to be collected includes a crop insurance acreage report, insurance application, and a continuous contract. Information collected from the acreage report and application is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are producers of almonds that are eligible for Federal crop insurance.

The information requested is necessary for the reinsured companies and FCIC to provide insurance and reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums or other monetary amounts, and pay benefits.

All information is reported annually. The reporting burden for this collection of information is estimated to average 25 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,669,970.

FCIC is requesting comments for the following: (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 or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Bonnie Hart, Advisory and Corporate Operations Staff, Regulatory Review Group, Farm Service Agency, P.O. Box 2415, Ag Box 0572, U.S. Department of Agriculture, Washington, D.C. 20013–2415. Copies of the information collection may be obtained from Bonnie Hart at the above address, telephone (202) 690–2857.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FCIC generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FCIC to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. The insured must certify to the number of acres and production on an annual basis or receive a transitional yield. The producer must maintain the records to support the certified information for at least 3 years. This regulation does not alter those requirements. Therefore, the amount of work required of the insurance companies and FSA offices delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

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

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions in 7 CFR parts 11 and 780 must be exhausted before action for judicial review may be brought.

Environmental Evaluation

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

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section to be known as 7 CFR 457.123, Almond Crop Insurance Provisions. The provisions will be effective for the 1998 and succeeding crop years. The proposed provisions will supersede and replace those found at 7 CFR 401.110 (Almond Endorsement). By separate rule, FCIC will revise § 401.110 to restrict its effect through the 1997 crop year and later remove that section.

This rule makes minor editorial and format changes to improve the Almond Endorsement's compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring almonds as follows:

1. Section 1—Add the definitions for the terms ''days,'' ''good farming practices,'' ''insurable rejects,'' ''interplanted,'' ''irrigated practice,'' ''production guarantee (per acre),'' ''rejects (inedible meats),'' ''set out,'' and ''written agreement'' for the purpose of clarification.

2. Section 2—Revise the unit language for clarity. There is no change in the unit structure.

3. Section 3(a)—Specify that the insured may select only one price election for all the almonds in the county insured under the policy, unless the Special Provisions provide different price elections by type, in which case the insured may select one price election for each almond type designated in the Special Provisions. The price election the insured selects for each almond type must have the same percentage relationship to the

maximum price offered. This helps protect against adverse selection and simplifies administration of the program.

4. Section 3(b)—Specify that the insured must report damage, removal of trees, and any change in practice that may reduce yields. The insured must also report, for the first year of insurance for acreage interplanted with another perennial crop and anytime the planting pattern of such acreage is changed, the age and type, if applicable, of any interplanted crop, the planting pattern, and any other information needed to establish the approved yield. The acreage or the yield used to establish your production guarantee, or both, may be adjusted by us when the insurance provider become aware of the situation if the insured has not previously reported it. Interplanting is not provided under the current Almond Endorsement. Section 7 of these crop provisions allows interplanting almonds with another perennial crop. The change in policy language is based on FCIC's desire to insure the maximum amount of acreage.

5. Section 7—Add interplanting as an insurable farming practice if the almond crop is interplanted with another perennial in order to make insurance available on more acreage and reduce reliance on the noninsured crop disaster assistance program (NAP) for protection for crop losses.

6. Section 8(a)—Clarify that if an application is accepted by us after December 31, insurance will attach on the 10th day after the application is received in the insurance provider's local office. However, full premium will be due for the partial year.

7. Section 8(b)—Add provisions to clarify the procedure for insuring acreage when an insurable share is acquired or relinquished on or before the acreage reporting date.

8. Section 9(a)—Remove direct Mediterranean Fruit Fly damage as a cause of loss because insect infestations are no longer covered.

9. Section 9(b)(1)—Clarify that disease and insect infestations are excluded causes of loss unless adverse weather prevents the proper application of control measures, causes control measures to be ineffective when properly applied, or causes disease or insect infestation for which no effective control mechanism is available.

10. Section 10—Add provisions that require an insured to notify the insurer of damage prior to harvest so that an inspection can be made in order to permit a timely appraisal. The provisions also prohibit the insured from selling or otherwise disposing of any damaged production until consent to do so is provided by the insurer.

11. Section 12—Add provisions for providing insurance coverage by written agreement. FCIC has a long standing policy of permitting modification of certain provisions of insurance contracts by written agreement. Written agreements are not available in the current Almond Endorsement. The new section will cover application for, and duration of, written agreements.

List of Subjects in 7 CFR Part 457

Crop insurance, Almonds.

Proposed Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Common Crop Insurance Regulations (7 CFR part 457), effective for the 1998 and succeeding crop years, as follows:

PART 457—[AMENDED]

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. 7 CFR part 457 is amended by adding a new § 457.123 to read as follows:

§ 457.123 Almond crop insurance provisions.

The Almond Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Almond Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions, the Special Provisions will control these crop provisions and the Basic Provisions, and these crop provisions will control the Basic Provisions.

1. Definitions

Days—Calendar days.

Good farming practices—The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee, and are those generally recognized by the Cooperative Extension Service as compatible with agronomic and weather conditions in the county.

Harvest—The removal of mature almonds from the orchard.

Insurable rejects—Inedible meats that due to an insurable cause of loss will not be considered as production to count.

Interplanted—Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Irrigated practice—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Non-contiguous land—Any two or more tracks of land whose boundaries do not touch at any point, except that land separated only by a public or private right-of-way, waterway or an irrigation canal will be considered as contiguous.

Production guarantee (per acre)—The quantity of almonds (total meat pounds) determined by multiplying the approved yield per acre by the coverage level percentage you elect.

Rejects (inedible meats)—As defined by the USDA Agricultural Marketing Service for Handling of Almonds Grown in California.

Set out—Transplanting the tree into the orchard.

Total meat pounds—The total pounds of almond meats (whole, chipped and broken, and in-shell meats) and rejects, excluding insurable rejects. Unshelled almonds will be converted to meat pounds in accordance with FCIC approved procedures.

Written agreement—A written document that alters designated terms of a policy in accordance with section 12.

2. Unit Division

(a) Unless limited by the Special Provisions, a unit as defined in section l (Definitions) of the Basic Provisions (§ 457.8), may be divided into optional units if, for each optional unit, you meet all the conditions of this section or if a written agreement to such division exists.

(b) Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, and variety, other than as described in this section.

(c) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined, that portion of the premium paid for the purpose of electing optional units will be refunded to you pro rata for the units combined.

(d) All optional units must be identified on the acreage report for each crop year.

(e) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(2) You must have records of marketed or stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us; and

(3) Each optional unit must be located on non-contiguous land.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(a) You may select only one price election for all the almonds in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each almond type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent (100%) of the maximum price election for a specific type, you must also choose 100 percent (100%) of the maximum price election for all other types.

(b) You must report, by the production reporting date designated in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), by type if applicable:

(1) Any damage, removal of trees, or change in practices that may reduce the expected yield below the yield upon which the insurance guarantee is based, and the number of affected acres;

(2) The number of bearing trees on insurable and uninsurable acreage;

(3) The age of the trees and the planting patterns; and

(4) For the first year of insurance for acreage interplanted with another perennial crop, and anytime the planting pattern of such acreage is changed:

(i) The age of the interplanted crop, and type if applicable;

(ii) The planting pattern; and

(iii) Any other information that we request in order to establish your approved yield.

We will reduce the yield used to establish your production guarantee as necessary, based on our estimate of the effect of the interplanted perennial crop, removal of trees, damage, or change in practices on the yield potential of the insured crop. If you fail to notify us of any circumstances that may reduce yields from previous levels, we will reduce your production guarantee as necessary at any time we become aware of the circumstance.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is August 31 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are December 31.

6. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the almonds in the county for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That are grown for harvest as almonds;

(c) That are irrigated;

(d) That are grown in an orchard that, if inspected, is considered acceptable to us; and

(e) That are grown on trees that have reached at least the seventh growing season after set out, unless we agree in writing to insure such acreage.

7. Insurable Acreage

In lieu of the provisions in section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8) that prohibit insurance attaching to a crop planted with another crop, almonds interplanted with another perennial crop are insurable unless we inspect the acreage and determine it does not meet insurability requirements.

8. Insurance Period

(a) In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) Coverage begins on January 1 of each crop year, except that for the first crop year, if the application is accepted by us after December 31, insurance will attach on the 10th day after the application is received in our local agent's office.

(2) The calendar date for the end of the insurance period for each crop year is November 30.

(b) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) If you acquire an insurable share in any insurable acreage after coverage begins but on or before the acreage reporting date of any crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period.

(2) If you relinquish your insurable share on any insurable acreage of almonds on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due for, such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity or a similar form approved by us is completed by all affected parties; and

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date.

9. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occurs during the insurance period:

(1) Adverse weather conditions;

(2) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the orchard;

(3) Wildlife;

(4) Earthquake;

(5) Volcanic eruption; or

(6) Failure of the irrigation water supply, if due to a cause of loss covered by this policy and occurring within the insurance period.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against damage or loss of production due to:

(1) Disease or insect infestation, unless adverse weather:

(i) Prevents the proper application of control measures or causes properly applied control measures to be ineffective; or

(ii) Causes disease or insect infestation for which no effective control mechanism is available.

(2) Inability to market the almonds for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

10. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), if you intend to claim an indemnity on any unit, you must notify us prior to the beginning of harvest so that we may inspect the damaged production. You must not sell or dispose of the damaged crop until after we have given you written consent to do so. If you fail to meet the requirements of this subsection, all such production will be considered undamaged and included as production to count.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide production records:

(1) For any optional unit, we will combine all optional units for which acceptable production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by its respective production guarantee;

(2) Multiplying each result in paragraph (1) by the respective price election for the type;

(3) Totaling the results in paragraph (2);

(4) Multiplying the total production to be counted of each type, if applicable, (see subsection 11(c)) by the respective price election;

(5) Totaling the results in paragraph (4);

(6) Subtracting the total in paragraph (5) from the total in paragraph (3); and

(7) Multiplying the result of paragraph (6) by your share.

(c) The total production to count (in meat pounds) from all insurable acreage on the unit will include:

(l) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) Damaged solely by uninsured causes; or

(C) For which you fail to provide records of production that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production; and

(iv) Potential production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such

agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general in the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

(2) The total meat pounds harvested from the insurable acreage.

12. Written Agreements

Designated terms of this policy may be altered by written agreement. The following conditions will apply:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in subsection 12(e).

(b) The application for written agreement must contain all terms of the contract between you and us and the insured that will be in effect if the written agreement is not approved.

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election.

(d) Each written agreement will only be valid for 1 year. If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy.

(e) An application for written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy provisions.

Signed in Washington D.C., on August 1, 1996.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 96–20193 Filed 8–8–96; 8:45 am]

BILLING CODE 3410–FA–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 934

[No. 96–53]

Amendment of Budgets Regulation

AGENCY: Federal Housing Finance Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to amend its regulation governing approval of Federal Home Loan Bank (FHLBank) budgets by removing the requirement that the FHLBanks' budgets be approved by the Finance Board. In order to ensure sufficient data to carry out its supervisory responsibility to ensure the safety and soundness of FHLBank operations, the Finance Board is further proposing to establish specific requirements for the FHLBanks' preparation and reporting of both budget and other financial information to the Finance Board. Certain of these reporting requirements are derived and streamlined from the Finance Board's current practice for budget and financial information reporting by the FHLBanks. The proposed rule is in keeping with the Finance Board's continuing effort to devolve corporate governance authority to the FHLBanks. It also is consistent with the goals of the Regulatory Reinvention Initiative of the National Performance Review.

DATES: Comments on this proposed rule must be received in writing on or before September 9, 1996.

ADDRESSES: Send comments to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: John C. Waters or Christina T. Muradian, Office of Policy, (202) 408–2860 or 408–2584, or Sharon B. Like, Senior Attorney-Advisor, Office of General Counsel, (202) 408–2930, Federal Housing Finance Board.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 934.6 of the Finance Board's existing regulations provides:

> As prescribed by the [Finance] Board or its designee, each Bank shall prepare and submit to the Board for its approval a budget. Each Bank will operate within such budget as approved or as it may be amended by the Bank's board of directors within limits set by the Board. Any amendment beyond such limits must be submitted to the Board for approval. The Board's designee, may approve amendments within limits set by the Board.

See 12 CFR 934.6.

The substance of § 934.6 previously appeared at § 524.6 of the regulations of the Finance Board's predecessor, the Federal Home Loan Bank Board (FHLBB). *See* 12 CFR 524.6 (1989). (redesignated). The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. L. No. 101–73, 103 Stat. 183 (Aug. 9, 1989), amended the Federal Home Loan Bank Act (Bank Act), 12 U.S.C. 1421 to 1449, by creating the Finance Board and transferring from the FHLBB to the Finance Board the responsibility for the supervision and regulation of the twelve FHLBanks. *See id.* §§ 1422a(a), 1422b(a)(1). Section 524.6 subsequently was redesignated as § 934.6 of the Finance Board's regulations. *See* 54 FR 36757 (Sept. 5, 1989).

The Bank Act does not provide explicitly for Finance Board approval of Bank budgets. *See* 12 U.S.C. 1432(a). Such approval authority is derived from the Finance Board's general powers and duties to supervise the FHLBanks under sections 2A(a)(3) and 2B(a)(1) of the Bank Act, as well as the Finance Board's authority to approve corporate powers granted to the FHLBanks under section 12(a) of the Bank Act. *See id.* §§ 1422a(a)(3), 1422b(a)(1), 1432(a).

II. Analysis of the Proposed Rule

A. Current Practice and Basis For Proposed Amendment

In approving the FHLBanks' budgets under current § 934.6, the Finance Board's practice, which is not codified in the regulation, has been to request from each FHLBank a report on the FHLBank's annual budget approved by its board of directors, including the following information: projected balance sheet; projected income statement (including FHLBank board-approved operating expense budget and staffing levels); FHLBank board-approved capital expenditures budget; supplemental information as requested by the Finance Board; strategic/business plan; organizational chart; FHLBank board-approved budget resolution; and management discussion of the FHLBank's expected financial performance and underlying assumptions and comparisons with the financial performance from the prior year.

The Finance Board reviews this information and, pursuant to § 934.6, approves each FHLBank's operating expense and capital expenditures budget. Generally, budgets have been approved by the Finance Board as submitted by the FHLBanks. The Finance Board also reviews and approves, pursuant to § 934.6, amendments to the FHLBanks' budgets to exceed previously approved limits.

In addition, Finance Board practice has been to require each FHLBank to submit quarterly reports that evaluate year-to-date actual performance results relative to the original approved budget projections, and reforecasted financial projections for the remainder of the year relative to the original approved budget projections. Each FHLBank also submits an annual report that evaluates the actual performance results for the year relative to the original approved budget projections.

The Finance Board has been considering ways to transfer a variety of

governance responsibilities it exercises to the FHLBanks since the completion of studies by the Congressional Budget Office, General Accounting Office, Department of the Treasury, Department of Housing and Urban Development, and Finance Board, which were required by the Housing and Community Development Act of 1992, Pub. L. No. 102–550, 106 Stat. 3672 (Oct. 28, 1992). These studies recommended that the governance and regulatory responsibilities for the FHLBanks be separated, with the FHLBanks carrying out the management functions, and the Finance Board exercising regulatory oversight over the FHLBanks. The Finance Board already has taken actions to devolve some governance functions to the FHLBanks, including its recently adopted final rule transferring responsibility for all FHLBank membership approvals from the Finance Board to the FHLBanks. *See* Final Membership Rule, adopted July 3, 1996, no. 96–43 (to be codified at 12 CFR part 933).

Approval of the FHLBanks' budgets is a management responsibility which the Finance Board believes is best administered by the FHLBanks' respective boards of directors. The Finance Board believes that Finance Board approval of FHLBank budgets is unnecessary because incentives exist at the FHLBank board level to encourage efficient FHLBank operations: e.g., increased operating expenses reduce shareholder dividends, and since FHLBank elected board members represent FHLBank shareholders, they have an incentive to effectively manage operating expenses. Moreover, over the past few years, FHLBank System operations have become increasingly efficient, with the ratio of operating expenses to total assets declining from 17 basis points in 1990 to 8 basis points in 1995.

In addition, the fact that the Finance Board generally has approved the budgets as submitted by the FHLBanks indicates that Finance Board approval of the budgets is unnecessary.

The Finance Board would continue to exercise its supervisory responsibility to ensure that the FHLBanks are operating in a safe and sound manner by requiring and reviewing FHLBank budget and other financial information, and conducting on-site examinations of the FHLBanks. As further discussed below, the reporting requirements in the proposed rule would codify and streamline current reporting practice.

B. Section-by-Section Analysis of the Proposed Rule

1. Adoption of Annual FHLBank Budget—§ 934.6(a).

Under the proposed rule, Finance Board approval of FHLBank operating expense and capital expenditures budgets no longer would be required. Proposed § 934.6(a)(1) provides that each FHLBank's board of directors shall be responsible for the adoption of an annual operating expense and capital expenditures budget for the FHLBank, and any subsequent amendments thereto, consistent with the requirements of the Bank Act, proposed § 934.6, and other regulations and policies of the Finance Board. Implicit in these requirements are the requirements that the FHLBanks operate in a financially safe and sound manner and carry out their housing finance mission to the extent consistent with the former. See 12 U.S.C. 1422a(a)(3).

The extent to which a FHLBank is operating efficiently pursuant to its approved budget limits may impact on its safety and soundness and ability to carry out its housing finance mission. The proposed rule does not establish a specific ''efficiency'' standard as part of the overall safety and soundness and housing finance mission requirements. The Finance Board specifically requests comments on whether such a standard should be included in the rule, and if so, what that standard should be.

Proposed § 934.6(a)(2) provides that the board of directors of a FHLBank may not delegate the authority to approve the annual budget, or any subsequent amendments thereto, to FHLBank officers or other FHLBank employees.

Proposed § 934.6(a)(3) requires that each FHLBank's annual budget be prepared based upon an interest rate scenario provided by the Finance Board. This is consistent with current Finance Board practice. The Finance Board specifically requests comments on whether an alternative approach, such as requiring the use of reported interest rates as of a fixed date specified in the regulation, would be preferable to the current approach.

Proposed § 934.6(a)(4) provides that a FHLBank may not exceed its annual budget limits without prior approval by the FHLBank's board of directors of an amendment to such budget.

2. Annual Budget Report—§ 934.6(b)

Proposed § 934.6(b) establishes specific FHLBank reporting requirements, certain of which are codified and streamlined from the Finance Board's current practice for FHLBank reporting.

Specifically, the FHLBanks would be required to submit to the Finance Board, by January 31 of each year, in accordance with reporting formats and as further prescribed by the Finance Board, a report containing such FHLBank budget and other financial information as the Finance Board shall require, which may include the following: (1) balance sheet projections; (2) income statement projections, including operating expense budget data and staffing levels; (3) capital expenditures budget data; (4) management discussion of expected financial performance; (5) strategic or business plan, and (6) a copy of the FHLBank's board of directors resolution adopting the FHLBank's annual operating expense and capital expenditures budget.

3. Report on Amendments to Annual Budget—§ 934.6(c)

Proposed § 934.6(c) requires a FHLBank to submit promptly to the Finance Board a copy of the FHLBank's board of directors resolution adopting any amendment to the FHLBank's annual budget.

4. Mid-year Reforecasting Report—§ 934.6(d)

Rather than requiring the current quarterly reports from the FHLBanks of reforecasted projections for the year relative to original budget projections, proposed § 934.6(d) requires each FHLBank to submit only a mid-year report containing a balance sheet and income statement setting forth reforecasted projections for the year relative to the original budget for that year, including a management discussion explaining any significant changes from the original budget.

5. Annual Actual Performance Results Report—§ 934.6(e)

Rather than requiring the current quarterly reports from the FHLBanks, which analyze actual performance results for the period relative to original budget projections, proposed § 934.6(e) requires each FHLBank to submit only an annual report containing a balance sheet and income statement setting forth actual performance results for the year relative to the original budget for that year, including a management discussion explaining any significant changes from the original budget.

III. Regulatory Flexibility Act

This proposed rule applies only to the FHLBanks, which do not come within the meaning of ''small entities,'' as defined in the Regulatory Flexibility Act. See 5 U.S.C. 601(6). Therefore, in

accordance with 5 U.S.C. 605(b), the Finance Board hereby certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 934

Federal home loan banks, Securities, Surety bonds.

Accordingly, the Federal Housing Finance Board hereby proposes to amend title 12, chapter IX, subchapter B, part 934, of the Code of Federal Regulations, as follows:

PART 934—OPERATIONS OF THE BANKS

1. The authority citation for part 934 is revised to read as follows:

Authority: 12 U.S.C. 1422a, 1422b, 1442.

2. Section 934.6 is revised to read as follows:

§ 934.6 Budget preparation and reporting requirements.

(a) *Adoption of annual Bank budget.* (1) Each Bank's board of directors shall be responsible for the adoption of an annual operating expense and capital expenditures budget for the Bank, and any subsequent amendments thereto, consistent with the requirements of the Act, this section, and other regulations and policies of the Board.

(2) A Bank's board of directors may not delegate the authority to approve the Bank's annual budget, or any subsequent amendments thereto, to Bank officers or other Bank employees.

(3) A Bank's annual budget shall be prepared based upon an interest rate scenario provided by the Board.

(4) A Bank may not exceed its annual budget limits without prior approval by the Bank's board of directors of an amendment to such budget.

(b) *Annual budget report.* Each Bank shall submit to the Board, by January 31 of each year, in accordance with reporting formats and as further prescribed by the Board, a report containing such Bank budget and other financial information as the Board shall require, which may include the following:

(1) Balance sheet projections;

(2) Income statement projections, including operating expense budget data and staffing levels;

(3) Capital expenditures budget data;

(4) Management discussion of expected financial performance;

(5) Strategic or business plan; and

(6) A copy of the FHLBank's board of directors resolution adopting the FHLBank's annual operating expense and capital expenditures budget.

(c) *Report on amendments to annual budget.* A Bank shall submit promptly to the Board a copy of the Bank's board of directors resolution adopting any amendment to the Bank's annual budget.

(d) *Mid-year reforecasting report.* Each Bank shall submit to the Board, by July 31 of each year, in accordance with reporting formats and as further prescribed by the Board, a report containing a balance sheet and income statement setting forth reforecasted projections for the year relative to the original budget for that year, including a management discussion explaining any significant changes in the reforecasted projections from the original budget.

(e) *Annual actual performance results report.* Each Bank shall submit to the Board, by January 31 of each year, in accordance with reporting formats and as further prescribed by the Board, a report containing a balance sheet and income statement setting forth the actual performance results for the prior year relative to the original budget for that year, including a management discussion explaining any significant changes in the actual performance results from the original budget.

Dated: July 25, 1996.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 96–20212 Filed 8–8–96; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–167–AD]

RIN 2120–AA64

Airworthiness Directives; Beech (Raytheon) Model BAe 125 Series 1000A and Model Hawker 1000 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Beech (Raytheon) Model BAe series 1000A and Model Hawker 1000 airplanes. This proposal would require modifications of the thrust reversers. This proposal is prompted by a review of the certification analysis of the thrust reversers and by testing of the thrust reversers, which indicated that additional design features are necessary to prevent failure of the driver link and the inadvertent deployment of a thrust reverser during flight. The actions specified by the proposed AD are intended to prevent inadvertent deployment of a thrust reverser during flight, which could result in reduced controllability of the airplane.

DATES: Comments must be received by September 17, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–167–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 Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

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–167–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–167–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Beech (Raytheon) Model BAe 125 series 1000A and Model Hawker 1000 airplanes. The CAA advises that the manufacturer of the thrust reversers has conducted a review of the certification analysis of the thrust reversers, and has tested the thrust reversers installed on these airplanes in service. As a result of this analysis and testing, the manufacturer has found that additional design features are necessary in order to prevent:

1. the failure of the driver link and

2. the inadvertent deployment of a thrust reverser during flight.

Inadvertent deployment of a thrust reverser during flight, if not corrected, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

Raytheon, the original airframe manufacturer, has issued Hawker Service Bulletin SB.78–14–3691A,B&E, dated June 21, 1995, which describes procedures for modifications of the thrust reversers (specified as Modifications 253691 Part A, Part B, and Part E), as follows:

Accomplishment of Modifications 253691 Part A and Part B entails installing an electrical connector at each engine pylon firewall and changing certain wiring. Accomplishment of these modifications adds an unlock indication for the secondary locks using the existing thrust reverser UNLCK annunciator.

Accomplishment of Modification 253691 Part E involves installing upper and lower secondary locks, upper and lower secondary lock microswitches, and associated electrical wiring assemblies to the engine pylon firewall.

The Hawker service bulletin references Rohr Service Bulletin PW300 78–8, dated June 21, 1995, as an additional source of information for accomplishment of the modification.

The CAA classified the Hawker service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom 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 CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, 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, the proposed AD would require modifications of the thrust reversers. The actions would be required to be accomplished in accordance with the Hawker service bulletin described previously.

Cost Impact

The FAA estimates that 23 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 110 work hours per airplane (excluding time to gain access and functional testing) to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $151,800, or $6,600 per airplane.

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

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 adding the following new airworthiness directive:

Beech Aircraft Corporation (Formerly deHavilland; Hawker Siddeley; British Aerospace, plc; Raytheon Corporate Jets, Inc.): Docket 95–NM–167–AD.

Applicability: Model BAe series 1000A and Model Hawker 1000 airplanes; as identified in Hawker Service Bulletin SB.78–14–3691A,B&E, dated June 21, 1995; 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 (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.

Note 2: Beech (Raytheon) Model BAe 125 series 1000B airplanes are similar in design to the airplanes that are subject to the requirements of this AD and, therefore, also may be subject to the unsafe condition addressed by this AD. However, as of the effective date of this AD, those models are not type certificated for operation in the United States. Airworthiness authorities of countries in which the Model BAe 125 series 1000B airplanes are approved for operation should consider adopting corrective action, applicable to those models, that is similar to the corrective action required by this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent deployment of a thrust reverser during flight, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the thrust reversers by accomplishing Modifications 253691 Part A, Part B, and Part E, in accordance with Hawker Service Bulletin SB.78–14–3691A,B&E, dated June 21, 1995.

Note 3: The Hawker service bulletin references Rohr Service Bulletin PW300 78–8, dated June 21, 1995, as an additional source of service information for accomplishment of Modification 253691 Part E.

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

(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 August 2, 1996.

Gary L. Killion,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–20291 Filed 8–8–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 95–NM–251–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAe 146–100A, –200A, and –300A Series Airplanes, and Model Avro 146–RJ70A, –RJ85A, and RJ–100A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146 series airplanes, and Model Avro 146–RJ series airplanes. This proposal would require a one-time inspection of terminal block ''D'' to ensure that a two-way link is installed, and installation of a new link, if necessary. This proposal is prompted by a report indicating that a two-way link that should be installed on direct current (DC) panel No. 1 may be missing from certain airplanes. The actions specified by the proposed AD are intended to ensure that a two-way link is installed. If the link is not installed, it could result in loss of the emergency electrical system and, consequently, increased pilot workload and possible reduced controllability of the airplane.

DATES: Comments must be received by September 17, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–251–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 British Aerospace Regional Aircraft Limited, Avro International Aerospace Division, Customer Support, Woodford Aerodrome, Woodford, Cheshire SK7 1QR, England. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

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–251–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–251–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes, and Model Avro 146–RJ70A, –RJ85A, and RJ–100A airplanes. The CAA advises that it received a report indicating that a two-way link that should be installed between terminals ''D8'' and ''D9'' of terminal block ''D'' on direct current (DC) panel No. 1 may be missing from airplanes having a dual lead-acid battery installation. The No. 1 battery is off-line when the standby generator is operating. Installation of the two-way link ensures that the No. 2 battery also is isolated, which preserves the battery charge to ensure that emergency electrical power

can be sustained from the batteries during flights for a minimum duration of one hour. If the electrical system fails totally, use of battery power would be required; however, if the two-way link is missing, the No. 2 battery would have insufficient capacity to power the electrical system. This condition, if not corrected, could result in loss of the emergency electrical system, and consequent increased pilot workload and possible reduced controllability of the airplane.

Explanation of Relevant Service Information

The manufacturer has issued Avro International Aerospace Inspection Service Bulletin S.B. 24–107, dated January 25, 1995, which describes procedures for a one-time visual inspection of terminal block ''D'' on DC panel No. 1 to ensure that a two-way link is installed between terminals ''D8'' and ''D9,'' and installation of a new link, if necessary.

The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

These airplane models are manufactured in the United Kingdom and are 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 CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, 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, the proposed AD would require a one-time visual inspection of terminal block ''D'' on DC panel No. 1 to ensure that a two-way link is installed between terminals ''D8'' and ''D9,'' and installation of a new link, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $600, or $60 per airplane.

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

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 adding the following new airworthiness directive:

British Aerospace: Docket 95–NM–251–AD.

Applicability: Model BAe 146–100A, –200A, and –300A series airplanes and Model Avro 146–RJ70A, –RJ85A, and RJ–100A airplanes equipped with a dual lead-acid battery installation (British Aerospace Modification HCM40028B or D) accomplished during production or in accordance with British Aerospace Modification Service Bulletin 24–45–40028D; 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 (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 loss of the emergency electrical system, and consequent increased pilot workload and possible reduced controllability of the airplane due to insufficient capacity of the No. 2 battery to power the electrical system; accomplish the following:

(a) Within 3 months after the effective date of this AD: Perform a one-time visual inspection of terminal block ''D'' on DC panel No. 1 to ensure that a two-way link is installed between terminals ''D8'' and ''D9,'' in accordance with Avro International Aerospace Inspection Service Bulletin S.B. 24–107, dated January 25, 1995.

(1) If a two-way link is installed, no further action is required by this AD.

(2) If no two-way link is installed, prior to further flight, install a new two-way link having part number S3403–102 on terminals ''D8'' and ''D9'' on terminal block ''D'' on DC panel No. 1 in accordance with the service bulletin.

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

(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 August 2, 1996.

Gary L. Killion,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–20290 Filed 8–8–96; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC19

Proposed Rule to Clarify Unitization

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Extension of comment period for proposed rule.

SUMMARY: This document extends to August 19, 1996, the deadline for the submission of comments on the proposed rule governing unitization of Outer Continental Shelf oil and gas leases, which was published on June 5, 1996. The proposed rule amends the unitization regulations by removing the model unit agreements, making them available from the Regional Supervisor as needed.

DATES: We will consider all comments that are received by August 19, 1996. We will begin our review of those comments at that time and may not fully consider comments we receive after August 19, 1996.

ADDRESSES: Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; 381 Elden Street; Mail Stop 4700; Herndon, Virginia 20170–4817; Attention: Chief, Engineering and Standards Branch.

FOR FURTHER INFORMATION CONTACT: Judy Wilson, Engineering and Standards Branch, Telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION: The MMS has been asked to extend the deadline for respondents to submit comments on the proposed rule published on June 5, 1996 (61 FR 28525). The requests explain that more time is needed to allow respondents time to prepare comments on omissions in the proposed rule.

Dated: August 5, 1996.

Lucy R. Querques,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 96–20354 Filed 8–8–96; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 227

[Docket No. 960730210–6210–01; I.D. 050294D]

Endangered and Threatened Species: Proposed Endangered Status for Five ESUs of Steelhead and Proposed Threatened Status for Five ESUs of Steelhead in Washington, Oregon, Idaho, and California

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has completed a comprehensive status review of West Coast steelhead (*Oncorhynchus mykiss*, or *O. mykiss*) populations in Washington, Oregon, Idaho, and California, and has identified 15 Evolutionarily Significant Units (ESUs) within this range. NMFS is now issuing a proposed rule to list five ESUs as endangered and five ESUs as threatened under the Endangered Species Act (ESA). The endangered steelhead ESUs are located in California (Central California Coast, South/Central California Coast, Southern California, and Central Valley ESUs) and Washington (Upper Columbia River ESU). The threatened steelhead ESUs are dispersed throughout all four states and include the Snake River Basin, Lower Columbia River, Oregon Coast, Klamath Mountains Province, and Northern California ESUs. NMFS is also designating the Middle Columbia River ESU as a candidate species.

NMFS is requesting public comments on the biological issues pertaining to this proposed rule and suggestions on integrated local/state/Federal conservation measures that might best achieve the purposes of the ESA relative to recovering the health of steelhead populations and the ecosystems upon which they depend. Should the proposed listings be made final, protective regulations under the ESA would be put into effect and a recovery program would be implemented.

DATES: Comments must be received by November 7, 1996. NMFS will announce the dates and locations of public hearings in Washington, Oregon, Idaho, and California in a separate Federal Register document. Requests for additional public hearings must be received by September 23, 1996.

ADDRESSES: Comments on this proposed rule and requests for public hearings or reference materials should be sent to the Protected Species Branch, Environmental and Technical Services Division, NMFS, Northwest Region, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, 503–231–2005, Craig Wingert, 310–980–4021, or Marta Nammack, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

On May 5, 1992, NMFS received a petition to list Illinois River winter steelhead from the Oregon Natural Resources Council, the Siskiyou Regional Education Project, Federation of Fly Fishers, Kalmiopsis Audubon Society, Siskiyou Audubon Society, Klamath/Siskiyou Coalition, Headwaters, The Wilderness Society, North Coast Environmental Center, The Sierra Club—Oregon Chapter, and the National Wildlife Federation. On July 31, 1992, NMFS published a notice stating that the petition presented substantial information indicating that a listing might be warranted (57 FR 33939) and concurrently solicited information about the status of this population. NMFS completed a status review (Busby et al. 1993) that was summarized in a May 20, 1993, determination (58 FR 29390). NMFS concluded that Illinois River winter steelhead did not represent a ''species'' under the ESA and therefore, a proposal to list this population was not warranted. However, NMFS recognized that this population was part of a larger ESU whose extent had not yet been determined, but whose status might warrant listing because of declining trends in steelhead abundance observed in several southern Oregon streams.

In its May 20, 1993, finding regarding Illinois River winter steelhead, NMFS announced that it would conduct an expanded status review to identify all coastal steelhead ESU(s) within California, Oregon, and Washington, and to determine whether any identified ESU(s) warrant listing under the ESA. Subsequently, on February 16, 1994, NMFS received a petition from the Oregon Natural Resources Council and 15 co-petitioners to list all steelhead (or

specific ESUs, races, or stocks) within the states of California, Oregon, Washington, and Idaho. In response to this petition, NMFS announced the expansion of its status review of steelhead to include inland steelhead populations occurring in eastern Washington and Oregon and the State of Idaho (59 FR 27527, May 27, 1994).

On September 21, 1993, NMFS received a petition from Washington Trout to list Deer Creek summer steelhead. On December 23, 1993, NMFS concluded that the petition presented substantial information indicating that listing may be warranted (58 FR 68108). NMFS completed a status review which concluded that Deer Creek summer steelhead did not represent a ''species'' under the ESA (59 FR 59981, November 21, 1994), and, therefore, a proposal to list this population under the ESA was not warranted. However, NMFS further concluded that Deer Creek summer steelhead were part of a larger ESU that may warrant listing under the ESA and for which a status review was currently underway.

On March 16, 1995, NMFS published a proposed rule to list Klamath Mountains Province steelhead as threatened (60 FR 14253). This proposal included steelhead populations occurring in coastal streams between Cape Blanco, OR, and the Klamath River Basin in Oregon and California, inclusive. A brief summary of this ESU is included in the current proposed rule. Public comments were received on this earlier proposal.

During the coastwide steelhead status review, NMFS assessed the best available scientific and commercial data, including technical information from Pacific Salmon Biological Technical Committees (PSBTCs) and interested parties in Washington, Oregon, Idaho, and California. The PSBTCs consisted primarily of scientists (from Federal, state, and local resource agencies, Indian tribes, industries, universities, professional societies, and public interest groups) possessing technical expertise relevant to steelhead and their habitats.

A NMFS Biological Review Team, composed of staff from NMFS' Northwest Fisheries Science Center and Southwest Regional Office, as well as a representative of the National Biological Service, has completed a coastwide status review for steelhead [Memorandum to William Stelle and Hilda Diaz-Soltero from M. Schiewe, July 17, 1995, Review of the Status of Steelhead (*O. mykiss*) from Washington, Idaho, Oregon, and California under the U.S. Endangered Species Act]. Copies of the memorandum are available upon request (see **ADDRESSES** section). The review, summarized below, identifies 15 ESUs of steelhead in the four states. NMFS is proposing to list five ESUs as endangered and five ESUs as threatened under the ESA. In addition, NMFS is proposing to add the Middle Columbia River ESU to the candidate species list. The complete results of NMFS' status review of steelhead populations will be published in a forthcoming NOAA Technical Memorandum (Busby et al., in press).

Steelhead Life History

Steelhead exhibit one of the most complex suite of life history traits of any salmonid species. Steelhead may exhibit anadromy (meaning that they migrate as juveniles from fresh water to the ocean, and then return to spawn in fresh water) or freshwater residency (meaning that they reside their entire life in fresh water). Resident forms are usually referred to as ''rainbow'' or ''redband'' trout, while anadromous life forms are termed ''steelhead.'' Few detailed studies have been conducted regarding the relationship between resident and anadromous *O. mykiss* and as a result, the relationship between these two life forms is poorly understood. Recently however, the scientific name for the biological species that includes both steelhead and rainbow trout was changed from *Salmo gairdneri* to *O. mykiss.* This change reflects the premise that all trouts from western North America share a common lineage with Pacific salmon.

Steelhead typically migrate to marine waters after spending 2 years in fresh water. They then reside in marine waters for typically 2 or 3 years prior to returning to their natal stream to spawn as 4- or 5-year-olds. Unlike Pacific salmon, steelhead are iteroparous, meaning that they are capable of spawning more than once before they die. However, it is rare for steelhead to spawn more than twice before dying; most that do so are females. Steelhead adults typically spawn between December and June (Bell, 1990). Depending on water temperature, steelhead eggs may incubate in ''redds'' (nesting gravels) for 1.5 to 4 months before hatching as ''alevins'' (a larval life stage dependent on food stored in a yolk sac). Following yolk sac absorption, alevins emerge from the gravel as young juveniles or ''fry'' and begin actively feeding. Juveniles rear in fresh water from 1 to 4 years, then migrate to the ocean as ''smolts.''

Biologically, steelhead can be divided into two reproductive ecotypes, based on their state of sexual maturity at the time of river entry and the duration of their spawning migration. These two ecotypes are termed ''stream maturing'' and ''ocean maturing.'' Stream maturing steelhead enter fresh water in a sexually immature condition and require several months to mature and spawn. Ocean maturing steelhead enter fresh water with well-developed gonads and spawn shortly after river entry. These two reproductive ecotypes are more commonly referred to by their season of freshwater entry (e.g., summer and winter steelhead).

Two major genetic groups or ''subspecies'' of steelhead occur on the west coast of the United States: a coastal group and an inland group, separated in the Fraser and Columbia River Basins by the Cascade crest approximately (Huzyk & Tsuyuki, 1974: Allendorf, 1975; Utter & Allendorf, 1977; Okazaki, 1984; Parkinson, 1984; Schreck et al., 1986; Reisenbichler et al., 1992). Behnke (1992) proposed to classify the coastal subspecies as *O. m. irideus* and the inland subspecies as *O. m. gairdneri.* These genetic groupings apply to both anadromous and nonanadromous forms of *O. mykiss*. Both coastal and inland steelhead occur in Washington and Oregon. California is thought to have only coastal steelhead while Idaho has only inland steelhead.

Historically, steelhead were distributed throughout the North Pacific Ocean from the Kamchatka Peninsula in Asia to the northern Baja Peninsula. Presently, the species distribution extends from the Kamchatka Peninsula, east and south along the Pacific coast of North America, to at least Malibu Creek in southern California. There are infrequent anecdotal reports of steelhead continuing to occur as far south as the Santa Margarita River in San Diego County (McEwan & Jackson, 1996). Historically, steelhead likely inhabited most coastal streams in Washington, Oregon, and California as well as many inland streams in these states and Idaho. However, during this century, over 23 indigenous, naturally-reproducing stocks of steelhead are believed to have been extirpated, and many more are thought to be in decline in numerous coastal and inland streams in Washington, Oregon, Idaho, and California. Forty-three stocks have been identified by Nehlsen et al. (1991) as being at moderate or high risk of extinction.

Consideration as a ''Species'' Under the ESA

To qualify for listing as a threatened or endangered species, the identified populations of steelhead must be considered ''species'' under the ESA.

The ESA defines a ''species'' to include ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' NMFS published a policy (56 FR 58612, November 20, 1991) describing the agencies application of the ESA definition of ''species'' to anadromous Pacific salmonid species. NMFS's policy provides that a Pacific salmonid population will be considered distinct and, hence, a species under the ESA if it represents an ESU of the biological species. A population must satisfy two criteria to be considered an ESU: (1) It must be reproductively isolated from other conspecific population units, and (2) it must represent an important component in the evolutionary legacy of the biological species. The first criterion, reproductive isolation, need not be absolute, but must be strong enough to permit evolutionarily important differences to accrue in different population units. The second criterion is met if the population contributes substantially to the ecological/genetic diversity of the species as a whole. Guidance on the application of this policy is contained in a scientific paper ''Pacific Salmon (*Oncorhynchus* spp.) and the Definition of 'Species' under the Endangered Species Act'' and a NOAA Technical Memorandum ''Definition of 'Species' Under the Endangered Species Act: Application to Pacific Salmon,'' which are available upon request (see **ADDRESSES**). The following sections describe the genetic, ecological, and life history characteristics, as well as human-induced genetic changes that NMFS assessed to determine the number and geographic extent of steelhead ESUs.

Reproductive Isolation

Genetic data provide useful indirect information on reproductive isolation because they integrate information about migration and gene flow over evolutionarily important time frames. During the status review, NMFS worked in cooperation with the States of California, Oregon, Idaho, and Washington to develop a genetic stock identification data base for steelhead. Natural and hatchery steelhead were collected by NMFS, California Department of Fish and Game (CDFG), Oregon Department of Fish and Wildlife (ODFW), Idaho Department of Fish and Game (IDFG), Washington Department of Fish and Wildlife (WDFW), and U.S. Fish and Wildlife Service (USFWS) for protein electrophoretic analysis by NMFS and WDFW. Existing NMFS data for Columbia and Snake River Basin steelhead were also included in the data base.

In addition to the new studies, published results from numerous studies of genetic characteristics of steelhead populations were considered. These included studies based on protein electrophoresis (Huzyk & Tsuyuki, 1974; Allendorf, 1975; Utter & Allendorf, 1977; Okazaki, 1984; Parkinson, 1984; Campton & Johnson, 1985; Milner & Teel, 1985; Schreck et al., 1986; Hershberger & Dole, 1987; Berg & Gall, 1988; Reisenbichler & Phelps, 1989; Reisenbichler et al., 1992; Currens & Schreck, 1993; Waples et al., 1993; Phelps et al., 1994; Leider et al., 1995). Supplementing these protein electrophoretic studies were two studies based on mitochondrial DNA (Buroker, unpublished; Nielsen, 1994) and chromosomal karyotyping studies conducted by Thorgard (1977, 1983) and Ostberg and Thorgard (1994).

Genetic information obtained from allozyme, DNA, and chromosomal sampling indicate a strong differentiation between coastal and inland subspecies of steelhead. Several studies have identified coastal and inland forms of *O. mykiss* as distinct genetic life forms. Allendorf (1975) first identified coastal and inland steelhead life forms in Washington, Oregon, and Idaho based on large and consistent allele frequency differences which applied to both anadromous and resident *O. mykiss*. In the Columbia River, it was determined that the geographic boundary of these life forms occurs at about the Cascade crest. Subsequent studies have supported this finding (Utter & Allendorf, 1977; Okazaki, 1984; Schreck et al., 1986; Reisenbichler et al., 1992). Recent genetic data from WDFW further supports the major differentiation between coastal and inland steelhead forms.

Few detailed studies have explored the relationship between resident and anadromous *O. mykiss* residing in the same location. Genetic studies generally show that, in the same geographic area, resident and anadromous life forms are more similar to each other than either is to the same form from a different geographic area. Recently, Leider et al. (1995) found that results from comparisons of rainbow trout in the Elwha and Cedar Rivers and Washington steelhead indicate that the two forms are not reproductively isolated. Further, Leider et al. (1995) also concluded that, based on preliminary analyses of data from the Yakima and Big White Salmon Rivers, resident trout would be genetically indistinguishable from steelhead. Based on these studies, it appears that resident and anadromous *O. mykiss* from the same geographic area may share a common gene pool, at least over evolutionary time periods.

Based on the available genetic information, it was the consensus of NMFS scientists, as well as regional fishery biologists, that resident fish should generally be considered part of the steelhead ESUs. However, even though NMFS requested data regarding resident rainbow trout abundance during its west coast steelhead status review, very little was received, making status determinations with respect to resident rainbow trout problematic. Because available information does not clearly define the relationship between resident rainbow trout and steelhead, NMFS is not proposing to list resident rainbow trout at this time. However, through this proposed rule, NMFS is requesting public comment regarding the inclusion of resident rainbow trout in proposed steelhead ESUs. Prior to the final listing determination, NMFS will work with the U.S. Fish and Wildlife Service (USFWS) and other fisheries comanagers to examine the relationship between resident and anadromous *O. mykiss* in the ESUs proposed for listing.

Genetic Changes Due to Human Activities

The effects of artificial propagation and other human activities can be relevant to ESA listing determinations in two ways. First, such activities can genetically change natural populations so much that they no longer represent an evolutionarily significant component of the biological species (Waples, 1991). For example, in 1991, NMFS concluded that, as a result of massive and prolonged effects of artificial propagation, harvest, and habitat degradation, the agency could not identify natural populations of coho salmon (*O. kisutch*) in the lower Columbia River that qualified for ESA listing consideration (56 FR 29553, June 27, 1991). Second, risks to the viability and genetic integrity of native salmon populations posed by human activities may contribute to their threatened or endangered status (Goodman, 1990; Hard et al., 1992). The severity of these effects on natural populations depends both on the nature of the effects (e.g., harvest rate, gear size, or type of hatchery practice) and their magnitude (e.g., duration of a hatchery program and number and life-history stage of hatchery fish involved).

In the case of west coast steelhead, artificial propagation is a common practice to supplement stocks for recreational fisheries. However, in many

areas, a significant portion of the naturally spawning population consists of hatchery-produced steelhead. In several of the steelhead ESUs, over 50 percent of the naturally spawning fish are from hatcheries. Many of these hatchery-produced fish are derived from a few stocks which may or may not have originated from the geographic area where they are released. Artificial propagation of steelhead has been, and continues to be, a common occurrence throughout the range of west coast steelhead. However, in several of the ESUs analyzed, insufficient or uncertain information exists regarding the interactions between hatchery and natural fish, and the relative abundance of hatchery and natural stocks. The impacts of hatchery activities in specific ESUs is discussed below under Status of Steelhead ESUs.

Ecological/Genetic Diversity

Several types of physical and biological evidence were considered in evaluating the contribution of steelhead from Washington, Oregon, Idaho, and California to the ecological/genetic diversity of the biological species throughout its range. Factors examined included: (1) The physical environment—geology, soil type, air temperature, precipitation, river flow patterns, water temperature, and vegetation; (2) biogeography—marine, estuarine, and freshwater fish distributions; and (3) life history traits—age at smolting, age at spawning, river entry timing, and spawning timing. An analysis of the physical environment and life history traits provides important insight into the ecological/genetic diversity of the species and can reflect unusual or distinctive adaptations that promote evolutionary processes. Following is a brief summary of the relevance of these factors for each ESU.

ESU Determinations

The ESU determinations described here represent a synthesis of a large amount of diverse information. In general, the proposed geographic boundaries for each ESU (i.e., the watersheds within which the members of the ESU are typically found) are supported by several lines of evidence that show similar patterns. However, the diverse data sets are not always entirely congruent (nor would they be expected to be), and the proposed boundaries are not necessarily the only ones possible. For example, in some cases (e.g., in the Middle Columbia River near the Cascade Crest), environmental changes occur over a transition zone rather than abruptly.

Based on the best available scientific and commercial information, including the biological effects of human activities, NMFS has identified 15 ESUs that include steelhead populations from Washington, Oregon, Idaho, and California. The 15 ESUs are briefly described and characterized below. Genetic data (from studies of protein electrophoresis and DNA) were the primary evidence considered for the reproductive isolation criterion, supplemented by inferences about barriers to migration created by natural geographic features and human-induced changes resulting from artificial propagation and harvest. Factors considered to be most informative in evaluating ecological/genetic diversity include data pertaining to the physical environment, ocean conditions/upwelling, vegetation, estuarine and freshwater fish distributions, river entry, and spawning timing.

(1) Puget Sound

The geographic boundaries of this coastal steelhead ESU extend from the United States/Canada border and include steelhead in river basins of the Strait of Juan de Fuca, Puget Sound, and Hood Canal, WA. Included are river basins east of and including the Elwha River and north to include the Nooksack River. This region is in the rain shadow of the Olympic Mountains, is therefore drier than the rainforest area of the western Olympic Peninsula, and is dominated by western hemlock forests. Streams are characterized by cold water, high average flows, and a relatively long duration of peak flows that occur twice each year.

Recent genetic data provided by WDFW show that steelhead in the Puget Sound area generally form a coherent group distinct from populations elsewhere in Washington. Chromosomal studies show that steelhead from the Puget Sound area have a distinctive karyotype not found in other regions. No recent genetic comparisons have been made between Puget Sound and British Columbia steelhead; however, Nooksack River steelhead tend to differ genetically from other Puget Sound stocks, indicating a genetic transition zone in northern Puget Sound.

In life history traits, there appears to be a sharp transition between steelhead populations from Washington, which smolt primarily at age 2, and those in British Columbia, which most commonly smolt at age 3. This pattern holds for comparisons across the Strait of Juan de Fuca as well as for comparisons of Puget Sound and Strait of Georgia populations. At the present time, therefore, evidence suggests that the northern boundary for this ESU coincides approximately with the United States/Canada border. This ESU is primarily composed of winter steelhead but includes several stocks of summer steelhead, usually in subbasins of large river systems and above seasonal hydrologic barriers.

(2) Olympic Peninsula

This coastal steelhead ESU occupies river basins of the Olympic Peninsula, WA, west of the Elwha River and south to, but not including, the rivers that flow into Grays Harbor, WA. Streams in the Olympic Peninsula are similar to those in Puget Sound and are characterized by high levels of precipitation and cold water, high average flows, and a relatively long duration of peak flows that occur twice a year. In contrast to the more inland areas of Puget Sound where western hemlock is the dominant forest cover at sea level, lowland vegetation in this region is dominated by Sitka spruce.

Genetic data collected by WDFW indicate that steelhead in this region are substantially isolated from other regions in western Washington. Only limited life history information is available for Olympic Peninsula steelhead, and the information that does exist is primarily from winter-run fish. As with the Puget Sound ESU, known life history attributes of Olympic Peninsula steelhead are similar to those for other west coast steelhead, the notable exception being the difference between United States and Canadian populations in age at smolting. This ESU is primarily composed of winter steelhead but includes several stocks of summer steelhead in the larger rivers.

(3) Southwest Washington

This coastal steelhead ESU occupies the river basins of, and tributaries to, Grays Harbor, Willapa Bay, and the Columbia River below the Cowlitz River in Washington and below the Willamette River in Oregon. Willapa Bay and Grays Harbor in southwest Washington have extensive intertidal mud and sand flats and differ substantially from estuaries to the north and south. This similarity between the Willapa Bay and Grays Harbor estuaries results from the shared geology of the area and the transportation of Columbia River sediments northward along the Washington coast. Rivers draining into the Columbia River have their headwaters in increasingly drier areas, moving from west to east. Columbia River tributaries that drain the Cascade Mountains have proportionally higher flows in late summer and early fall than rivers on the Oregon coast.

Recent genetic data (Leider et al., 1995) show consistent differences between steelhead populations from the southwest Washington coast and coastal areas to the north, as well as Columbia River drainages east of the Cowlitz River. Genetic data do not clearly define the relationship between southwest Washington steelhead and lower Columbia River steelhead. This ESU is primarily composed of winter steelhead but includes summer steelhead in the Humptulips and Chehalis River Basins.

(4) Lower Columbia River

This coastal steelhead ESU occupies tributaries to the Columbia River between the Cowlitz and Wind Rivers in Washington and the Willamette and Hood Rivers in Oregon. Excluded are steelhead in the upper Willamette River Basin above Willamette Falls, and steelhead from the Little and Big White Salmon Rivers in Washington. Similar to Willapa Bay and Grays Harbor in southwest Washington, the lower Columbia River has extensive intertidal mud and sand flats and differs substantially from estuaries to the north and south. This similarity results from the shared geology of the area and the transportation of Columbia River sediments northward along the Washington coast. Rivers draining into the Columbia River have their headwaters in increasingly drier areas, moving from west to east. Columbia River tributaries that drain the Cascade Mountains have proportionally higher flows in late summer and early fall than rivers on the Oregon coast.

Steelhead populations in this ESU are of the coastal genetic group (Schreck et al., 1986; Reisenbichler et al., 1992; Chapman et al., 1994), and a number of genetic studies have shown that they are part of a different ancestral lineage than inland steelhead from the Columbia River Basin. Genetic data also show steelhead from this ESU to be distinct from steelhead from the upper Willamette River and coastal streams in Oregon and Washington. WDFW data showed genetic affinity between the Kalama, Wind, and Washougal River steelhead. The data show differentiation between the Lower Columbia River ESU and the Southwest Washington and Middle Columbia River Basin ESUs. This ESU is composed of winter steelhead and summer steelhead.

(5) Upper Willamette River

This coastal steelhead ESU occupies the Willamette River and its tributaries, upstream from Willamette Falls. The Willamette River Basin is zoogeographically complex. In addition to its connection to the Columbia River, the Willamette has had connections with coastal basins through stream capture and headwater transfer events (Minckley et al., 1986).

Steelhead from the upper Willamette River are genetically distinct from those in the lower river. Reproductive isolation from lower river populations may have been facilitated by Willamette Falls, which is known to be a migration barrier to some anadromous salmonids. For example, winter steelhead and spring chinook salmon (*O. tshawytscha*) occurred historically above the falls, but summer steelhead, fall chinook salmon, and coho salmon did not (PGE, 1994).

The native steelhead of this basin are late-migrating winter steelhead, entering fresh water primarily in March and April (Howell et al., 1985), whereas most other populations of west coast winter steelhead enter fresh water beginning in November or December. As early as 1885, fish ladders were constructed at Willamette Falls to aid the passage of anadromous fish. The ladders have been modified and rebuilt, most recently in 1971, as technology has improved (Bennett, 1987; PGE, 1994). These fishways facilitated successful introduction of Skamania stock summer steelhead and early-migrating Big Creek stock winter steelhead to the upper basin. Another effort to expand the steelhead production in the upper Willamette River was the stocking of native steelhead in tributaries not historically used by that species. Native steelhead primarily used tributaries on the east side of the basin, with cutthroat trout predominating in streams draining the west side of the basin.

Nonanadromous *O. mykiss* are known to occupy the Upper Willamette River Basin; however, most of these nonanadromous populations occur above natural and manmade barriers (Kostow, 1995). Historically, spawning by Upper Willamette River steelhead was concentrated in the North and Middle Santiam River Basins (Fulton, 1970). These areas are now largely blocked to fish passage by dams, and steelhead spawning is now distributed throughout more of the Upper Willamette River Basin than in the past (Fulton, 1970). Due to introductions of nonnative steelhead stocks and transplantation of native stocks within the basin, it is difficult to formulate a clear picture of the present distribution of native Upper Willamette River Basin steelhead, and their relationship to nonanadromous and possibly residualized *O. mykiss* within the basin.

(6) Oregon Coast

This coastal steelhead ESU occupies river basins on the Oregon coast north of Cape Blanco, excluding rivers and streams that are tributaries of the Columbia River. Most rivers in this area drain the Coast Range Mountains, have a single peak in flow in December or January, and have relatively low flow during summer and early fall. The coastal region receives fairly high precipitation levels, and the vegetation is dominated by Sitka spruce and western hemlock. Upwelling off the Oregon coast is much more variable and generally weaker than areas south of Cape Blanco. While marine conditions off the Oregon and Washington coasts are similar, the Columbia River has greater influence north of its mouth, and the continental shelf becomes broader off the Washington coast.

Recent genetic data from steelhead in this ESU are limited, but they show a level of differentiation from populations from Washington, the Columbia River Basin, and coastal areas south of Cape Blanco. Ocean migration patterns also suggest a distinction between steelhead populations north and south of Cape Blanco. Steelhead (as well as chinook and coho salmon) from streams south of Cape Blanco tend to be south-migrating rather than north-migrating (Everest, 1973; Nicholas & Hankin, 1988; Pearcy et al., 1990; Pearcy, 1992).

The Oregon Coast ESU primarily contains winter steelhead; there are only two native stocks of summer steelhead. Summer steelhead occur only in the Siletz River, above a waterfall, and in the North Umpqua River, where migration distance may prevent full utilization of available habitat by winter steelhead. Alsea River winter steelhead have been widely used for steelhead broodstock in coastal rivers. Populations of nonanadromous *O. mykiss* are relatively uncommon on the Oregon coast, as compared with other areas, occurring primarily above migration barriers and in the Umpqua River Basin (Kostow, 1995).

Little information is available regarding migration and spawn timing of natural steelhead populations within this ESU. Age structure appears to be similar to other west coast steelhead, dominated by 4-year-old spawners. Iteroparity is more common among Oregon coast steelhead than populations to the north.

(7) Klamath Mountains Province

This coastal steelhead ESU occupies river basins from the Elk River in Oregon to the Klamath and Trinity Rivers in California, inclusive. A detailed discussion of this ESU is presented in a previous NMFS status review (Busby et al., 1994). Geologically, this region includes the

Klamath Mountains Province, which is not as erosive as the Franciscan formation terrains south of the Klamath River Basin. Dominant vegetation along the coast is redwood forest, while some interior basins are much drier than surrounding areas and are characterized by many endemic species. Elevated stream temperatures are a factor affecting steelhead and other species in some of the larger river basins. With the exception of major river basins such as the Rogue and Klamath, most rivers in this region have a short duration of peak flows. Strong and consistent coastal upwelling begins at about Cape Blanco and continues south into central California, resulting in a relatively productive nearshore marine environment.

Protein electrophoretic analyses of coastal steelhead have indicated genetic discontinuities between the steelhead of this region and those to the north and south (Hatch, 1990; Busby et al., 1993, 1994). Chromosomal studies have also identified a distinctive karyotype that has been reported only from populations within this ESU. Steelhead within this ESU include both winter and summer steelhead as well as the unusual ''half-pounder'' life history (characterized by immature steelhead that return to fresh water after only 2 to 4 months in salt water, overwinter in rivers without spawning, then return to salt water the following spring).

Among the remaining questions regarding this ESU is the relationship between *O. mykiss* below and above Klamath Falls, OR. Behnke (1992) has proposed that the two groups are in different subspecies, and that the upper group, a redband trout (*O. m. newberrii*), exhibited anadromy until blocked by the Copco dams in the early 1900's. However, Moyle (1976) stated that Klamath Falls was the upstream barrier to anadromous fish prior to construction of the dams.

(8) Northern California

This coastal steelhead ESU occupies river basins from Redwood Creek in Humboldt County, CA to the Gualala River, inclusive. Dominant vegetation along the coast is redwood forest, while some interior basins are much drier than surrounding areas and are characterized by many endemic species. This area includes the extreme southern end of the contiguous portion of the Coast Range Ecoregion (Omernick, 1987). Elevated stream temperatures are a factor in some of the larger river basins (greater than 20°C), but not to the extent that they are in river basins farther south. Precipitation is generally higher in this geographic area than in regions to the south, averaging 100–200 cm of rainfall annually (Donley et al., 1979). With the exception of major river basins such as the Eel, most rivers in this region have peak flows of short duration. Strong and consistent coastal upwelling begins at about Cape Blanco and continues south into central California, resulting in a relatively productive nearshore marine environment.

There are life history similarities between steelhead of the Northern California ESU and the Klamath Mountains Province ESU. This ESU includes both winter and summer steelhead, including what is presently considered to be the southernmost population of summer steelhead, in the Middle Fork Eel River. Half-pounder juveniles also occur in this geographic area, specifically in the Mad and Eel Rivers. Snyder (1925) first described the half-pounder from the Eel River; however, Cramer et al. (1995) suggested that adults with the half-pounder juvenile life history may not spawn south of the Klamath River Basin. As with the Rogue and Klamath Rivers, some of the larger rivers in this area have migrating steelhead year-round, and seasonal runs have been named. River entry ranges from August through June and spawning from December through April, with peak spawning in January in the larger basins and late February and March in the smaller coastal basins.

(9) Central California Coast

This coastal steelhead ESU occupies river basins from the Russian River to Soquel Creek, Santa Cruz County (inclusive), and the drainages of San Francisco and San Pablo Bays; excluded is the Sacramento-San Joaquin River Basin of the Central Valley of California. This area is characterized by very erosive soils in the coast range mountains; redwood forest is the dominant coastal vegetation for these drainages. Precipitation is lower here than in areas to the north, and elevated stream temperatures (greater than 20°C) are common in the summer. Coastal upwelling in this region is strong and consistent, resulting in a relatively productive nearshore marine environment.

Analysis of mitochondrial DNA (mtDNA) data suggests that genetic transitions occur north of the Russian River and north of Monterey, California. Allozyme data show large genetic differences between steelhead populations from the Eel and Mad Rivers and those to the south. Only winter steelhead are found in this ESU and those to the south. River entry ranges from October in the larger basins, late November in the smaller coastal basins, and continues through June. Steelhead spawning begins in November in the larger basins, December in the smaller coastal basins, and can continue through April with peak spawning generally in February and March. Little other life history information exists for steelhead in this ESU.

(10) South/Central California Coast

This coastal steelhead ESU occupies rivers from the Pajaro River, located in Santa Cruz County, CA, to (but not including) the Santa Maria River. Most rivers in this ESU drain the Santa Lucia Range, the southernmost unit of the California Coast Ranges. The climate is drier and warmer than in the north, which is reflected in the vegetational change from coniferous forest to chaparral and coastal scrub. Another biological transition at the north of this area is the southern limit of the distribution of coho salmon (*O. kisutch*). The mouths of many of the rivers and streams in this area are seasonally closed by sand berms that form during periods of low flow in the summer. The southern boundary of this ESU is near Point Conception, a well-known transition area for the distribution and abundance of marine flora and fauna.

Mitochondrial DNA data provide evidence for a genetic transition in the vicinity of Monterey Bay. Both mtDNA and allozyme data show large genetic differences between populations in this area, but do not provide a clear picture of population structure. Only winter steelhead are found in this ESU. River entry ranges from late November through March, with spawning from January through April. Little other life history information exists for steelhead in this ESU. The relationship between anadromous and nonanadromous *O. mykiss*, including possibly residualized fish upstream from dams, is unclear, but likely to be important.

(11) Southern California

This coastal steelhead ESU occupies rivers from (and including) the Santa Maria River to the southern extent of the species range which is presently considered to be Malibu Creek, in Los Angeles County (McEwan & Jackson, 1996). Migration and life history patterns of southern California steelhead depend more strongly on rainfall and streamflow than is the case for steelhead populations farther north (Moore, 1980; Titus et al., in press). River entry ranges from early November through June, with peaks in January and February. Spawning primarily begins in January and continues through early June, with

peak spawning in February and March. Average rainfall is substantially lower and more variable in this ESU than regions to the north, resulting in increased duration of sand berms across the mouths of streams and rivers and, in some cases, complete dewatering of the marginal habitats. Environmental conditions in marginal habitats may be extreme (e.g., elevated water temperatures, droughts, floods, and fires) and presumably impose selective pressures on steelhead populations. The use of southern California streams and rivers with elevated temperatures by steelhead suggests that populations within this ESU are able to withstand higher temperatures than those to the north. The relatively warm and productive waters of the Ventura River resulted in more rapid growth of juvenile steelhead than occurred in northerly populations. However, relatively little life history information exists for steelhead from this ESU.

Genetic data show large differences between steelhead populations within this ESU as well as between these and populations to the north. Steelhead populations between the Santa Ynez River and Malibu Creek show a predominance of a mtDNA type that is rare in populations to the north. Allozyme data indicate that two samples from Santa Barbara County are genetically among the most distinctive of any natural populations of coastal steelhead yet examined.

Among the remaining questions regarding this ESU are the distribution and abundance of steelhead south of Malibu Creek. For example, in years of substantial rainfall there have been reports of steelhead in some coastal streams as far south as the Santa Margarita River, San Diego County (Hubbs, 1946; Barnhart, 1986; Higgins, 1991; McEwan & Jackson, 1996; Titus et al., in press).

(12) Central Valley

This coastal steelhead ESU occupies the Sacramento and San Joaquin Rivers and their tributaries. In the San Joaquin Basin, however, the best available information suggests that the current range of steelhead has been limited to the Stanislaus, Tuolumne, and Merced Rivers (tributaries), and the mainstem San Joaquin River to its confluence with the Merced River by human alteration of formerly available habitat. The Sacramento and San Joaquin Rivers offer the only migration route to the drainages of the Sierra Nevada and southern Cascade mountain ranges for anadromous fish. The distance from the Pacific Ocean to spawning streams can exceed 300 km, providing unique potential for reproductive isolation among steelhead. The Central Valley is much drier than the coastal regions to the west, receiving on average only 10–50 cm of rainfall annually. The valley is characterized by alluvial soils, and native vegetation was dominated by oak forests and prairie grasses prior to agricultural development. Steelhead within this ESU have the longest freshwater migration of any population of winter steelhead. There is essentially one continuous run of steelhead in the upper Sacramento River. River entry ranges from July through May, with peaks in September and February. Spawning begins in late December and can extend into April (McEwan & Jackson, 1996).

Steelhead ranged throughout the tributaries and headwaters of the Sacramento and San Joaquin Rivers prior to dam construction, water development, and watershed perturbations of the 19th and 20th centuries. Present steelhead distribution in the central valley drainages has been greatly reduced (McEwan & Jackson, 1996), particularly in the San Joaquin basin. While there is little historical documentation regarding steelhead distribution in the San Joaquin River system, it can be assumed (based on known chinook salmon distributions in this drainage) that steelhead were present in the San Joaquin River and its tributaries from at least the San Joaquin River headwaters northward. With regards to the present distribution of steelhead, there is also only limited information. McEwan and Jackson (1996) reported that a small, remnant run of steelhead persists in the Stanislaus River, that steelhead were observed in the Tuolumne River in 1983, and that a few large rainbow trout that appear to be steelhead enter the Merced River Hatchery annually.

Recent allozyme data show that samples of steelhead from Deer and Mill Creeks and Coleman NFH on the Sacramento River are well differentiated from all other samples of steelhead from California. There are two recognized taxonomic forms of native *O. mykiss* within the Sacramento River Basin: Coastal steelhead/rainbow trout (*O. m. irideus*, Behnke, 1992) and Sacramento redband trout (*O. m. stonei*, Behnke, 1992). It is not clear how the coastal and Sacramento redband forms of *O. mykiss* interacted in the Sacramento River prior to construction of Shasta Dam in the 1940s. However, it appears the two forms historically co-occurred at spawning time, but may have maintained reproductive isolation.

Among the remaining questions regarding this ESU are the current presence, distribution, and abundance of steelhead in the San Joaquin River and its main tributaries (stanislaus, tuolumne, and Merced Rivers), and whether these steelhead stocks historically represented a separate ESU from those in the Sacramento River Basin. Also, the relationship between anadromous and nonanadromous *O. mykiss*, including possibly residualized fish upstream from dams, is unclear.

(13) Middle Columbia River Basin

This inland steelhead ESU occupies the Columbia River Basin from Mosier Creek, OR, upstream to the Yakima River, WA, inclusive. Steelhead of the Snake River Basin are excluded. Franklin and Dyrness (1973) placed the Yakima River Basin in the Columbia Basin Physiographic Province, along with the Deschutes, John Day, Walla Walla, and lower Snake River Basins. Geology within this province is dominated by the Columbia River Basalt formation, stemming from lava deposition in the miocene epoch, overlain by plio-Pleistocene deposits of glaciolacustrine origin (Franklin & Dyrness, 1973). This intermontane region includes some of the driest areas of the Pacific Northwest, generally receiving less than 40 cm of rainfall annually (Jackson, 1993). Vegetation is of the shrub-steppe province, reflecting the dry climate and harsh temperature extremes.

Genetic differences between inland and coastal steelhead are well established, although some uncertainty remains about the exact geographic boundaries of the two forms in the Columbia River (see discussion above for the Lower Columbia River ESU). Electrophoretic and meristic data show consistent differences between steelhead from the middle Columbia and Snake Rivers. No recent genetic data exist for natural steelhead populations in the upper Columbia River, but recent WDFW data show that the Wells Hatchery stock from the upper Columbia River does not have a close genetic affinity to sampled populations from the middle Columbia River.

All steelhead in the Columbia River Basin upstream from The Dalles Dam are summer-run, inland steelhead (Schreck et al., 1986; Reisenbichler et al., 1992; Chapman et al., 1994). Steelhead in Fifteenmile Creek, OR, are genetically allied with inland *O. mykiss*, but are winter-run. Winter steelhead are also found in the Klickitat and White Salmon Rivers, WA.

Life history information for steelhead of this ESU indicates that most middle Columbia River steelhead smolt at 2 years and spend 1 to 2 years in salt

water (i.e., 1-ocean and 2-ocean fish, respectively) prior to re-entering fresh water, where they may remain up to a year prior to spawning (Howell et al., 1985; BPA, 1992). Within this ESU, the Klickitat River is unusual in that it produces both summer and winter steelhead, and the summer steelhead are dominated by 2-ocean steelhead, whereas most other rivers in this region produce about equal numbers of both 1- and 2-ocean steelhead.

(14) Upper Columbia River Basin

This inland steelhead ESU occupies the Columbia River Basin upstream from the Yakima River, WA, to the United States/Canada Border. The geographic area occupied by this ESU forms part of the larger Columbia Basin Ecoregion (Omernik, 1987). The Wenatchee and Entiat Rivers are in the Northern Cascades Physiographic Province, and the Okanogan and Methow Rivers are in the Okanogan Highlands Physiographic Province. The geology of these provinces is somewhat similar and very complex, developed from marine invasions, volcanic deposits, and glaciation (Franklin & Dyrness, 1973). The river valleys in this region are deeply dissected and maintain low gradients except in extreme headwaters. The climate in this area includes extremes in temperatures and precipitation, with most precipitation falling in the mountains as snow. Streamflow in this area is provided by melting snowpack, groundwater, and runoff from alpine glaciers. Mullan et al. (1992) described this area as a harsh environment for fish and stated that ''it should not be confused with more studied, benign, coastal streams of the Pacific Northwest.''

Life history characteristics for Upper Columbia River Basin steelhead are similar to those of other inland steelhead ESUs; however, some of the oldest smolt ages for steelhead, up to 7 years, are reported from this ESU. This may be associated with the cold stream temperatures (Mullan et al., 1992). Based on limited data available from adult fish, smolt age in this ESU is dominated by 2-year-olds. Steelhead from the Wenatchee and Entiat Rivers return to fresh water after 1 year in salt water, whereas Methow River steelhead are primarily 2-ocean resident (Howell et al., 1985).

In 1939, the construction of Grand Coulee Dam on the Columbia River (RKm 956) blocked over 1,800 km of river from access by anadromous fish (Mullan et al., 1992). In an effort to preserve fish runs affected by Grand Coulee Dam, all anadromous fish migrating upstream were trapped at Rock Island Dam (RKm 729) from 1939 through 1943 and either released to spawn in tributaries between Rock Island and Grand Coulee Dams or spawned in hatcheries and the offspring released in that area (Peven, 1990; Mullan et al., 1992; Chapman et al., 1994). Through this process, stocks of all anadromous salmonids, including steelhead, which historically were native to several separate subbasins above Rock Island Dam, were randomly redistributed among tributaries in the Rock Island-Grand Coulee reach. Exactly how this has affected stock composition of steelhead is unknown.

(15) Snake River Basin

This inland steelhead ESU occupies the Snake River Basin of southeast Washington, northeast Oregon and Idaho. The Snake River flows through terrain that is warmer and drier on an annual basis than the upper Columbia Basin or other drainages to the north. Geologically, the land forms are older and much more eroded than most other steelhead habitat. The eastern portion of the basin flows out of the granitic geological unit known as the Idaho Batholith. The western Snake River Basin drains sedimentary and volcanic soils of the Blue Mountains complex. Collectively, the environmental factors of the Snake River Basin result in a river that is warmer and more turbid, with higher pH and alkalinity, than is found elsewhere in the range of inland steelhead.

Snake River Basin steelhead are summer steelhead, as are most inland steelhead, and comprise 2 groups, A-run and B-run, based on migration timing, ocean-age, and adult size. Snake River Basin steelhead enter fresh water from June to October and spawn in the following spring from March to May. A-run steelhead are thought to be predominately l-ocean, while B-run steelhead are thought to be 2-ocean (IDFG, 1994). Snake River Basin steelhead usually smolt at age-2 or -3 years (Whitt, 1954; BPA, 1992; Hassemer, 1992).

The steelhead population from Dworshak National Fish Hatchery (NFH) is the most divergent single population of inland steelhead based on genetic traits determined by protein electrophoresis. Additionally, steelhead returning to Dworshak NFH are considered to have a distinctive appearance and are the one steelhead population that is consistently referred to as B-run. NMFS considered the possibility that Dworshak NFH steelhead should be in their own ESU. However, little specific information was available regarding the characteristics of this population's native habitat in the North Fork Clearwater River, which is currently unavailable to anadromous fish due blockage by Dworshak Dam.

Status of Steelhead ESUs

The ESA defines the term ''endangered species'' as ''any species which is in danger of extinction throughout all or a significant portion of its range.'' The term ''threatened species'' is defined as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' Thompson (1991) suggested that conventional rules of thumb, analytical approaches, and simulations may all be useful in making this determination. In previous status reviews (e.g., Weitkamp et al., 1995), NMFS has identified a number of factors that should be considered in evaluating the level of risk faced by an ESU, including: (1) Absolute numbers of fish and their spatial and temporal distribution; (2) current abundance in relation to historical abundance and current carrying capacity of the habitat; (3) trends in abundance; (4) natural and human-influenced factors that cause variability in survival and abundance; (5) possible threats to genetic integrity (e.g., from strays or outplants from hatchery programs); and (6) recent events (e.g., a drought or changes in harvest management) that have predictable short-term consequences for abundance of the ESU.

During the coastwide status review for steelhead, NMFS evaluated both quantitative and qualitative information to determine whether any proposed ESU is threatened or endangered according to the ESA. The types of information used in these assessments are described below, followed by a summary of results for each ESU.

Quantitative Assessments: A significant component of NMFS' status determination was analyses of abundance trend data. Principal data sources for these analyses were historical and recent runsize estimates derived from dam and weir counts, stream surveys, and angler catch estimates. Of the 160 steelhead stocks for which sufficient data existed, 118 (74 percent) exhibited declining trends in abundance, while the remaining 42 (26 percent) exhibited increasing trends in abundance. Sixty-five of the stock abundance trends analyzed were statistically significant. Of these, 57 (88 percent) indicated declining trends in abundance and the remaining 8 (12 percent) indicated increasing trends in

abundance. It should be noted that NMFS' analysis assumes that catch trends reflect trends in overall population abundance. NMFS recognizes that there are many problems with this assumption, with the result that the index may not precisely represent trends in the total population in a river basin. However, angler catch is the only information available for many steelhead populations, and changes in catch still provide a useful indication of trends in total population abundance.

Analyses of steelhead abundance indicate that across the species' range, the majority of naturally-reproducing steelhead stocks have exhibited declining long-term trends in abundance. The severity of declines in abundance tends to vary by geographic region. Based on historical and recent abundance estimates, stocks in the southern extent of the coastal steelhead range (i.e., California's Central Valley, South/Central and Southern California ESUs) appear to have declined significantly, with widespread stock extirpations. Northern areas of the coastal steelhead range tend to be relatively more stable with larger overall population sizes. However, stocks in these areas continue to exhibit downward abundance trends as well. In several areas, a lack of accurate runsize and trend data make estimating abundance difficult.

Qualitative Assessments: Numerous studies have attempted to classify the status of steelhead populations on the west coast of the United States. However, problems exist in applying results of these studies to NMFS' ESA evaluations. A significant problem is that the definition of ''stock'' or ''population'' varies considerably in scale among studies, and sometimes among regions within a study. In several studies, identified units range in size from large river basins, to minor coastal streams and tributaries. Only two studies (Nehlsen et al., 1991; Higgins et al., 1992) used categories which relate to the ESA ''threatened'' or ''endangered'' status. However, these studies applied their own interpretations of these terms to individual stocks, not to broader geographic units such as those discussed here. Another significant problem in applying previously published studies to this evaluation is the manner in which stocks or populations were selected to be included in the review. Several studies did not evaluate stocks which were not perceived to be at risk; therefore, it is difficult to determine the proportion of stocks they considered to be at risk in any given area.

Nehlsen et al. (1991) considered salmon and steelhead stocks throughout Washington, Idaho, Oregon, and California and enumerated all stocks that they found to be extinct or at risk of extinction. They considered 23 steelhead stocks to be extinct, one possibly extinct, 27 at high risk of extinction, 18 at moderate risk of extinction, and 30 of special concern. Steelhead stocks that do not appear in their summary were either not at risk of extinction or there was insufficient information to classify them. Higgins et al. (1992) used the same classification scheme as Nehlsen et al. (1991), but provided a more detailed review of northern California salmon stocks. Of the eleven steelhead stocks Higgins et al. identified as being at some risk of extinction, eight were classified as at high risk, two were classified as at moderate risk, and one was classified as of concern. Nickelson et al. (1992) rated coastal Oregon (excluding Columbia River Basin) salmon and steelhead stocks on the basis of their status over the past 20 years, classifying stocks as ''depressed'' (spawning habitat underseeded, declining trends, or recent escapements below long-term average), ''healthy'' (spawning habitat fully seeded and stable or increasing trends), or ''of special concern'' (300 or fewer spawners or a problem with hatchery interbreeding). Of 27 coastal populations identified, 5 were classified as healthy, 1 as of special concern, and 21 as depressed. Washington Department of Fisheries et al. (1993) categorized all salmon and steelhead stocks in Washington on the basis of stock origin (''native,'' ''non-native,'' ''mixed,'' or ''unknown''), production type (''wild,'' ''composite,'' or ''unknown'') and status (''healthy,'' ''depressed,'' ''critical,'' or ''unknown''). Of the 141 steelhead stocks identified in Washington, 36 were classified as healthy, 44 as critical, 1 as depressed, and 60 as unknown.

The following summaries draw on these quantitative and qualitative assessments to describe NMFS' conclusions regarding the status of each steelhead ESU.

(1) Puget Sound

No estimates of historical (pre-1960s) abundance specific to the Puget Sound ESU are available. Total run size for Puget Sound for the early 1980s can be calculated from estimates in Light (1987) as about 100,000 winter steelhead and 20,000 summer steelhead. Light (1987) provided no estimate of hatchery proportion specific to Puget Sound streams. For Puget Sound and coastal Washington combined, Light (1987) estimated that 70 percent of steelhead in ocean runs were of hatchery origin; the percentage in escapement to spawning grounds would be substantially lower due to differential harvest and hatchery rack returns. Recent 5-year average natural escapements for streams with adequate data range from less than 100 to 7,200, with corresponding total run sizes of 550 to 19,800. Total recent run size for major stocks in this ESU was greater than 45,000, with total natural escapement of about 22,000.

Of the 21 independent stocks for which adequate escapement information exists, 17 stocks have been declining and 4 increasing over the available data series, with a range from 18 percent annual decline (Lake Washington winter steelhead) to 7 percent annual increase (Skykomish River winter steelhead). Eleven of these trends (nine negative, two positive) were significantly different from zero. The two basins producing the largest numbers of steelhead (Skagit and Snohomish Rivers) both have overall upward trends.

Hatchery fish in this ESU are widespread, spawn naturally throughout the region, and are largely derived from a single stock (Chambers Creek). The proportion of spawning escapement comprised of hatchery fish ranged from less than 1 percent (Nisqually River) to 51 percent (Morse Creek). In general, hatchery proportions are higher in Hood Canal and the Strait of Juan de Fuca than in Puget Sound proper. Most of the hatchery fish in this region originated from stocks indigenous to the ESU, but are generally not native to local river basins. The WDFW has provided information supporting substantial temporal separation between hatchery and natural winter steelhead in this ESU. Given the lack of strong trends in abundance for the major stocks and the apparently limited contribution of hatchery fish to production of the late-run winter stocks, most winter steelhead stocks in the Puget Sound ESU appear to be naturally sustaining at this time. However, there are clearly isolated problems with sustainability of some steelhead runs in this ESU, notably Deer Creek summer steelhead (although juvenile abundance for this stock increased in 1994) and Lake Washington winter steelhead. Summer steelhead stocks within this ESU are all small, occupy limited habitat, and most are subject to introgression by hatchery fish.

NMFS concludes that the Puget Sound steelhead ESU is not presently in danger of extinction, nor is it likely to become endangered in the foreseeable

future. Despite this conclusion, NMFS has several concerns about the overall health of this ESU and about the status of certain stocks within the ESU. Recent trends in stock abundance are predominantly downward, although this may be largely due to recent climate conditions. Trends in the two largest stocks (Skagit and Snohomish Rivers) have been upward. The majority of steelhead produced within the Puget Sound region appear to be of hatchery origin, but most hatchery fish are harvested and do not contribute to natural spawning escapement. NMFS is particularly concerned that the majority of hatchery production originates from a single stock (Chambers Creek). The status of certain stocks within the ESU is also of concern, especially the depressed status of most stocks in the Hood Canal area and the steep declines of Lake Washington winter steelhead and Deer Creek summer steelhead.

(2) Olympic Peninsula

No estimates of historical (pre-1960s) abundance specific to the Olympic Peninsula ESU are available. Total run size for the major stocks in the Olympic Peninsula ESU for the early 1980's can be calculated from estimates in Light (1987) as about 60,000 winter steelhead. Light (1987) provided no estimate of hatchery proportion for these streams. For Puget Sound and coastal Washington together, Light (1987) estimated that 70 percent of steelhead were of hatchery origin. Recent 5-year average natural escapements for streams with adequate data range from 250 to 6,900, with corresponding total run sizes of 450 to 19,700. Total recent (1989–1993 average) run size for major streams in this ESU was about 54,000, with a natural escapement of 20,000 fish.

Of the 12 independent stocks for which adequate information existed to compute trends, 7 were declining and 5 increasing over the available data series, with a range from 8 percent annual decline to 14 percent annual increase. Three of the downward trends were significantly different from zero. Three of the four river basins producing the largest numbers of natural fish had upward trends in basinwide total numbers.

Hatchery fish are widespread and escaping to spawn naturally throughout the region, with hatchery production largely derived from a few parent stocks. Estimated proportions of hatchery fish in natural spawning areas range from 16 percent (Quillayute River) to 44 percent (Quinault River), with the two largest producers of natural fish (Quillayute and Queets Rivers) having the lowest proportions. The WDFW has provided information supporting substantial temporal separation between hatchery and natural winter steelhead in this ESU. Given the lack of strong trends in abundance and the apparently limited contribution of hatchery fish to production of the late-run winter stocks, most winter steelhead stocks in the Olympic Peninsula ESU appear to be naturally sustaining at this time. However, there are clearly isolated problems with sustainability of some winter steelhead runs in this ESU, notably the Pysht/Independents stock, which has a small population with a strongly declining trend over the available data series, and the Quinault River stock, which has a declining trend and substantial hatchery contribution to natural spawning.

NMFS concludes that the Olympic Peninsula steelhead ESU is not presently in danger of extinction, nor is it likely to become endangered in the foreseeable future. Despite this conclusion, NMFS has several concerns about the overall health of this ESU and about the status of certain stocks within the ESU. The majority of recent trends are upward (including three of the four largest stocks), although trends in several stocks are downward. These downward trends may be largely due to recent climate conditions. There is widespread production of hatchery steelhead within this ESU, largely derived from a few parent stocks, which could increase genetic homogenization of the resource despite management efforts to minimize introgression of the hatchery gene pool into natural populations.

(3) Southwest Washington

No estimates of historical (pre-1960's) abundance specific to this ESU are available. Recent 5-year average natural escapements for individual tributaries with adequate data range from 150 to 2,300, with the Chehalis River and its tributaries representing the bulk of production. Total recent (5-year average) natural escapement for major streams in this ESU was about 13,000.

All but 1 (Wynoochee River) of the 12 independent stocks have been declining over the available data series, with a range from 7 percent annual decline to 0.4 percent annual increase. Six of the downward trends were significantly different from zero. For Washington streams, these trends are for the late run ''wild'' component of winter steelhead populations; Oregon data included all stock components. Most of the Oregon trends are based on angler catch, and so may not reflect trends in underlying population abundance. In general, stock condition appears to be healthier in southwest Washington than in the lower Columbia River Basin.

Hatchery fish are widespread and escaping to spawn naturally throughout the region, largely from parent stocks from outside the ESU. This could substantially change the genetic composition of the resource despite management efforts to minimize introgression of the hatchery gene pool into natural populations. Estimates of the proportion of hatchery fish on natural spawning grounds range from 9 percent (Chehalis, the largest producer of steelhead in the ESU) to 82 percent (Clatskanie). Available information suggests substantial temporal separation between hatchery and natural winter steelhead in this ESU; however, some Washington stocks (notably lower Columbia River tributaries) appear to have received substantial hatchery contributions to natural spawning.

NMFS concludes that the Southwest Washington steelhead ESU is not presently in danger of extinction, nor is it likely to become endangered in the foreseeable future. Almost all stocks within this ESU for which data exist have been declining in the recent past, although this may be partly due to recent climate conditions. NMFS is very concerned about the pervasive opportunity for genetic introgression from hatchery stocks within the ESU and about the status of summer steelhead in this ESU. There is widespread production of hatchery steelhead within this ESU, largely from parent stocks from outside the ESU. This could substantially change the genetic composition of the resource despite management efforts to minimize introgression of the hatchery gene pool into natural populations.

(4) Lower Columbia River

No estimates of historical (pre–1960's) abundance specific to this ESU are available. Total run size for the major stocks in the lower Columbia River (below Bonneville Dam, including the upper Willamette ESU) for the early 1980's can be calculated from estimates in Light (1987) as approximately 150,000 winter steelhead and 80,000 summer steelhead. Light (1987) estimated that 75 percent of the total run (summer and winter steelhead combined) was of hatchery origin. Recent 5-year average natural escapements for streams with adequate data range from less than 100 to 1,100. Total recent run size for major streams in this ESU was greater than 16,000, but this total includes only the few basins for which estimates are available.

Of the 18 stocks for which adequate adult escapement trend data exists, 11 have been declining and 7 increasing, with a range from 24 percent annual decline to 48 percent annual increase. Eight of these trends (5 negative, 3 positive) were significantly different from zero. Most of the data series for this ESU are short, beginning only in the late 1970's to the mid-1980's. Thus, they may be heavily influenced by short-term climate effects. Some of the Washington trends (notably those for the Cowlitz and Kalama River Basins) have been influenced (positively or negatively) by the 1980 eruption of Mount Saint Helens. For Washington streams, these trends are for the late run ''wild'' component of winter steelhead populations; Oregon data included all stock components. Most of the Oregon trends are based on angler catch, and so may not reflect trends in underlying population abundance.

Hatchery fish are widespread, and many stray to spawn naturally throughout the region. Most of the hatchery stocks used originated primarily from stocks within the ESU, but many are not native to local river basins. The WDFW has provided information supporting substantial temporal separation between hatchery and natural winter steelhead in this ESU; however, some Washington stocks (notably Kalama River winter and summer steelhead) appear to have substantial hatchery contribution to natural spawning. ODFW estimates of hatchery composition indicate a range from about 30 percent (Sandy River and Tanner Creek winter steelhead) to 80 percent (Hood River summer steelhead) hatchery fish in spawning escapements. Estimates for Hood River winter steelhead range from 0 percent (ODFW, 1995b) to greater than 40 percent (ODFW, 1995a).

NMFS concludes that the Lower Columbia River steelhead ESU is not presently in danger of extinction, but is likely to become endangered in the foreseeable future. The majority of stocks within this ESU for which data exist have been declining in the recent past, but some have been increasing strongly. However, the strongest upward trends are either non-native stocks (Lower Willamette River and Clackamas River summer steelhead) or stocks that are recovering from major habitat disruption and are still at low abundance (mainstem and North Fork Toutle River). NMFS is very concerned about the pervasive opportunity for genetic introgression from hatchery stocks within the ESU and about the status of summer steelhead in this ESU. Concerns about hatchery influence are especially strong for summer steelhead and Oregon winter steelhead stocks, where there appears to be substantial overlap in spawning between hatchery and natural fish.

(5) Upper Willamette River

No estimates of historical (pre-1960's) abundance specific to this ESU are available. Total recent 5-year average run size for this ESU can be estimated from counts at Willamette Falls for the years 1989–1993. Dam counts indicate that the late-run (''native'') winter steelhead average run size was approximately 4,200, while early-run winter and summer steelhead averaged 1,900 and 9,700 respectively. Adequate angler catch data are available to derive approximate average winter steelhead escapement for three tributaries: Mollala River, 2,300 (predominantly non-native); North Fork Santiam River, 2,000; South Fork Santiam River, 550.

Total basin run-size or escapement estimates for both total winter and late winter steelhead exhibit declines, while summer steelhead estimates exhibit an increase. All of these basin-wide estimates have exhibited large fluctuations. Of the three tributary winter steelhead stocks for which adequate adult escapement information exists to compute trends, two have been declining and one increasing, with a range from 4.9 percent annual decline to 2.4 percent annual increase. None of these trends were significantly different from zero.

Hatchery fish are widespread and escaping to spawn naturally throughout the region. Both summer steelhead and early-run winter steelhead have been introduced into the basin and escape to spawn naturally in substantial numbers. Indigenous late-run winter steelhead are also produced in the Santiam River Basin. Estimates of hatchery contribution to winter steelhead escapements are available only for the North Fork Santiam River and the Mollala River and are variable, ranging from 14 percent (ODFW, 1995b) to 54 percent (ODFW, 1995a) on the North Fork Santiam River. There is probably some temporal and spatial separation in spawning between the early and late winter stocks. While little information exists on the actual contribution of hatchery fish to natural production, given the generally low numbers of fish escaping to tributaries and the general declines in winter steelhead abundance in the basin, NMFS has substantial concern that the majority of natural winter steelhead populations in this ESU may not be self-sustaining. All summer steelhead within the range of this ESU are introduced from outside the area (i.e., they are non-native), so are not considered as part of the ESU. Natural reproduction by these introduced summer steelhead may be quite limited.

NMFS concludes that the Upper Willamette steelhead ESU is not presently in danger of extinction, nor is it likely to become endangered in the foreseeable future. While historical information regarding this ESU is lacking, geographic range and historical abundance are believed to have been relatively small compared to other ESUs, and current production probably represents a larger proportion of historical production than is the case in other Columbia River Basin ESUs. NMFS is concerned about the pervasive opportunity for genetic introgression from hatchery stocks within the ESU, as well as the potential ecological interactions between introduced stocks and native stocks.

(6) Oregon Coast

No estimates of historical abundance specific to this ESU are available, except for counts at Winchester Dam on the North Umpqua River and angler catch records beginning in 1953. Estimated total run size for the major stocks on the Oregon Coast (including areas south of Cape Blanco) for the early 1980s are given by Light (1987) as approximately 255,000 winter steelhead and 75,000 summer steelhead. Of these, 69 percent of winter and 61 percent of summer steelhead were of hatchery origin, resulting in estimated naturally-produced run sizes of 79,000 winter and 29,000 summer steelhead. Recent 5-year average total (natural and hatchery) run sizes for streams with adequate data range from 250 to 15,000, corresponding to escapements from 200 to 12,000. Total recent (5-year average) run size for major streams in this ESU was approximately 129,000 (111,000 winter, 18,000 summer), with a total escapement of 96,000 (82,000 winter, 14,000 summer). These totals do not include all streams in the ESU, so they may underestimate total ESU run size and escapements.

Adequate adult escapement information was available to compute trends for 42 independent stocks within this ESU. Of these, 36 data series exhibit declines and six exhibit increases over the available data series, with a range from 12 percent annual decline (Drift Creek on the Siletz River) to 16 percent annual increase (North Fork Coquille River). Twenty (18 decreasing, 2 increasing) of these trends were significantly different from zero. Upward trends were only found in the southernmost portion of the ESU, from

Siuslaw Bay south. In contrast, longer-term trends in angler catch using data from the early 1950's to the present generally were increasing. This may reflect long-term stability of populations or may be an artifact of long-term increases in statewide fishing effort coupled with the differences in bias correction of catch summaries before and after 1970.

Hatchery fish are widespread and escaping to spawn naturally throughout the region. Most of the hatchery stocks used in this region originated from stocks indigenous to the ESU, but many are not native to local river basins. The ODFW estimates of hatchery composition for winter steelhead escapements are high in many streams, ranging from 10 percent (North Umpqua River) to greater than 80 percent (Drift Creek on the Alsea River and Tenmile Creek south of Umpqua Bay). For summer steelhead, hatchery composition (where reported) ranged from 38 percent (South Umpqua River) to 90 percent (Siletz River). Several summer steelhead stocks have been introduced to rivers with no native summer runs. Overall, about half of the stocks in this ESU for which NMFS has information have hatchery composition in excess of 50 percent. Few stocks in the ESU are documented to have escapements above 1,000 fish and no significant decline; most of these are in the southern portion of the ESU and have high hatchery influence. While little information exists on the actual contribution of hatchery fish to natural production, given the substantial presence of hatchery fish in the few stocks that are relatively abundant and stable or increasing, NMFS is concerned that the majority of natural steelhead populations in this ESU may not be self-sustaining.

NMFS concludes that the Oregon Coast steelhead ESU is not presently in danger of extinction, but is likely to become endangered in the foreseeable future. Most steelhead populations within this ESU have been declining in the recent past (although this may be partly due to recent climate conditions), with increasing trends restricted to the southernmost portion (south of Siuslaw Bay). NMFS is very concerned about the pervasive opportunity for genetic introgression from hatchery stocks within the ESU, as well as the potential ecological interactions between introduced stocks and native stocks.

(7) Klamath Mountains Province

NMFS has previously published a proposal to list this ESU as threatened under the ESA (60 FR 14253, March 16, 1995). Although historical trends in overall abundance within the ESU are not clearly known, NMFS believes there has been a substantial replacement of natural fish with hatchery-produced fish. While absolute abundance remains fairly high, since about 1970, trends in abundance have been downward in most steelhead populations for which NMFS has data within the ESU, and a number of populations are considered by various agencies and groups to be at some risk of extinction. Declines in summer steelhead populations are of particular concern. Most natural populations of steelhead within the area experience a substantial infusion of naturally spawning hatchery fish each year.

Risk analyses for this and other ESUs are unusually difficult due to the paucity of abundance data and, where data are available, the possible biases associated with particular data sets (e.g., angler catch records). Also, the Klamath Mountains Province status review was the first NMFS assessment in which the issue of naturally spawning hatchery fish and the questions they raise about the sustainability of natural populations was an important consideration. NMFS will continue to seek additional information and pursue assessments with Federal, state, and tribal fisheries managers that should help clarify the risk faced by Klamath Mountains Province Steelhead. Hence, NMFS will make a final determination on the status of this ESU concurrently with final listing determinations on all west coast steelhead ESUs.

(8) Northern California

Historical (pre-1960's) abundance information specific to this ESU is available from dam counts in the upper Eel River (Cape Horn Dam—annual average of 4,400 adult steelhead in the 1930's; McEwan & Jackson, 1996), the South Fork Eel River (Benbow Dam—annual average of 19,000 adult steelhead in the 1940's; McEwan & Jackson, 1996), and the Mad River (Sweasey Dam—annual average of 3,800 adult steelhead in the 1940's; Murphy & Shapovalov, 1951; CDFG, 1994).

In the mid-1960's, CDFG (1965) estimated that steelhead spawning populations for many rivers in this ESU totaled 198,000 fish. Estimated statewide total run size for the major stocks in California in the early 1980's was given by Light (1987) as approximately 275,000 fish. Of this total, 22 percent were estimated to be of hatchery origin, resulting in a naturally-produced run size of 215,000 steelhead statewide. Roughly half of this production was thought to be in the Klamath River Basin (including the Trinity River), so the total natural production for all ESUs south of the Klamath River was probably on the order of 100,000 adults.

The only current run-size estimates for this area are dam counts on the Eel River (Cape Horn Dam) and summer steelhead snorkel surveys in a few tributaries that provide no total abundance estimate. Statewide adult summer steelhead abundance is estimated at about 2,000 adults (McEwan & Jackson, 1996). While no overall recent abundance estimate for this ESU exists, the substantial declines in run size from historic levels at major dams in the region indicate a probable similar overall decline in abundance from historical levels.

Adequate adult escapement information was available to compute trends for seven stocks (Redwood Creek, Mad River [winter and summer runs], the mainstem, Middle Fork, and South Fork of the Eel River, and the South Fork of the Van Duzen River). Of these, five data series exhibit declines and two exhibit increases over the available data series, ranging from a 5.8-percent annual decline (mainstem Eel River) to a 3.5-percent annual increase (south Fork of the Van Duzen River). Three (all decreasing) of these trends were significantly different from zero. For one long-term data set (Eel River, Cape Horn Dam counts), a separate trend for the last 21 years (1971–1991) was calculated for comparison. The full-series trend showed a significant decline, but the recent data showed a lesser, non-significant decline, suggesting that the major stock decline occurred prior to 1970.

State hatchery planting records indicate that large numbers of out-of-basin hatchery fish are planted throughout this ESU and are allowed to spawn naturally throughout the region. According to McEwan and Jackson (1996), ''despite the large number of hatchery smolts released, steelhead runs in north coast drainages are comprised mostly of naturally produced fish.'' There is little information on the actual contribution of hatchery fish to natural spawning, and little information on present total run sizes for this ESU. However, given the preponderance of significant negative trends in the available data series, there is concern that steelhead populations in this ESU may not be self-sustaining.

NMFS concludes that the Northern California steelhead ESU is not presently in danger of extinction, but is likely to become endangered in the foreseeable future. Population abundances are very low relative to historical estimates (1930's dam counts),

and recent trends are downward in stocks for which data exist, except for two small summer steelhead stocks. Summer steelhead abundance is very low. The abundance of introduced Sacramento squawfish (*Ptychocheilus grandis*), a known predator of salmonids, in the Eel River is also a concern. For certain rivers (particularly the Mad River), NMFS is concerned about the influence of hatchery stocks, both in terms of genetic introgression and potential ecological interactions between introduced stocks and native stocks.

(9) Central California Coast

Only two estimates of historical (pre-1960's) abundance specific to this ESU are available: an average of about 500 adults in Waddell Creek in the 1930's and early 1940's (Shapovalov & Taft, 1954), and an estimate of 20,000 steelhead in the San Lorenzo River before 1965 (Johnson, 1964). In the mid-1960's, CDFG (1965) estimated 94,000 steelhead spawning in many rivers of this ESU, including 50,000 and 19,000 fish in the Russian and San Lorenzo Rivers, respectively. NMFS has comparable recent estimates for only the Russian (approximately 7,000 fish) and San Lorenzo (approximately 500 fish) Rivers. These estimates indicate that recent total abundance of steelhead in these two rivers is less than 15 percent of their abundance 30 years ago. Additional recent estimates for several other streams (Lagunitas Creek, Waddell Creek, Scott Creek, San Vincente Creek, Soquel Creek, and Aptos Creek) indicate individual run sizes are 500 fish or less; however, no recent estimates of total run size exist for this ESU. McEwan and Jackson (1996) noted that steelhead in most streams tributary to San Francisco and San Pablo Bays have been extirpated. Small ''fair to good'' runs of steelhead apparently occur in coastal Marin County tributaries.

Adequate adult escapement information was not available to compute trends for any stocks within this ESU. However, general trends can be inferred from the comparison of 1960's and 1990's abundance estimates provided above, which indicate substantial rates of decline in the two main steelhead stocks (Russian and San Lorenzo Rivers) within this ESU.

The principal hatchery production in this ESU is from Warm Springs Hatchery on the Russian River and the Monterey Bay Salmon and Trout Project (Big Creek Hatchery off Scott Creek and other facilities). There are other small private and cooperative programs producing steelhead within this ESU. Most of the hatchery stocks used in this region originated from stocks indigenous to the ESU, but many are not native to local river basins. Little information is available regarding the actual contribution of hatchery fish to natural spawning, and little information on present run sizes or trends for this ESU exists. However, given the substantial rates of declines for those stocks where data do exist, it is likely that the majority of natural production in this ESU is not self-sustaining.

NMFS concludes that the Central California Coast steelhead ESU is presently in danger of extinction. The southernmost portion of the ESU (south of Scott and Waddell Creeks, including one of two major rivers within the ESU) and the portion within San Francisco and San Pablo Bays appear to be at highest risk. In the northern coastal portion of the ESU, steelhead abundance in the Russian River has been reduced roughly sevenfold since the mid-1960's, but abundance in smaller streams appears to be stable at low levels. There is particular concern for sedimentation and channel restructuring due to floods, apparently resulting in part from poor land management practices.

(10) South/Central California Coast

Historical estimates of steelhead abundance are available for a few streams in this region. In the mid-1960's, CDFG (1965) estimated a total of 27,750 steelhead spawning in many rivers of this ESU. Recent estimates for those rivers where comparative abundance information is available show a substantial decline during the past 30 years. In contrast to the CDFG (1965) estimates, McEwan and Jackson (1996) reported runs ranging from 1,000 to 2,000 in the Pajaro River in the early 1960's, and Snider (1983) estimated escapement of about 3,200 steelhead for the Carmel River for the 1964–1975 period. No recent estimates for total run size exist for this ESU; however, recent run-size estimates are available for five streams (Pajaro River, Salinas River, Carmel River, Little Sur River, and Big Sur River). The total of these estimates is less than 500 fish, compared with a total of 4,750 for the same streams in 1965, which suggests a substantial decline for the entire ESU from 1965 levels.

Adequate adult escapement information was available to compute a trend for only one stock within this ESU (Carmel River above San Clemente Dam). This data series shows a significant decline of 22 percent per year from 1963 to 1993, with a recent 5-year average count of only 16 adult steelhead at the dam. General trends can be inferred from the comparison of 1960's and 1990's abundance estimates provided above.

Presently, there is little hatchery production within this ESU. There are small private and cooperative programs producing steelhead within this ESU, as well as one captive broodstock program intended to conserve the Carmel River steelhead strain (McEwan & Jackson, 1996). Most of the hatchery stocks used in this region originated from stocks indigenous to the ESU, but many are not native to local river basins. Little information exists regarding the actual contribution of hatchery fish to natural spawning, and little information on present total run sizes or trends are available for this ESU. However, given the substantial reductions from historical abundance or recent negative trends in the stocks for which data does exist, it is likely that the majority of natural production in this ESU is not self-sustaining.

NMFS concludes that the South-Central California Coast steelhead ESU is presently in danger of extinction. Total abundance is extremely low, and most stocks for which NMFS has data in the ESU show recent downward trends. There is also concern about the genetic effects of widespread stocking of rainbow trout.

(11) Southern California

Historically, steelhead occurred naturally south into Baja California. Estimates of historical (pre-1960's) abundance for several rivers in this ESU are available: Santa Ynez River, before 1950, 20,000 to 30,000 (Shapovalov & Taft, 1954; CDFG, 1982; Reavis, 1991; Titus et al., in press); Ventura River, pre-1960, 4,000 to 6,000 (Clanton & Jarvis, 1946; CDFG, 1982; AFS, 1991; Hunt et al., 1992; Henke, 1994; Titus et al., in press); Santa Clara River, pre-1960, 7,000 to 9,000 (Moore, 1980; Comstock, 1992; Henke, 1994); Malibu Creek, pre-1960, 1,000 (Nehlsen et al., 1991; Reavis, 1991). ln the mid-1960's, CDFG (1965) estimated steelhead spawning populations for smaller tributaries in San Luis Obispo County as 20,000 fish; however, no estimates for streams further south were provided.

The present estimated total run size for six streams (Santa Ynez River, Gaviota Creek, Ventura River, Matilija Creek, Santa Clara River, Malibu Creek) in this ESU are summarized in Titus et al. (in press), and all are less than 200 adults. Titus et al. (in press) concluded that populations have been extirpated from all streams south of Ventura County, with the exception of Malibu Creek in Los Angeles County. While there are no comprehensive stream

surveys conducted for steelhead trout occurring in streams south of Malibu Creek, there continues to be anecdotal observations of steelhead in rivers as far south as the Santa Margarita River, San Diego County, in years of substantial rainfall (Barnhart, 1986; Higgins, 1991; McEwan and Jackson, 1996). Titus et al. (in press) cited extensive loss of steelhead habitat due to water development, including impassable dams and dewatering.

No time series of data are available within this ESU to estimate population trends. Titus et al. (in press) summarized information for steelhead populations based on historical and recent survey information. Of the populations south of San Francisco Bay (including part of the Central California Coast ESU) for which past and recent information was available, 20 percent had no discernable change, 45 percent had declined, and 35 percent were extinct. Percentages for the counties comprising this ESU show a very high percentage of declining and extinct populations.

The influence of hatchery practices on this ESU is not well documented. In some populations, there may be genetic introgression from past steelhead plants and from planting of rainbow trout (Nielsen 1991). Habitat fragmentation and population declines resulting in small, isolated populations also pose genetic risk from inbreeding, loss of rare alleles, and genetic drift.

NMFS concludes that the Southern California steelhead ESU is presently in danger of extinction. Steelhead have already been extirpated from much of their historical range in this ESU. There is also concern about the genetic effects of widespread stocking of rainbow trout.

(12) Central Valley

Historical abundance estimates are available for some stocks within this ESU, but no overall estimates are available prior to 1961, when Hallock et al. (1961) estimated a total run size of 40,000 steelhead in the Sacramento River, including San Francisco Bay. In the mid-1960's, CDFG (1965) estimated steelhead spawning populations for the rivers in this ESU, totaling almost 27,000 fish. Limited data exist on recent abundance for this ESU. The present total run size for this ESU based on dam counts, hatchery returns, and past spawning surveys is probably less than 10,000 fish. Both natural and hatchery runs have declined since the 1960's. Counts at Red Bluff Diversion Dam averaged 1,400 fish over the last 5 years, compared with runs in excess of 10,000 fish in the late 1960's. Recent run-size estimates for the hatchery produced American River stock average less than 1,000 fish, compared to 12,000 to 19,000 in the early 1970's (McEwan & Jackson, 1996).

Adequate adult escapement information was available to compute a trend for only one stock within this ESU (Sacramento River above Red Bluff Diversion Dam). Fish passing over this dam are primarily (70 to 90 percent) of hatchery origin (CDFG, 1995; McEwan & Jackson, 1996). This data series shows a significant decline of 9 percent per year from 1966 to 1992. McEwan and Jackson (1996) cite substantial declines in hatchery returns within the basin as well. The majority of native, natural steelhead production in this ESU occurs in upper Sacramento River tributaries (Antelope, Deer, Mill, and other Creeks) below Red Bluff Diversion Dam, but these populations are nearly extirpated. The American, Feather, and Yuba (and possibly the upper Sacramento and Mokelumne) Rivers also have naturally-spawning populations (CDFG, 1995), but these populations have had substantial hatchery influence and their ancestry is not clearly known. The Yuba River had an estimated run size of 2,000 in 1984. Recent run size estimates for the Yuba River are unknown, but the population appears to be stable and supports a sport fishery (McEwan & Jackson, 1996). However, the status of native, natural fish in this stock is unknown. This stock has been influenced by Feather River Hatchery fish, and biologists familiar with the stock report that the Yuba River supports almost no natural production of steelhead (Hallock, 1989). However, CDFG (1995) asserted that ''a substantial portion of the returning adults are progeny of naturally spawning adults from the Yuba River.'' This stock currently receives no hatchery steelhead plants and is managed as a naturally sustained population (CDFG, 1995; McEwan & Jackson, 1996).

In the San Joaquin River Basin, there is little available historic or recent information on steelhead distribution or abundance. According to McEwan and Jackson (1996), there are reports of a small remnant steelhead run in the Stanislaus River. Also, steelhead were observed in the Tuolumne River in 1983, and large rainbow trout (possibly steelhead) have been observed at Merced River Hatchery recently.

NMFS concludes that the Central Valley steelhead ESU is presently in danger of extinction. Steelhead have already been extirpated from most of their historical range in this ESU. Habitat concerns in this ESU focus on the widespread degradation, destruction, and blockage of freshwater habitats within the region, and the potential results of continuing habitat destruction and water allocation problems. NMFS is also very concerned about the pervasive opportunity for genetic introgression from hatchery stocks within the ESU because of the widespread production of hatchery steelhead, and the potential ecological interactions between introduced stocks and native stocks.

(13) Middle Columbia River Basin

Estimates of historical (pre-1960's) abundance indicate that the total historical run size for this ESU might have been in excess of 300,000. Total run sizes for the major stocks in the upper Columbia River (above Bonneville Dam, including the Upper Columbia River, Snake River Basin, and parts of the Southwest Washington and Lower Columbia River ESUs) for the early 1980's were estimated by Light (1987) as approximately 4,000 winter steelhead and 210,000 summer steelhead. Based on dam counts for this period, the Middle Columbia River ESU represented the majority of this total run estimate, so the run returning to this ESU was probably somewhat below 200,000 at that time. Light (1987) estimated that 80 percent of the total Columbia River Basin run (summer and winter steelhead combined) above Bonneville Dam was of hatchery origin. The most recent 5-year average run size was 142,000, with a naturally-produced component of 39,000. These data indicate approximately 74 percent hatchery fish in the total run to this ESU. Recent escapement or run size estimates exist for only five basins in this ESU. For the main Deschutes River (counted at Sherars Falls), total recent (5-year average) run size was approximately 11,000, with a natural escapement of 3,000. Hatchery escapement to spawning grounds (calculated by subtracting Pelton Ladder and other hatchery returns from the counts at Sherars Falls) has averaged about 4,000 adults over the last five brood years (BPA 1992). For the Warm Springs River (steelhead passing above Warm Springs NFH), escapement has averaged 150 adults over the last 5 years. In the Umatilla River (counts at Three Mile Dam) escapement has averaged 1,700 adults over the last 5 years. In the Yakima River, total escapement has averaged 1,300 adults, with a natural escapement of 1,200 adults, over the last 5 years. In addition to these estimates, ODFW (1995a) suggested that 5 sub-basins of the John Day River each have runs in excess of 1,000, so the total run size for the John

Day River is probably in excess of 5,000 fish.

Stock trend data are available for various basins from dam counts, spawner surveys, and angler catch. Of the 14 independent stock indices for which trends could be computed, 10 have been declining and 4 increasing over the available data series, with a range from 20 percent annual decline to 14 percent annual increase. Eight of these trends (seven negative, one positive) were significantly different from zero. Of the major basins, the Yakima, Umatilla, and Deschutes Rivers show upward overall trends, although all tributary counts in the Deschutes River are downward and the Yakima River is recovering from extremely low abundance in the early 1980's. The John Day River probably represents the largest native, natural spawning stock in the ESU, and combined spawner surveys for the John Day River have been declining at a rate of about 15 percent per year since 1985. However, estimates of total run size for the ESU based on differences in counts at dams show an overall increase in steelhead abundance, with a relatively stable naturally-produced component.

Hatchery fish are widespread and straying to spawn naturally throughout the region. Hatchery production in this ESU is derived primarily from within-basin stocks. Recent estimates of the proportion of natural spawners with hatchery origin range from low (Yakima River, Walla Walla River, John Day River) to moderate (Umatilla River, Deschutes River). Little information is available on the actual contribution of hatchery production to natural spawning.

NMFS concludes that the Middle Columbia steelhead ESU is not presently in danger of extinction, but has reached no conclusion regarding its likelihood of becoming endangered in the foreseeable future. NMFS remains concerned about the status of this ESU and will carefully evaluate conservation measures affecting this ESU and continue monitoring its status during the period between this proposed rule and publication of a final rule. There is particular concern about Yakima River stocks and winter steelhead stocks. Winter steelhead are reported within this ESU only in the Klickitat River and Fifteenmile Creek. No abundance information exists for winter steelhead in the Klickitat River, but they have been declining in abundance in Fifteenmile Creek. Total steelhead abundance in the ESU appears to have been increasing recently, but the majority of natural stocks for which NMFS has data within this ESU have been declining, including those in the John Day River, which is the largest producer of native, natural steelhead. NMFS is very concerned about the pervasive opportunity for genetic introgression from hatchery stocks within the ESU. There is widespread production of hatchery steelhead within this ESU, but largely based on within basin stocks. Estimated proportion of hatchery fish on spawning grounds ranges from low (Yakima River, Walla Walla River, John Day River) to moderate (Umatilla River, Deschutes River).

(14) Upper Columbia River Basin

Estimates of historical (pre-1960s) abundance specific to this ESU are available from fish counts at dams. Counts at Rock Island Dam from 1933 to 1959 averaged 2,600 to 3,700, suggesting a pre-fishery run size in excess of 5,000 adults for tributaries above Rock Island Dam (Chapman et. al., 1994). However, runs may already have been depressed by lower Columbia River fisheries at this time. Recent 5-year (1989–93) average natural escapements are available for two stock units: Wenatchee River, 800 steelhead, and Methow and Okanogan Rivers, 450 steelhead. Recent average total escapement for these stocks were 2,500 and 2,400, respectively. Average total run size at Priest Rapids Dam for the same period was approximately 9,600 adult steelhead.

Trends in total (natural and hatchery) adult escapement are available for the Wenatchee River (2.6 percent annual increase, 1962–1993) and the Methow and Okanogan Rivers combined (12 percent annual decline, 1982–93). These two stocks represent most of the escapement to natural spawning habitat within the range of the ESU; the Entiat River also has a small spawning run (WDF et al., 1993).

Hatchery fish are widespread and escaping to spawn naturally throughout the region. The hatchery stock used in this region originated from stocks indigenous to the ESU during the Grand Coulee Fish Maintenance Project, but represents a blend of fish from all basins within the ESU (and from areas above Grand Coulee Dam). Spawning escapement is strongly dominated by hatchery production, with recent contributions averaging 65 percent (Wenatchee River) to 81 percent (Methow and Okanogan Rivers). The WDFW estimated adult replacement ratios of only 0.3:1.0 in the Wenatchee River and 0.25:1.0 in the Entiat River, and concluded that both these stocks and the Methow/Okanogan stock are not self-sustaining without substantial hatchery production.

NMFS concludes that the Upper Columbia steelhead ESU is presently in danger of extinction. While total abundance of populations within this ESU has been relatively stable or increasing, this appears to be true only because of major hatchery production programs. Estimates of the proportion of hatchery fish in spawning escapement are 65 percent (Wenatchee River) and 81 percent (Methow and Okanogan Rivers). The major concern for this ESU is the clear failure of natural stocks to replace themselves. NMFS is very concerned about problems of genetic homogenization due to hatchery supplementation within the ESU. Significant concern also exists regarding the apparent high harvest rates on steelhead smolts in rainbow trout fisheries and the degradation of freshwater habitats within the region.

(15) Snake River Basin

No estimates of historical (pre-1960's) abundance specific to this ESU are available. Light (1987) estimated that 80 percent of the total Columbia River Basin run (summer and winter steelhead combined) above Bonneville Dam was of hatchery origin. All steelhead in the Snake River Basin are summer steelhead, which for management purposes are divided into ''A-run'' and ''B-run'' steelhead. Each has several life history differences including spawning size, run timing, and habitat type. Although there is little information for most stocks within this ESU, there are recent run-size and/or escapement estimates for several stocks. Total recent-year average (1990–1994) escapement above Lower Granite Dam was approximately 71,000, with a natural component of 9,400 (7,000 A-run and 2,400 B-run). Run-size estimates are available for only a few tributaries within the ESU, all with small populations.

The aggregate trend in abundance for this ESU (indexed at Lower Granite Dam) has been upward since 1975, although natural escapement has been declining during the same period. However, the aggregate trend has been downward (with wide fluctuations) over the past 10 years, recently reaching levels below those observed at Ice Harbor Dam in the early 1960's. Naturally-produced escapement has declined sharply in the last ten years. Adult abundance trend information is available for several individual stocks from a variety of sources, including spawner surveys, dam counts, and angler catch. Of the thirteen stock indices (excluding the Lower Granite

Dam counts discussed above) for which sufficient adequate information exists to compute trends, nine have been declining and four increasing over the available data series, with a range from 30 percent annual decline to a 4 percent annual increase. Four of these trends (all negative) were significantly different from zero. In addition to these adult abundance data, the focus of IDFG's steelhead monitoring program is juvenile (parr) surveys in areas designated as ''wild'' (i.e., sites with limited hatchery influence) as well as in natural production areas. Summaries in Leitzinger and Petrosky (in press) show declines in average parr density over the past 7 or 8 years for both A- and B-run steelhead in both wild and natural production areas. From 1985 to 1993, estimates of mean percent of rated parr carrying capacity for these surveys ranged from as low as 11.2 percent (wild-production B-run) to 62.1 percent (wild-production A-run). The *U.S.* v. *Oregon* Technical Advisory Committee found that A-run steelhead densities were closer to rated capacities than were B-run steelhead; it noted that ''percent carrying capacity indicates that all surveyed areas are underseeded'' (TAC, 1991).

Hatchery fish are widespread and escaping to spawn naturally throughout the region. During the past five years, an average of 86 percent of steelhead passing above Lower Granite Dam were of hatchery origin. Only two hatchery composition estimates are available for individual stocks: 0 percent for Joseph Creek (Grande Ronde River), and 57 percent for the Tucannon River. In general, there are wild production areas with limited hatchery influence remaining in the Selway River, lower Clearwater River, Middle and South Forks of the Salmon River, and the lower Salmon River (Leitzinger & Petrosky, in press). In other areas, such as the upper Salmon River, there appears to be little or no natural production of locally-native steelhead (IDFG, 1995). Given the relatively low natural run sizes to individual streams for which estimates are available, the declines in natural returns at Lower Granite Dam and in parr density estimates, and the widespread presence of hatchery fish, NMFS concludes that the majority of natural steelhead populations in this ESU are probably not self-sustaining at this time.

NMFS concludes that the Snake River Basin steelhead ESU is not presently in danger of extinction, but is likely to become endangered in the foreseeable future. While total run size (hatchery and natural) has increased since the mid-1970's, there has been a severe recent decline in natural run size. The majority of natural stocks for which adequate data exists within this ESU have been declining. Parr densities in natural production areas have been substantially below estimated capacity in recent years. Downward trends and low parr densities indicate a particularly severe problem for B-run steelhead, the loss of which would substantially reduce life-history diversity within this ESU. NMFS is very concerned about the pervasive opportunity for genetic introgression from hatchery stocks within the ESU. There is widespread production of hatchery steelhead within this ESU. The total Snake River steelhead run at Lower Granite Dam is estimated to average 86 percent hatchery fish in recent years. Estimates of proportion of hatchery fish in spawning escapement for tributaries range from 0 percent (Joseph Creek) to above 80 percent (upper Salmon River, IDFG, 1995).

Existing Protective Efforts

Under § 4(b)(1)(A) of the ESA, the Secretary of Commerce is required to make listing determinations solely on the basis of the best scientific and commercial data available and after taking into account efforts being made to protect a species. During the status review for west coast steelhead, NMFS reviewed an array of protective efforts for steelhead and other salmonids, ranging in scope from regional strategies to local watershed initiatives. NMFS has summarized some of the major efforts in a document entitled ''Steelhead Conservation Efforts: A Supplement to the Notice of Determination for West Coast Steelhead under the Endangered Species Act.'' This document is available upon request (see **ADDRESSES** section).

Despite numerous efforts to halt and reverse declining trends in west coast steelhead, it is clear that the status of many native, naturally-reproducing populations has continued to deteriorate. NMFS therefore believes it highly likely that past efforts and programs to address the conservation needs of these stocks have proven inadequate, including efforts to reduce mortalities and improve the survival of these stocks through all stages of their life cycle. Important factors include the continued decline in the productivity of freshwater habitat for a wide variety of reasons, significant potential negative impacts from interactions with hatchery stocks, overfishing, and natural environmental variability.

While NMFS recognizes that many of the ongoing protective efforts are likely to promote the conservation of steelhead and other salmonids, in the aggregate, they do not achieve steelhead conservation at a scale that is adequate to protect and conserve ESUs. NMFS believes that most existing efforts lack some of the critical elements needed to provide a high degree of certainty that the efforts will be successful. These elements include: (1) Identification of specific factors for decline; (2) immediate measures required to protect the best remaining populations and habitats and priorities for restoration activities; (3) explicit and quantifiable objectives and timelines; and (4) monitoring programs to determine the effectiveness of actions, including methods to measure whether recovery objectives are being met.

The best available scientific information on the biological status of the species supports a proposed listing of 10 steelhead ESUs under the ESA (see Proposed Determination). NMFS concludes that existing protective efforts are inadequate to alter the proposed determination of threatened or endangered for these 10 steelhead ESUs. However, during the period between publication of this proposed rule and publication of a final rule, NMFS will continue to solicit information regarding protective efforts (see Public Comments Solicited) and will work with Federal, state and tribal fisheries managers to evaluate the efficacy of the various salmonid conservation efforts. If, during this process, NMFS determines that existing protective efforts are likely to avert extinction and provide for the recovery of a steelhead ESU(s), NMFS will modify this listing proposal.

Summary of Factors Affecting the Species

Section 2(a) of the ESA states that various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern for ecosystem conservation. Section 4(a)(1) of the ESA and the listing regulations (50 CFR part 424) set forth procedures for listing species. NMFS must determine, through the regulatory process, if a species is endangered or threatened based upon any one or a combination of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or education purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or human-made factors affecting its continued existence.

NMFS has prepared a supporting document which addresses the factors that have led to the decline of this species entitled ''Factors for Decline: A supplement to the notice of determination for West Coast steelhead.'' This report, available upon request (see **ADDRESSES** section), concludes that all of the factors identified in section 4(a)(1) of the ESA have played a role in the decline of the species. The report identifies destruction and modification of habitat, overutilization for recreational purposes, and natural and human-made factors as being the primary reasons for the decline of west coast steelhead. The following discussion summarizes findings regarding factors for decline across the range of west coast steelhead. While these factors have been treated here in general terms, it is important to underscore that impacts from certain factors are more acute for specific ESUs. For example, impacts from hydropower development are more pervasive for ESUs in the upper Columbia River Basin than for some coastal ESUs.

Steelhead on the west coast of the United States have experienced declines in abundance in the past several decades as a result of natural and human factors. Forestry, agriculture, mining, and urbanization have degraded, simplified, and fragmented habitat. Water diversions for agriculture, flood control, domestic, and hydropower purposes (especially in the Columbia River and Sacramento-San Joaquin Basins) have greatly reduced or eliminated historically accessible habitat. Studies indicate that in most western states, about 80 to 90 percent of the historic riparian habitat has been eliminated. Further, it has been estimated that during the last 200 years, the lower 48 states have lost approximately 53 percent of all wetlands and the majority of the rest are severely degraded. Washington and Oregon's wetlands are estimated to have diminished by one-third, while California has experienced a 91-percent loss of its wetland habitat. Loss of habitat complexity has also contributed to the decline of steelhead. For example, in national forests in Washington, there has been a 58-percent reduction in large, deep pools due to sedimentation and loss of pool-forming structures such as boulders and large wood. Similarly, in Oregon, the abundance of large, deep pools on private coastal lands has decreased by as much as 80 percent. Sedimentation from land use activities is recognized as a primary cause of habitat degradation in the range of west coast steelhead.

Steelhead support an important recreational fishery throughout their range. During periods of decreased habitat availability (e.g., drought conditions or summer low flow when fish are concentrated), the impacts of recreational fishing on native anadromous stocks may be heightened. Steelhead are not generally targeted in commercial fisheries. However, high seas driftnet fisheries in the past may have contributed slightly to a decline of this species in local areas, but this could not be solely responsible for the large declines in abundance observed along most of the Pacific coast over the past several decades.

Introductions of non-native species and habitat modifications have resulted in increased predator populations in numerous river systems, thereby increasing the level of predation experienced by salmonids. Predation by marine mammals is also of concern in areas experiencing dwindling steelhead runsizes. However, salmon and marine mammals have coexisted for thousands of years and most investigators consider predation an insignificant contributing factor to the large declines observed in west coast steelhead populations.

Natural climatic conditions have served to exacerbate the problems associated with degraded and altered riverine and estuarine habitats. Persistent drought conditions have reduced already limited spawning, rearing and migration habitat. Further, climatic conditions appear to have resulted in decreased ocean productivity which, during more productive periods, may help (to a small degree) offset degraded freshwater habitat conditions.

In an attempt to mitigate the loss of habitat, extensive hatchery programs have been implemented throughout the range of steelhead on the West Coast. While some of these programs have been successful in providing fishing opportunities, the impacts of these programs on native, naturally-reproducing stocks are not well understood. Competition, genetic introgression, and disease transmission resulting from hatchery introductions may significantly reduce the production and survival of native, naturally-reproducing steelhead. Furthermore, collection of native steelhead for hatchery broodstock purposes may result in additional negative impacts to small or dwindling natural populations. It is important to note, however, that artificial propagation could play an important role in steelhead recovery and that some hatchery populations of steelhead may be deemed essential for the recovery of threatened or endangered steelhead ESUs (see Proposed Determination). In addition, alternative uses of supplementation, such as for the creation of terminal fisheries, must be fully explored to try to limit negative impacts to remaining natural populations. This use must be tempered with the understanding that protecting native, naturally-reproducing steelhead and their habitats is critical to maintaining healthy, fully-functioning ecosystems.

Proposed Determination

The ESA defines an endangered species as any species in danger of extinction throughout all or a significant portion of its range, and a threatened species as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Section 4(b)(1) of the ESA requires that the listing determination be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account those efforts, if any, being made to protect such species.

Based on results from its coastwide assessment, NMFS has determined that on the west coast of the United States, there are fifteen ESUs of steelhead which constitute ''species'' under the ESA. NMFS has determined that five ESUs are currently endangered (Central California Coast, South Central California Coast, Southern California, Central Valley, and Upper Columbia ESUs) and another five ESUs are currently threatened (Snake River Basin, lower Columbia River, Oregon Coast, Klamath Mountains Province, and northern California ESUs) and NMFS proposes to list them as such at this time. The geographic boundaries (i.e., the watersheds within which the members of the ESU spend their freshwater residence) for these ESUs are described under ''ESU Determinations.''

The Klamath Mountains Province ESU was proposed for listing under a previous determination (60 FR 14253, March 16, 1995). However, due to unresolved issues and practical considerations, NMFS believes it more prudent to make a final determination on Klamath Mountains Province steelhead in the context of final determinations for West Coast steelhead ESUs. NMFS has received comments on the previous proposal to list this ESU and will seek additional information that should help clarify the degree of risk faced by Klamath Mountains Province steelhead. The agency will make a final determination on this ESU concurrently with final listing

determinations on all west coast steelhead ESUs.

NMFS has determined that steelhead in the Middle Columbia River ESU (the Columbia River Basin from Mosier Creek, OR, upstream to the Yakima River, WA) do not warrant listing. However, because there is sufficient concern regarding the health of steelhead in this region, NMFS is adding this ESU to its candidate species list. NMFS will conduct a thorough reevaluation of the status of this ESU before the final listing determination.

In all 10 ESUs identified as threatened or endangered, only native, naturally-reproducing steelhead are being proposed for listing. Prior to the final listing determination, NMFS will examine the relationship between hatchery and natural populations of steelhead in these ESUs, and assess whether any hatchery populations are essential for their recovery. This may result in the inclusion of specific hatchery populations as part of a listed ESU in NMFS' final determination.

In addition, NMFS is proposing to list only anadromous life forms of *O. mykiss* at this time due to uncertainties regarding the relationship between resident rainbow trout and steelhead. Prior to the final listing determination, NMFS will seek additional information on this issue and work with the U.S. Fish and Wildlife Service and fisheries comanagers to better define the relationship between resident and anadromous *O. mykiss* in the ESUs proposed for listing.

Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the ESA include recognition, recovery actions, Federal agency consultation requirements, and prohibitions on taking. Recognition through listing promotes public awareness and conservation actions by Federal, state, and local agencies, private organizations, and individuals.

Several conservation efforts are underway that may reverse the decline of west coast steelhead and other salmonids. These include the Northwest Forest Plan (on Federal lands within the range of the northern spotted owl), Pacfish (on all additional Federal lands with anadromous salmonid populations), Oregon's Coastal Salmon Restoration Initiative, Washington's Wild Stock Restoration Initiative, California's Coastal Salmon Initiative and Steelhead Management Plan, NMFS' Proposed Recovery Plan for Snake River Salmon, and a Draft Recovery Plan for Sacramento Winter-run Chinook Salmon. NMFS is very encouraged by a number of these efforts and believes that they have or may constitute significant strides in the efforts in the region to develop a scientifically well grounded conservation plan for these stocks. NMFS intends to support and work closely with these efforts—staff and resources permitting—in the belief that they could have a substantial impact on a final decision on the need to list these stocks or on the type of final listing. The degree to which these conservation efforts are able to provide reliable, scientifically well grounded commitments through a variety of measures to provide for the conservation of these stocks will have a direct and substantial effect on any final listing determination of NMFS.

Section 7(a)(4) of the ESA requires that Federal agencies confer with NMFS on any actions likely to jeopardize the continued existence of a species proposed for listing and on actions likely to result in the destruction or adverse modification of proposed critical habitat. For listed species, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with NMFS.

Examples of Federal actions likely to affect steelhead include authorized land management activities of the U.S. Forest Service and U.S. Bureau of Land Management, as well as operation of hydroelectric and storage projects of the Bureau of Reclamation and U.S. Army Corps of Engineers (COE). Such activities include timber sales and harvest, hydroelectric power generation, and flood control. Federal actions, including the COE section 404 permitting activities under the Clean Water Act, COE permitting activities under the River and Harbors Act, Federal Energy Regulatory Commission licenses for non-Federal development and operation of hydropower, and Federal salmon hatcheries, may also require consultation.

Based on information presented in this proposed rule, general conservation measures that could be implemented to help conserve the species are listed below. This list does not constitute NMFS' interpretation of a recovery plan under section 4(f) of the ESA.

1. Measures could be taken to promote land management practices that protect and restore steelhead habitat. Land management practices affecting steelhead habitat include timber harvest, road building, agriculture, livestock grazing, and urban development.

2. Evaluation of existing harvest regulations could identify any changes necessary to protect steelhead populations.

3. Artificial propagation programs could be required to incorporate practices that minimize impacts upon native populations of steelhead.

4. Efforts could be made to ensure that existing and proposed dam facilities are designed and operated in a manner that will not adversely affect steelhead populations. For example, NMFS could require that fish passage facilities at dams effectively pass migrating juvenile and adult steelhead.

5. Water diversions could have adequate headgate and staff gauge structures installed to control and monitor water usage accurately. Water rights could be enforced to prevent irrigators from exceeding the amount of water to which they are legally entitled.

6. Irrigation diversions affecting downstream migrating steelhead trout could be screened. A thorough review of the impact of irrigation diversions on steelhead could be conducted.

NMFS recognizes that, to be successful, protective regulations and recovery programs for steelhead will need to be developed in the context of conserving aquatic ecosystem health. NMFS intends that Federal lands and Federal activities play a primary role in preserving listed populations and the ecosystems upon which they depend. However, throughout the range of all ten ESUs proposed for listing, steelhead habitat occurs and can be affected by activities on state, tribal or private land. Agricultural, timber, and urban management activities on nonfederal land could and should be conducted in a manner that avoids adverse effects to steelhead habitat.

NMFS encourages nonfederal landowners to assess the impacts of their actions on potentially threatened or endangered salmonids. In particular, NMFS encourages the formulation of watershed partnerships to promote conservation in accordance with ecosystem principles. These partnerships will be successful only if state, tribal, and local governments, landowner representatives, and Federal and nonfederal biologists all participate and share the goal of restoring steelhead to the watersheds.

Section 9 of the ESA prohibits certain activities that directly or indirectly affect endangered species. These prohibitions apply to all individuals, organizations, and agencies subject to

U.S. jurisdiction. Section 4(d) of the ESA allows the promulgation of protective regulations that modify or apply any or all of the prohibitions of section 9 to threatened species. Section 9 prohibits violations of protective regulations for threatened species promulgated under section 4(d).

At this time, NMFS proposes to adopt protective measures to prohibit ''taking,'' interstate commerce, and the other ESA prohibitions applicable to endangered species, with the exceptions provided under section 10 of the ESA, for the five ESUs of steelhead proposed as threatened herein. Under the ESA, the term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS is proposing to extend the provisions of section 9 and section 10 to these ESUs to provide immediate protections to them upon final listing. However, prior to the final listing determination, NMFS will consider adopting specific regulations under section 4(d) that will apply to one or more ESUs of steelhead identified as threatened (see Public Comments Solicited). These regulations, promulgated pursuant to the Administrative Procedures Act, 5 U.S.C. 551 *et seq.*, may be in lieu of the Section 9 taking prohibition and Section 10 permit exception.

Sections 10(a)(1)(A) and 10(a)(1)(B) of the ESA provide NMFS with authority to grant exceptions to the ESA's ''taking'' prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-Federal) conducting research that involves a directed take of listed species. A directed take refers to the intentional take of listed species. NMFS has issued section 10(a)(1)(A) research/enhancement permits for other listed species (e.g., Snake River chinook salmon and Sacramento River winter-run chinook salmon) for a number of activities, including trapping and tagging, electroshocking to determine population presence and abundance, removal of fish from irrigation ditches, and collection of adult fish for artificial propagation programs.

Section 10(a)(1)(B) incidental take permits may be issued to non-Federal entities performing activities which may incidentally take listed species. The types of activities potentially requiring a section 10(a)(1)(B) incidental take permit include the operation and release of artificially propagated fish by state or privately operated and funded hatcheries, state or University research not receiving Federal authorization or funding, and the implementation of state fishing regulations. NMFS Policies on Endangered and Threatened Fish and Wildlife

On July 1, 1994, NMFS, jointly with the U.S. Fish and Wildlife Service, published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270) and a policy to identify, to the maximum extent possible, those activities that would or would not constitute a violation of section 9 of the ESA (59 FR 34272).

Role of peer review: The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. Prior to a final listing, NMFS will solicit the expert opinions of three qualified specialists, concurrent with the public comment period. Independent peer reviewers will be selected from the academic and scientific community, Tribal and other native American groups, Federal and state agencies, and the private sector.

Identification of those activities that would constitute a violation of Section 9 of the ESA: The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. NMFS will identify, to the extent known at the time of the final rule, specific activities that will not be considered likely to result in violation of section 9, as well as activities that will be considered likely to result in violation. NMFS believes that, based on the best available information, the following actions will not result in a violation of section 9:

(1) Possession of steelhead acquired lawfully by permit issued by NMFS pursuant to section 10 of the ESA, or by the terms of an incidental take statement pursuant to section 7 of the ESA.

(2) Federally approved projects that involve activities such as silviculture, grazing, mining, road construction, dam construction and operation, discharge of fill material, stream channelization or diversion for which consultation has been completed, and when such activity is conducted in accordance with any terms and conditions given by NMFS in an incidental take statement accompanied by a biological opinion.

Activities that NMFS believes could potentially harm the steelhead and result in ''take'', include, but are not limited to:

(1) Unauthorized collecting or handling of the species. Permits to conduct these activities are available for purposes of scientific research or to enhance the propagation or survival of the species.

(2) Unauthorized destruction/alteration of the species' habitat such as removal of large woody debris or riparian shade canopy, dredging, discharge of fill material, draining, ditching, diverting, blocking, or altering stream channels or surface or ground water flow.

(3) Discharges or dumping of toxic chemicals or other pollutants (i.e., sewage, oil and gasoline) into waters or riparian areas supporting the species.

(4) Violation of discharge permits.

(5) Pesticide applications in violation of label restrictions.

(6) Interstate and foreign commerce (commerce across State lines and international boundaries) and import/export without prior obtainment of an endangered species permit.

This list is not exhaustive. It is provided to give the reader some examples of the types of activities that may be considered by the NMFS as constituting a ''take'' of steelhead under the ESA and regulations. Questions regarding whether specific activities will constitute a violation of section 9, and general inquiries regarding prohibitions and permits, should be directed to NMFS (see **ADDRESSES**).

Critical Habitat

Section 4(a)(3)(A) of the ESA requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. While NMFS has completed its initial analysis of the biological status of steelhead populations from Washington, Oregon, Idaho, and California, it has not performed the analysis (including economic analysis) necessary for designating critical habitat. Further, NMFS is placing a higher priority on listings than on critical habitat designations due to staffing and workload constraints resulting from the lifting of the recent listing moratorium. In most cases, the substantive protections of critical habitat designations are duplicative of those of listings, however, in cases in which critical habitat designation is deemed essential to the conservation of the species, such a designation could warrant a higher priority. It is NMFS' intention to develop and publish a critical habitat designation for West Coast steelhead as time and workload permit.

Public Comments Solicited

To ensure that the final action resulting from this proposal will be as accurate and effective as possible, NMFS is soliciting comments and suggestions from the public, other

governmental agencies, the scientific community, industry, and any other interested parties. Public hearings will be held in several locations in the range of the proposed ESUs; details regarding locations, dates, and times will be published in a forthcoming Federal Register notice. NMFS recognizes that there are serious limits to the quality of information available, and, therefore, NMFS has executed its best professional judgment in developing this proposal. NMFS will appreciate any additional information regarding, in particular: (1) The relationship between rainbow trout and steelhead, specifically whether rainbow trout and steelhead populations in the same geographic area should be considered a single ESU; (2) biological or other relevant data concerning any threat to steelhead or rainbow trout; (3) the range, distribution, and population size of steelhead and rainbow trout in all identified ESUs; (4) current or planned activities in the subject areas and their possible impact on this species; (5) steelhead escapement, particularly escapement data partitioned into natural and hatchery components; (6) the proportion of naturally-reproducing fish that were reared as juveniles in a hatchery; (7) homing and straying of natural and hatchery fish; (8) the reproductive success of naturally-reproducing hatchery fish (i.e., hatchery-produced fish that spawn in natural habitat) and their relationship to the identified ESUs; (9) efforts being made to protect native, naturally-reproducing populations of steelhead and rainbow trout in Washington, Oregon, Idaho and California; and (10) suggestions for specific regulations under section 4(d) of the ESA that should apply to threatened steelhead ESUs. Suggested regulations may address activities, plans, or guidelines that, despite their potential to result in the incidental take of listed fish, will ultimately promote the conservation and recovery of threatened steelhead.

NMFS is also requesting quantitative evaluations describing the quality and extent of freshwater and marine habitats for juvenile and adult steelhead as well as information on areas that may qualify as critical habitat in Washington, Oregon, Idaho, and California for the proposed ESUs. Areas that include the physical and biological features essential to the recovery of the species should be identified. NMFS recognizes that there are areas within the proposed boundaries of some ESUs that historically constituted steelhead habitat, but may not be currently occupied by steelhead. NMFS is requesting information about steelhead in these currently unoccupied areas (in particular, for the Southern California and Central Valley ESUs) and whether these habitats should be considered essential to the recovery of the species or excluded from designation. Essential features include, but are not limited to: (1) Habitat for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for reproduction and rearing of offspring; and (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species.

For areas potentially qualifying as critical habitat, NMFS is requesting information describing: (1) The activities that affect the area or could be affected by the designation, and (2) the economic costs and benefits of additional requirements of management measures likely to result from the designation.

The economic cost to be considered in the critical habitat designation under the ESA is the probable economic impact ''of the [critical habitat] designation upon proposed or ongoing activities'' (50 CFR 424.19). NMFS must consider the incremental costs specifically resulting from a critical habitat designation that are above the economic effects attributable to listing the species. Economic effects attributable to listing include actions resulting from section 7 consultations under the ESA to avoid jeopardy to the species and from the taking prohibitions under section 9 of the ESA. Comments concerning economic impacts should distinguish the costs of listing from the incremental costs that can be directly attributed to the designation of specific areas as critical habitat.

NMFS will review all public comments and any additional information regarding the status of the steelhead ESUs described herein and, as required under the ESA, will complete a final rule within 1 year of this proposed rule. The availability of new information may cause NMFS to reassess the status of steelhead ESUs. In particular, NMFS will conduct a thorough reevaluation of the status of the Middle Columbia River ESU before the final listing determination. Although NMFS has concluded that information available at the present time is not sufficient to demonstrate that a listing is warranted for this ESU, there is concern over the health of natural populations in this ESU.

NMFS is aware and strongly supportive of the current efforts by the states of Oregon, Washington, and California to develop effective and scientifically based conservation measures to address at-risk salmon and steelhead stocks. NMFS believes that these efforts, if successful, could serve as the central components of a broad conservation program that would provide a steady, predictable, and well grounded road to recovery and rebuilding of these stocks. NMFS intends to work closely with these efforts and those of local or regional watershed groups, as well as other involved Federal agencies, and hopes that this proposal will add greater impetus to those efforts.

References

A complete list of all references cited herein is available upon request (see **ADDRESSES** section).

Classification

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 675 F. 2d 825 (6th Cir. 1981), NMFS has categorically excluded all ESA listing actions from environmental assessment requirements of the National Environmental Policy Act under NOAA Administrative Order 216–6.

This proposed rule is exempt from review under E.O. 12866.

Dated: July 31, 1996.

C. Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

List of Subjects

50 CFR Part 222

Administrative practice and procedure, Endangered and threatened wildlife, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

For the reasons set out in the preamble, 50 CFR parts 222 and 227 are proposed to be amended as follows:

PART 222—ENDANGERED FISH OR WILDLIFE

1. The authority citation of Part 222 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

§ 222.23 [Amended]

2. In § 222.23, paragraph (a) is amended by adding the phrases ''Central California Coast steelhead (*Oncorhynchus mykiss*); South-Central California Coast steelhead (*Oncorhynchus mykiss*); Southern California steelhead (*Oncorhynchus mykiss*); Central Valley steelhead (*Oncorhynchus mykiss*); and Upper Columbia River steelhead (*Oncorhynchus mykiss*);'' immediately after the phrase ''Umpqua River cutthroat trout (*Oncorhynchus clarki clarki*)''.

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 227.4, paragraphs (n), (o), (p), and (q) are added to read as follows:

§ 227.4 Enumeration of threatened species.

* * * * *

(n) Lower Columbia River steelhead (*Oncorhynchus mykiss*)

(o) Oregon Coast steelhead (*Oncorhynchus mykiss*)

(p) Northern California steelhead (*Oncorhynchus mykiss*)

(q) Snake River Basin steelhead (*Oncorhynchus mykiss*).

3. Section 227.21 is revised to read as follows:

§ 227.21 Threatened salmon.

(a) *Prohibitions.* The prohibitions of section 9 of the Act (16 U.S.C. 1538) relating to endangered species apply to threatened species of salmon listed in § 227.4 (f), (g), (j), (k), (l), (m), (n), (o), (p), and (q) except as provided in paragraph (b) of this section.

(b) *Exceptions.* The exceptions of section 10 of the Act (16 U.S.C. 1539) and other exceptions under the Act relating to endangered species, including regulations implementing such exceptions, also apply to the threatened species of salmon listed in § 227.4 (f), (g), (j), (k), (l), (m), (n), (o), (p), and (q). This section supersedes other restrictions on the applicability of parts 217 and 222 of this chapter, including, but not limited to, the restrictions specified in §§ 217.2 and 222.22(a) of this chapter with respect to the species identified in § 227.21(a).

[FR Doc. 96–20030 Filed 8–8–96; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 61, No. 155
Friday, August 9, 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

Arapahoe Basin Ski Area Master Development Plan, Arapaho National Forest, Summit County, CO

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environment impact statement.

SUMMARY: The U.S. Forest Service (Forest Service) has received a Master Development Plan from Arapahoe Basin Ski Area (A-Basin) to update the 1982 plan presently in effect. The Master Development Plan outlines a number of ski area modifications and new facilities, including limited snowmaking and a mid-mountain lodge. A-Basin is located in Summit County and operates on Arapaho National Forest under a Special Use Permit issued by the Forest Service. The Forest Service is initiating the process of preparing an Environmental Impact Statement (EIS) to analyze and disclose the effects of the proposed Master Development Plan and alternatives. Potential alternatives have not yet been identified.

DATES: Comments concerning the scope of the analysis should be received by September 7, 1996.

ADDRESSES: Send written comments to Tere O'Rourke, District Ranger, U.S. Forest Service, P.O. Box 620, 680 Blue River Parkway, Silverthorne, Colorado, 80498. FAX comments to Tere O'Rourke at (970) 468–7735. Oral comments will also be accepted.

FOR FURTHER INFORMATION CONTACT: Kent Sharp, Winter Sports Administrator, (970) 468–5400. FAX (970) 468–7735.

SUPPLEMENTARY INFORMATION: The Arapahoe Basin Master Development Plan (MDP) was recently completed to update the 1982 Arapahoe Basin Ski Area Master Plan (1982 Plan). The 1982 Plan currently guides the Forest Service in their administration of the ski area's Special Use Permit. A majority of the upgrades describes within the 1982 Plan have been implemented, with the exception of the proposed snowmaking facilities. Given the age and status of the 1982 Plan, the Forest Service and A-Basin determined that an updated plan would be appropriate at this time. The MDP includes the following features:

- Snowmaking capabilities on 84 acres of terrain (17% of the total developed terrain) potentially to extend the ski season to September 1 annually
- Potential construction of a one-acre foot capacity pond for water storage for the snowmaking facilities
- Facility upgrades and modifications including: rental shop upgrade; additional parking and access through a highway underpass; a utility corridor (for water, wastewater, electricity, and phone); a mid-mountain day lodge; and alpine slide; Norway lift modifications; and patrol headquarters building
- Mountain biking trails
- Hiking/interpretive trails

Details pertaining to these proposed modifications are included in the MDP, on file at the Forest Service offices in Silverthorne, Colorado and at the Silverthorne and Frisco libraries. The MDP does not include expansion of the Forest Service permit boundary, new lifts, new ski terrain,or an increase in capacity or skiers-at-one-time (SAOT).

The purpose of and need for the proposed MDP are as follows:

- Update the 1982 Plan which is out-dated (almost 15 years old). Most of the improvements described in the 1982 Plan have been implemented. In addition, new ski area technologies, planning strategies, and environmental philosophies have emerged during this time which warrant consideration in an updated plan.
- Increase summer recreational opportunities at A-Basin, potentially to include year-round alpine skiing, mountain biking, interpretive trails, and an alpine slide. Additional recreational opportunities would enhance economic activity and employment within Summit County. In addition, providing for increased recreational opportunities at A-Basin would be consistent with the White River National Forest Plan and Forest Service policies encouraging additional opportunities for summer and winter recreation on National Forest System land, including the summer use of ski area facilities, where appropriate.
- Provide year-round public skiing opportunities and race camp experiences for young racers through the employment of snowmaking to cover approximately 17% of the developed terrain at A-Basin. It would also provide for fall training facilities for the U.S. Ski Team. Currently, young racers and U.S. Ski Team members must travel out of state or out of the country to obtain appropriate training experiences.
- Update and improve restaurant, parking, patrol headquarters, and other facilities at the resort. The proposed facility improvements would address current deficiencies and enhance the quality and safety of the resort experience at A-Basin.
- Encourage year-round use of the facilities while maintaining the resort character.

The decision to be made is whether or not to approve and accept the proposed MDP as a portion of the existing special use permit.

Preliminary issues associated with the MDP include water quality and quantity; instream flow maintenance; fisheries; wetlands; wildlife; and recreational compatibility.

A U.S. Army Corps of Engineers ''404 Permit'' for dredging and filling waters and/or wetlands may be required. The Forest Service will request the U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service to cooperate in the environmental analysis, and may request cooperation from other State and Federal agencies.

The Forest Service invites comments and suggestions on the scope of the analysis to be included in the draft environmental impact statement. In addition, the Forest Service gives notice that it is beginning a full environmental analysis and decision-making process for this MDP so that interested or affected people may know how they may participate in the environmental analysis and contribute to the final decision. The public scoping meetings are scheduled for Monday August 12, 1996 from 7:30–9:30 pm at the Silverthorne Recreation Center, 430 Rainbow Drive, Silverthorne, Colorado; and Tuesday, August 13, 1996 from 7:00–9:00 pm at the Forest Service Regional Office, 740 Simms Street, Golden, Colorado. The purpose of these meetings is to learn what issues and concerns members of the public or interested agencies have that are associated with the proposal and should

be considered. Knowledge of these issues and concerns will help establish the scope of the Forest Service environmental analysis and define the kind and range of alternatives to be considered. Forest Service officials and the proponent will describe and explain the proposed actions and the process of environmental analysis and disclosure to be followed in evaluating the MDP. The Forest Service welcomes any public comments on the MDP.

The Responsible Official: Sonny LaSalle, Forest Supervisor, White River National Forest, P.O. Box 948, Glenwood Springs, CO. 81602.

We expect to publish the draft environmental impact statement in late 1996 or early 1997, to ask for public comment for a period of 45 days, and to complete a final environmental impact statement in mid 1997.

The 45-day public comment period on the draft environmental impact statement will commence on the day the Environmental Protection Agency publishes a ''Notice of Availability in the Federal Register.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553, (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.,* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provision of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.) Please note that comments you make on the draft environmental impact statement will be regarded as public information.

Dated: August 2, 1996.

Veto J. LaSalle,

White River National Forest, Forest Supervisor.

[FR Doc. 96–20325 Filed 8–8–96; 8:45 am]

BILLING CODE 3410–BW–M

Deadwood Ecosystem Analysis '96, Boise National Forest, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Lowman Ranger District of the Boise National Forest will prepare an environmental impact statement on a proposal to treat 22,910 acres within the 44,552 acre Deadwood Ecosystem Analysis '96 Project Area through timber harvest, precommercial thinning and/or prescribed fire. The proposal would reduce stand densities and alter tree species composition to favor densities and tree species which are resistant and/or resilient to wildfire, insect attack, and disease.

It is believed that density reduction and reintroduction of fire will improve the resistance and resilience of stands. Through treatment, these stands would be maintained in the early seral state. Stands in early seral condition have a high proportion of shade intolerant tree species which are resistant to insect and disease attack and capable of withstanding catastrophic fire.

The proposal includes construction of 11.2 miles of road within the Deadwood Inventoried Roadless Area (IRA).

The Deadwood River drainage is located in the west-central mountains of Idaho, in Boise and Valley Counties, Townships 9–11 North and Ranges 6–8 East, Boise Meridian. Preliminary analysis has demonstrated that large numbers of stands are at risk from insect and disease epidemics and catastrophic wildfires. The Deadwood Ecosystem Analysis '96 timber sale proposes to treat timber stands in the southern portion of the Deadwood River drainage to reduce densities and increase stand diversity and, as a by-product of this vegetative manipulation, provide wood fiber to the local economy.

Stands in the southern portion of the Deadwood River drainage were chosen for priority treatment because they are warmer and drier than stands in the northern portion. The southern portion has been identified by the Boise National Forest Hazard and Risk Assessment as at risk to catastrophic wildfire. Fire suppression and a limited amount of logging have been concentrated in this area. As a result, the stands (which previously had a fire return interval of approximately 20 years) have not burned as frequently as necessary to maintain resistance and resilience. In an effort to maintain ponderosa pine, an early seral species, within this ecosystem, stands capable of growing ponderosa pine have been selected for treatment. Additional stands which would not normally contain ponderosa pine will be treated to break up dense overstories and reduce stress, increasing growth rates and reducing the threat of insect attack and diseases and reducing the potential for catastrophic fires.

Proposed Action

Prescribed Fire Only—3,690 acres—to reduce on the ground fuels and stand densities. Burning would be at low intensity designed to stay on the ground and kill smaller trees. Some openings would be created, and a few areas may burn at moderate intensity, killing some larger trees. This includes 1,840 acres of the eligible Wild and Scenic river corridor.

Sanitation Salvage then Prescribed Fire—9,230 acres—to salvage dead, dying, insect infested and diseased trees. Dense pockets of trees in these stands would be thinned from below to remove the least fire resistant trees followed by prescribed fire.

Sanitation/Salvage with Precommercial Thinning Favoring Ponderosa Pine then Douglas-fir—900 acres—Dwarf mistletoe or bark beetle infested Douglas-fir stands would have the overstory removed except for those trees necessary for wildlife or large woody debris. There may be ½ to 3 acre openings created in heavily mistletoe infected and root rot affected areas. The understory will be precommercially thinned at a spacing which will range from 12 to 20 feet, depending on tree size. This precommercial thinning will retain ponderosa pine trees whenever available. If possible, fire will be used after the treatment.

Approximately 7,530 acres will be treated by selecting leave trees to create an uneven-aged stand primarily occupied by relatively large ponderosa

pine trees which are capable of producing seed for reproduction. Basal areas in these stands will be reduced to increase the resistance and resilience of the stands. These stands have been determined to be at risk to insects and disease attacks. By reducing densities, insect and disease infested trees, and/or trees of a certain species which may cause a stand to be unhealthy, the growth of the stands will improve and stress will be reduced. This treatment, described as ''thinning from below'' will be accomplished in the following ways:

1. Stands with several age/size classes of primarily ponderosa pine would be treated with density reduction. Young trees (8–14 inches d.b.h.) would be thinned to increase growth potential and reduce overcrowding. Trees in the 14- to 24-inch diameter class would also be thinned to encourage seed production. Some trees larger than 24 inches in diameter would be harvested if they show signs of disease, decay, or insect infestation. In areas where adequate ponderosa pine trees exist in all age/size classes, a small portion of large trees may be harvested to improve spacing and increase the economic viability of the timber sale.

2. In stands that contain a mix of species, the action would remove primarily Douglas-fir, allowing the ponderosa pine sufficient room to grow and reducing competition and stress within the stands.

3. Other stands are capable of growing ponderosa pine, but do not currently contain ponderosa pine due to successional changes. These stands currently contain primarily Douglas-fir. Where practical, stands would be treated to remove Douglas-fir and replanted with ponderosa pine. These activities would occur in small pockets where annosus root rot and dwarf mistletoe are occurring.

Precommercial and Commercial Thinning Favoring Lodgepole Pine—500 acres—thinned to 11-foot spacing. Slash will be jackpot burned.

Two to Five Acre Clearcuts—300 Total Acres—Small clearcuts would be used to break up the stands that have a continuous crown, remove the subalpine fir, and make the stands more resistant to natural fire. Stands would regenerate themselves with lodgepole pine.

Prescribed Fire in Subalpine Fir Habitats—700 acres—break up stands of dense subalpine fir which are highly susceptible to large stand destroying fires.

All treated stands would be prescribed burned following timber harvest or precommercial thinning. The prescribed fire would reduce fuels and reduce the proportion of late seral tree species which are more susceptible to fire.

Issues and Alternatives

Previous scoping and public meetings have identified several issues. These issues include:

1. Road construction in the Deadwood IRA would develop the roadless area and reduce the acres that have a roadless character.

2. Logging activities in the Deadwood IRA would develop the roadless area and reduce acres that have a roadless character.

An alternative to eliminate the proposed road construction in the Deadwood IRA will be analyzed in detail.

Comments

Comments concerning the scope of the analysis should be received in writing on or before September 9, 1996. Mail comments to, or for further information contact, Jackie Andrew, Lowman Ranger District, Boise National Forest, HC 77 Box 3020, Lowman, ID 83637, Telephone: 208–259–3361.

Public Involvement

The Deadwood Ecosystem Analysis '96 Project was proposed as a result of the Deadwood Landscape Analysis, completed in 1994. The Deadwood Landscape Analysis sought to analyze the current conditions within the Deadwood River drainage in contrast to the conditions believed to exist prior to logging, fire suppression, and drought which may have affected those conditions. This analysis was performed to comply with the National Forest Management Act. The analysis suggested that vegetative manipulation was warranted to restore the resistance and resilience of the ecosystem to catastrophic events such as fire, disease, and insect attack. Initial plans were to include all proposals for the Deadwood River drainage in a single Environmental Impact Statement. However, due to the complexity of the analysis, the area was divided into several project level environmental impact statements. In July 1995, P.L. 104–19 (Rescission Act) was signed into law. Since the Deadwood project contained an identifiable salvage component, the project was placed under the Rescission Act. The first project area to be analyzed was the southern portion, for which the Deadwood Salvage '96 Environmental Assessment was prepared. It was distributed for comment in April 1996. The Secretary of Agriculture issued clarification in July 1996. As a result, Forest Supervisor David D. Rittenhouse has removed the Deadwood Salvage '96 project area from consideration under the Rescission Act. The Deadwood Ecosystem Analysis '96 project includes the same area analyzed as the Deadwood Salvage '96 Environmental Assessment.

Numerous public mailings, meetings and site visits were conducted to collect public comment and concerns during the preparation of the Landscape Analysis and Environmental Assessment.

Public/Agency Contacts

Contacts have been made with the U.S. Fish and Wildlife Service regarding threatened and endangered species listed for the project area, and landowners in or near the project area. The U.S. Fish and Wildlife Service has concurred with the Forest Service determination that the proposed action is not likely to affect threatened or endangered species.

Schedule

A Draft Environmental Impact Statement is expected to be distributed in September 1996. The Final Environmental Impact Statement and Record of Decision is expected to be complete in November 1996.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the Federal Register.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact stage but that are not raised until after the completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angood* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time

when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official

David D. Rittenhouse, Forest Supervisor, Boise National Forest is the responsible official. He will decide if the area should be managed to reduce the risk of insect attack, disease, and wildfire and, if so, which proposal for treatment will be implemented.

Dated: August 5, 1996.

David D. Rittenhouse,

Forest Supervisor.

[FR Doc. 96–20324 Filed 8–8–96; 8:45 am]

BILLING CODE 3410–11–M

North Lochsa Face Vegetative Management; Clearwater National Forest; Idaho County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice; Intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service, Clearwater National Forest will prepare an EIS (environmental impact statement) for vegetative management activities, within the North Lochsa Face analysis area, that will restore and maintain the health of forest ecosystems and support the economic and social needs of people and their communities. The analysis area is located on the Lochsa Ranger District on the Clearwater National Forest, headquartered in Orofino, Idaho.

The EIS will tier to the Clearwater National Forest Land and Resource Management Plan Final EIS of September, 1987, which provides overall guidance of all land management activities on the Clearwater National Forest. Analyses will also be conducted in compliance with the Stipulation of Dismissal agreed to for the lawsuit between the Forest Service and the Sierra Club, et al (signed September 13, 1993).

The agency invites written comments and suggestions on the issues and management opportunities for the area being analyzed.

DATES: Comments concerning the scope of the analysis should be received by no later than September 23, 1996, to receive timely consideration in the preparation of the Draft EIS. The Draft EIS is anticipated to be filed with the Environmental Protection Agency in December 1996. The Final EIS and Record of Decision are expected to be issued in May 1997.

ADDRESSES: Submit written comments and suggestions on the proposed action or requests to be placed on the project mailing list to James L. Caswell, Forest Supervisor, Clearwater National Forest, 12730 U.S. Highway 12, Orofino, ID, 83544, FAX: 208–476–8329.

FOR FURTHER INFORMATION CONTACT: (George Harbaugh, Interdisciplinary Team Leader, Lochsa Ranger District, P.O. Box 398, Kooskia, ID 83539, telephone (208) 926–4275.

SUPPLEMENTARY INFORMATION: The North Lochsa Face analysis area covers approximately 128,000 acres of mostly forested, steep mountains on the Lochsa Ranger District. It lies between Highway 12 and the Lolo Motorway (Forest Road 500) just north of the small communities of Lowell and Syringa. Lewiston is 95 miles west of the area on Highway 12; Missoula is 130 miles to the east. The Lochsa River, a designated Wild and Scenic River, runs alongside Highway 12. The Lochsa District boundary and the Lolo Motorway form the north border of the analysis area. The Pete King Creek drainage forms the southwest boundary. Highway 12 and the Lochsa River form the south/southeast boundary up to Fish Creek, and the remaining boundary is the eastern watershed divide of Fish Creek.

The area is relatively isolated and undeveloped. However, U.S. Highway 12, the only highway in central Idaho that connects Washington and Montana, carries a great deal of traffic year-round. It is the primary route for trucks hauling grain, logs and other products from Montana and the northern tier of states, as well as southern Canada, to the shipping port of Lewiston. This route also provides the quickest crossing for passenger traffic from the Portland, Oregon, area to points in the northern tier of states. Recreation traffic on this highway, especially in the summer, can be heavy.

Two small communities, Lowell and Syringa, lie at the southern tip of the analysis area. Both offer motels and a service station for highway travelers and tourists. Within a 60 mile radius of the analysis area lie the towns of Kooskia, Kamiah, Grangeville, Orofino, Pierce, Weippe, and Sites. All are primarily timber-dependent communities, whose economies are directly affected by Forest Service management. The analysis area is within Idaho County, but any activity in the analysis area would also affect those communities within adjacent Clearwater and Lewis Counties.

The Clearwater Forest Plan provides guidance through its goals, objectives, standards, guidelines and management area direction. The analysis area consists of Management Areas A6, A7, C3, C4, C6, C8S, E1, M1, and US, with inclusions of Management Area M2 in all areas. Below is a brief description of the applicable management direction.

Management Area A6—Historic Lolo Trail Corridor (11,262 acres)—Manage to provide opportunity for recreational activities oriented to traveling over, understanding, and appreciating the route as a historic travel route. Minimize timber harvest activity conflicts with recreation.

Management Area A7—Middle Fork of the Clearwater Wild and Scenic River Corridor (4,105 acres)—Protect and enhance scenic values, cultural values, water quality, big game, non-game, and fishery habitats with special emphasis on the anadromous fishery, and developed and dispersed recreation that will contribut to public use and enjoyment of the free flowing rivers and their immediate environment. Harvest timber when enhancement of key resources will occur and adverse impacts to key resources would be of low magnitude and short duration, and to achieve specific vegetation management objectives.

Management Area C3—Elk Winter Range (16,797 acres)—Provide winter forage and thermal cover for big-game. Classify this land as unsuitable for timber production.

Management Area C4—Elk Winter Range/Timber (14,979 acres)—Provide sufficient winter forage and thermal cover for existing and projected big game populations while achieving timber production outputs.

Management Area C6—Elk Summer Range (28,263 acres)—Protect the soil and water from adverse effects of man's activities. Classify this land as unsuitable for timber production.

Management Area C8S—Elk Summer Range/Timber (22,900 acres)—Manage these areas to maintain high quality wildlife and fishery objectives while producing timber from the productive Forest land.

Management Area E1—Timer Management (24,640 acres)—Provide optimum, sustained production of timber products in a cost-effective manner while protecting soil and water quality.

Management Area M1—Lochsa Research Natural Area (1,022 acres)—Manage established RNAs to protect their inherent natural features and maintain them in undisturbed ecosystems.

Management Area M2—Riparian Areas (inclusions)—Manage under the principles of multiple use as areas of special consideration, distinctive values, and integrated with adjacent management areas to the extent that water and other riparian-dependent resources are protected.

Management Area US—Unsuitable Land (3,764 acres)—Manage to maintain and protect soil and watershed values and vegetative cover. Manage for resources other than timber such as dispersed recreation, and big-game summer range as appropriate.

The proposed actions are based on the North Lochsa Face Landscape and Watershed Assessment, April 1996, which was a National Forest Management Act (NFMA) analysis completed by a team of Forest and District specialists. The team was given two major objectives. The first was to prepare a scientific assessment of the ecological condition of the North Lochsa Face area, focusing on structure, function, and composition. The second major objective was to describe the social values associated with this piece of land, and integrate those social values into future management of the area. The analysis also provided an opportunity to modify interim PACFISH watershed guidelines. Copies of the assessment are available upon request from the District office.

The proposed actions reflect treatment needs identified for this landscape from a scientific basis. Numerous social constraints have not been overlaid on the proposed actions, but will be reflected in future alternative development. Also, in replicating natural disturbance patterns, it is likely that some of the timber harvest and/or prescribed burning proposals will result in Forest openings greater than 40 acres. The following actions are proposed for the North Lochsa Face area during the next 5-year planning period (1997–2001):

Proposed Action: Timber Harvest-Approximately 6,900 acres of highly stocked stands in the Fish and Hungery Creek drainages, 4,000 acres in the Canyon and Deadman Creek drainages, 2,500 acres in the Pete King drainage, and 6,000 acres in the remaining small drainages along the northern face of the Lochsa River are proposed for harvest. Stand diagnoses are still needed to determine the type of harvest treatment. However, at this time, it is anticipated that the primary type of proposed treatments will consist of commercial thinnings, with some regeneration harvest and selection cuts. Where needed, proposed road activities will consist mostly of reconstruction or reconditioning. It is anticipated that there will be minimal need, if any, for the construction of new roads. Almost two-thirds of the total area proposed for harvest is unroaded and will require helicopter yarding. Those remaining areas having existing road systems would be logged using conventional systems (skyline and tractor yarding). An additional 840 acres of roadside salvage, mostly in the Canyon and Deadman Creek drainages, are proposed within a 200 foot strip on both sides of 23 miles of open roads. Where economically feasible, opportunities for salvage harvesting will be considered beyond the roadside strips. Conventional systems would be used to yard the dead, dying, and high risk trees proposed for salvage. The total estimated volume to be harvested will be available after further data analysis and field reconnaissance.

Purpose: To reduce stand densities, change species composition, and achieve age class/size distribution and structure patterns to desired levels; to reduce the risk of wildfire; to reduce burn intensities on the breaklands; to salvage dead, dying and high risk trees; to improve Forest health; and to provide a supply of timber for logging-dependent communities.

Need: Many years of fire suppression have allowed a majority of the stands proposed for harvest to have basal areas higher than the normal range of variability. Increased stand densities, combined with the drought conditions of recent years, have stressed the trees, making them more susceptible to attack by bark beetles, root rots, and other pests. As the incidence of insects and disease has increased, higher fuel loads have resulted, increasing the risk of higher intensity fires. Also, since many of these acres are on the breaklands, the stand densities need to be reduced through timber harvest, before the following proposal on prescribed burning can be implemented.

Known stands in need of commercial thinning are less than 100 years old with over 175 trees per acre. There is a need to thin these stands back to about 100 trees per acre to reduce stress, redistribute growth, and reduce fuel loads.

Many stands along open roads are experiencing declaring growth rates resulting from age, insects, disease, and overcrowding. The recent emergency salvage effort, conducted under authority of the Rescission Act, focused on similar stands through the Forest. Another 23 miles of open roads within this analysis area have dead and dying stands along them, plus, recent aerial surveys have detected insect and disease damage in much of the analysis area. These stands need to be salvaged and regenerated to improve productively reduce attack by insects and disease, and utilize volumes usually lost to mortality.

Historically, logging has been the primary means of support and a way of life for local community residents. Most communities were hit hard by the timber shortages of the 1980s, and there has been some movement towards economic diversification. However, logging still plays a significant role in the area, and the above mention harvest proposals would benefit those people who work in the mills and wood products industry.

Proposed Action: Prescribed Burning—Approximately 5,000 to 8,000 acres of ponderosa pine and Douglas-fir habitats, mostly within the breaklands, are proposed for understory burns. Prescribed natural fire may take up additional acres, should lightening strikes occur in desirable areas. A prescribed natural fire management plan will be prepared as part of this analysis. Also, a Forest Plan amendment will be proposed to change the contain/confine status in brushfields in an effort to balance the suppression costs with resource values.

Purpose: To use prescribed fire to maintain healthy ecosystems; and to reduce the risk of catastrophic wildfires.

Need: Historically, the breaklands have had a short term fire regime of 26 to 50 years. Frequent fires maintained a very diverse structure composition, keeping stands open and allowing Douglas-fir, western larch, and to a lesser extent ponderosa pine to dominate a stand a regenerate. Over 60 years of fire suppression has caused the seral species to become less dominant in the overstory and replaced by uniform standards of trees with dense understories of western redcedar, grand fir, subalpine fir, and Douglas-fir. Under these conditions, the risk of a large catastrophic fire occurring in the breaklands is high. This risk is highest in Rye Patch Creek, lower Canyon Creek, Apgar Creek, and Glade Creek. Under-story burns will help perpetuate

the types of stand composition and structure naturally occurring when fire is reincorporated as an ecological process on the landscape.

Proposed Action: Stocking Control—Approximately 7,500 acres of stands having more than 1,000 trees per acre, less than 7″ diameter breast height (dbh), are proposed to be thinned back to 400–500 trees per acre, using chainsaws or natural prescribed fire as methods of treatment. These stands are scattered throughout the analysis area, and further screening based on accessibility will probably eliminate those stands out of reach. Another estimated 860 acres of overstocked stands are proposed to have their tolerant species (grand fir, cedar, subalpine fir, and mountain hemlock) thinned back to increase the percentage of seral species (Douglas-fir, ponderosa pine, white pine, larch, and lodgepole pine) left in the stand. These stands will also be screened for accessibility.

Purpose: To reduce the number of trees per acre in overstocked stands; and where desired, to reduce the density of tolerant species in favor of the seral species.

Need: High stocking levels, especially on the drier LTAs, lead to limited availability of water and nutrients for individual trees, predisposing them to insect and disease problems and increased fire risk. Shade-tolerant species on a site are more sensitive to water deficits, with the same results as overstocking. Also, stands having high percentages of seral species are better adapted to fire regimes.

Proposed Action: Planting Riparian Areas—Approximately 450 acres, consisting of a strip 300 feet wide, 6 miles long on both sides of Fish Creek, are proposed to be interplanted with conifers such as cedar and spruce, and cottonwoods. Approximately 150 acres, consisting of a similar strip along 2 miles of Pete King Creek, are proposed to be full-planted with cedar and white pine tree species.

Purpose: To reduce stream temperatures by re-establishing stands of trees (shade) in riparian areas.

Need: The stream terraces within both of these drainages would typically have a high percentage of old-growth trees. However, only remnants remain due to the 1934 fire that overran these areas. With shade being limited, stream temperatures in both Pete King Creek and Fish Creek are currently above water quality standards. The re-establishment of shade providing trees is needed to reduce stream temperature to desired levels.

Proposed Action: Reforestation of Shrubfields—There are approximately 5,300 acres of shrubfields with none or low tree stocking, mostly within the Fish, Hungery, Deadman, Bimerick, and Glade Creek drainages. Currently, a mechanical slash buster is being used on about 600 acres of shrubfields in the Middle Butte area. As the brush is cut back, the prepared sites are being planted with seral tree species. At this time, it is proposed to monitor the effectiveness of this treatment and research that of other treatments, such as, slashing followed by a light burn, underplanting followed by release, and possible ground applications of herbicides. Following this monitoring and research effort, some or all of the 5,300 acres of shrubfields may be proposed for treatment.

Purpose: To comply with the NFMA mandate to restore and maintain appropriate forest cover; to put suitable lands back into optimal timber production; to allow for soil recovery; and to provide future thermal cover for wildlife.

Need: Seral shrubfields, comprised of ninebark, mountain maple, alder, snowberry, ocean spray, willow, and other species, have come to dominate these areas after repeated large fires eliminated tree seed sources. These past fires have reduced site productivity through changing soil physical and chemical properties along with surface soil erosion losses. Forest vegetation is slowly returning to areas with deeper soils, but without treatment, some of the shrubfields may remain for many years.

Although these shrubfields represent an important early seral stage, the areas they occupy must proceed through natural successional processes to allow soil recovery from past fires. To accommodate big game use, shrubfields must be permitted to shift spatially across the landscape over time. This process creates a mosaic pattern of forage and thermal cover areas beneficial to big game while allowing for soil restoration to occur.

Proposed Action: Restoring Native Species Composition—Off-site ponderosa pine plantations occupy a total of 330 acres in the Boundary Peak area and 1,950 acres in the Bimerick Creek drainage. During this planning period, approximately 1,000 acres of off-site ponderosa pine are proposed to be removed by use of timber harvest, slashing, and/or burning. Use of timber harvest is still very questionable at this time, since these trees are of poor form and quality (low value), and access to them is very limited. Local seed sources would be used to replant the sites with genetically adapted seral species.

Purpose: To better utilize these sites by replacing off-site ponderosa pine with adapted stock; and to prevent the contamination of the local gene pool, which could affect the species' ability to adapt and thrive.

Need: After the 1934 fire these areas were planted with ponderosa pine by the Civilian Conservation Corps. The trees planted were from distant sources, including the Bitterroot, Cabinet, Chelan, and Deschutes National Forests. Recent research has shown that ponderosa pine is genetically adapted to specific elevations and geographic areas. This stock was not matched to the planting sites with those criteria. As a result, these trees have been slower growing than those from local seed sources, and are now falling victim to diseases that would normally not affect trees of this age. Root rots, blights, needle casts, and insect infestations have all been noted.

Proposed Action: Control of Noxious Weeds—The initial proposal is to prioritize where to control noxious weeds along all roads and trails, plus the grazing allotment area near Woodrat Mountain. The proposal will be further refined to concentrate control efforts on those areas receiving high use, such as, recreation areas and open roads. Methods of control to be analyzed include herbicides, manual or mechanical eradication, prescribed fire, and available biological control agents.

Purpose: To control new infestations and minimize the spread of noxious weeds; to comply with the Idaho Noxious Weed Law; and to participate in the integrated weed management system.

Need: Forest travel-ways (roads and trails) are the main seed depositories and transportation corridors for invasive/non-native plant species. Given the nature of use of the travel-ways within the analysis area (logging equipment, livestock grazing, backcountry horsemen, and weekend explorers), it would be safe to assume that all roads and trails have at least one invasive/non-native weed species established on them.

Surveys conducted along US Hwy 12 documented Spotted Knapweed (*Centaurea maculosa*) present continually from Kooskia to Lolo Pass, with scattered patches of Canada thistle (*cirsium arvense*), Meadow Hawkweed (*Hieracium pretense*), Scotch broom (*Cytisus scoparius*), Common crupina (*Crupina vulgaris*), St. Johnswort (*Hypericum preforatum*), Dalmation Toadflax (*Linaria dalmatica*), Field bindweed (*Convolvulus arvensis*), and Scotch thistle (*Onopordum acanthium*). Also documented were two potential invaders, Sulfur cinquefoil (*Potentilla recta*) and Everlasting peavine (*Lathyrus*

latifolius). Sulfur cinquefoil is the only species present that is known to persist under a forested canopy. It is not yet a listed Noxious Weed species in Idaho, but is considered a serious threat to big game winter range habitat.

In 1995, FS Road 101 was surveyed from U.S. Hwy 12 to Mex Mountain. This survey revealed Spotted Knapweed present almost continually on both sides of the road as well as scattered infestations of Dalmation toadflax, Canada thistle, Everlasting peavine, St. Johnswort and Orange Hawkweed (*Hieracium aurantiacum*). Roads 417, 514, 455 and 418 were also traveled during this survey. Spotted Knapweed, Orange Hawkweed and Canada thistle were found on these roads.

Proposed Action: Watershed Restoration and Rehabilitation—Of all the watersheds within the analysis area, Pete King has had the greatest amount of mass wasting. Due to more stable landforms or timber management associated activities, the other watersheds have experienced less mass wasting. Treatments proposed include: removing sediment from stream channels; placing large organic debris in the creeks; placing seed, fertilizer, and straw mulch on exposed soil surfaces; and rehabilitating over-steepened road cutslopes and old skid trails and roads that remain exposed to rainfall and running water.

Purpose: To identify and stabilize stream sediment sources and provide a pathway of actions that lead to a healthy functioning watershed.

Need: The analysis area is composed of relatively managed watersheds, with the exceptions of Fish/Hungery Creeks and some of the face watersheds. Mass wasting, such as debris torrents associated with channels, increased substantially after the large fire in 1934. Large landslide events, mostly related to roads, occurred in the 1970s, 1987, and 1996. This year's event can be related to higher than normal rainfall and saturated soils. Except for Canyon/Deadman Creeks, the other major drainages are in the upper ranges of natural variability for sediment. Data on Canyon and Deadman Creeks show sediment gradually declining, but these low energy systems do not clean themselves out.

A range of alternatives will be considered, including a no action alternative and the proposals identified above. Based on the issues identified through scoping, all action alternatives will vary in the number and location of acres to be treated, the type of treatment, and the kind of mitigation measures. Issues will drive the formulation of feasible alternatives.

The EIS will analyze the direct, indirect and cumulative environmental effects of the alternatives. Past, present and projected activities on National Forest lands will be considered. The EIS will disclose the analysis of site-specific mitigation measures and their effectiveness.

Comments from the public and other agencies will be used in preparation of the Draft EIS. The scoping process will continue to be used to:

1. Identify potential issues.
2. Identify major issues to be analyzed in depth.
3. Eliminate minor issues or those which have been covered by a relevant previous environmental analysis, such as the Clearwater Forest Plan EIS.
4. Identify alternatives to the proposed action.
5. Identify potential environmental effects of the proposed action and alternatives (i.e., direct, indirect and cumulative effects).
6. Determine potential cooperating agencies and task assignments.

Preliminary issues identified as a result of internal and public scoping include: effects of the proposal on watersheds, air quality, economics, roadless areas, research natural areas, ecosystem management, social aspects, visual quality, heritage resources, the possible use of herbicides, helicopter logging systems, and safety. These issues will be verified, expanded and/or modified based on continued scoping for this proposal.

Public participation is important all through the analysis process. Two key time periods have been identified for receipt of formal comments on the proposal and analysis:

1. Scoping period, which starts with publication of this notice and continues for the next 45 days; and
2. Review of the Draft EIS in December 1996 thru February 1997. The Forest Service expects to file the Draft EIS with the Environmental Protection Agency in December 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 and Record of Decision are expected in May 1997.

The Forest Service believes it is important to give reviewers notice, at this early stage, of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final EIS.

To assist the Forest Service in identifying and considering issues on the proposed action, comments on the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the Draft EIS.

Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The Forest Supervisor is the responsible official for this environmental impact statement. His address is Clearwater National Forest, Forest Supervisor's Office, 12730 Highway 12, Orofino, ID 83544.

Dated: July 30, 1996.

James E. Caswell,

Forest Supervisor, Responsible Official.

[FR Doc. 96–20286 Filed 8–8–96; 8:45 am]

BILLING CODE 3410–11–M

Blue Mountains Natural Resources Institute, Board of Directors, Pacific Northwest Research Station, Oregon

AGENCY: Forest Service, USDA.

ACTION: Correction of meeting date.

SUMMARY: The Blue Mountains Natural Resources Institute (BMNRI) Board of Directors will meet on September 3, 1996, at Eastern Oregon State College, Hoke Hall, Room 309, 1410 L. Avenue, in La Grande, Oregon. The meeting will begin at 9:00 a.m. and continue until 4:00 p.m. Agenda items to be covered will include: (1) program status; (2) research results of specific projects; (3) outreach activities; (4) briefing on Interior Columbia Basin Ecosystem Management Project and EIS alternatives; (5) election of board officers; (6) public comments. All

BMNRI Board Meetings are open to the public. Interested citizens are encouraged to attend. Members of the public who wish to make a brief oral presentation at the meeting should contact Larry Hartmann, BMNRI, 1401 Gekeler Lane, La Grande, Oregon 97850, 541–962–6537, no later than 5:00 p.m. August 30, 1996, to have time reserved on the agenda.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Larry Hartmann, Manager, BMNRI, 1401 Gekeler Lane, La Grande, Oregon 97850, 541–962–6537.

Dated: August 2, 1996.

Larry Hartmann,

Manager.

[FR Doc. 96–20334 Filed 8–8–96; 8:45 am]

BILLING CODE 3410–11–M

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Rural Business-Cooperative Service (RBS) to request an extension of a currently approved information collection in support of the Rural Business Enterprise Grants and Television Demonstration Grants (RBEG) Program.

DATES: Comments on this notice must be received by October 8, 1996.

FOR FURTHER INFORMATION CONTACT: Carole Boyko, Loan Specialist, Rural Business-Cooperative Service, USDA, Specialty Lenders Division, STOP 1521, 1400 Independence Avenue SW, Washington, DC 20250–1521. Telephone: (202) 720–0661.

SUPPLEMENTARY INFORMATION:

Title: RBS/Rural Business Enterprise Grants and Television Demonstration Grants.

OMB Number: 0570–0132.

Expiration Date of Approval: August 31, 1996.

Type of Request: Extension of a currently approved information collection.

Abstract: The objective of the RBEG program is to facilitate the development of small and emerging private businesses in rural areas. This purpose is achieved through grants made by RBS to public bodies and nonprofit corporations. Television Demonstration grants are available to private nonprofit public television systems to provide information on agriculture and other issues of importance to farmers and the rural residents. The regulations contain various requirements for information from the grantees, and some requirements may cause the grantees to require information from other parties. The information requested is vital for RBS to be able to process applications in a responsible manner, make prudent program decisions, and effectively monitor the grantees' activities to protect the Government's financial interest and ensure that funds obtained from the Government are used appropriately. It includes information used to determine eligibility; the specific purposes for which grant funds will be used; timeframes; who will be carrying out the grant purposes; project priority; applicant experience; employment improvement; and mitigation of economic distress.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.86 hours per response.

Respondents: Non-profit corporations, public bodies.

Estimated number of Respondents: 210.

Estimated number of responses per respondent: 33.14.

Estimated total annual burden on respondents: 12,920 hours.

Copies of this information collection can be obtained from Sam Spencer, Rural Business Team Information Collection Coordinator, at (202) 720–9588.

Comments: 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 will have practical utility; (b) 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; (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 those who respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Sam Spencer, Rural Business Team Information collection Coordinator, Regulations and Paperwork Management Division, U. S. Department of Agriculture, Rural Development, STOP 0743, 1400 Independence Avenue SW, Washington, DC 20250–0743. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: August 1, 1996.

Dayton J. Watkins,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 96–20355 Filed 8–8–96; 8:45 am]

BILLING CODE 3410–07–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 9, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Disposal Support Services
Eglin Air Force Base, Florida
NPA: Lakeview Center, Inc., Pensacola, Florida
Grounds Maintenance
Presidio of Monterey
Monterey, California
NPA: North Bay Rehabilitation Services, Inc., San Rafael, California

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–20362 Filed 8–8–96; 8:45 am]

BILLING CODE 6353–01–P

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: September 9, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On March 29, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (61 F.R. 14088) of proposed addition to the Procurement List. Comments were received from the current contractor for the strap assembly. The contractor objected to use of sales figures from a financial reporting service for assessment of impact on the company of adding the assembly to the Procurement List, and provided its own sales data. The contractor also noted that it had acquired new sewing machines and hired extra people for the contract, and that it employs all types of people and does business with a local nonprofit agency for the blind. The contractor also claimed an excellent record of past performance on its Government contracts.

The Committee used the sales figures provided by the contractor, adjusted to reflect estimated Government buys of the assembly in 1996, when it made its assessment of the impact on the contractor of adding the assembly to the Procurement List. The resulting percentage of the contractor's sales projected to be lost was very small, and considerably below that claimed by the contractor. Consequently, the Committee does not believe the addition will have a severe adverse impact on the contractor.

The contractor has not provided information which would indicate that the sewing machines it acquired could not be used for other business. With respect to any new employees who would be discharged if the contract were lost, addition of the assembly to the Procurement List would create substantial employment for blind individuals, whose unemployment rate far exceeds that of individuals without severe disabilities. Consequently, the Committee believes that any job loss by the contractor's employees is outweighed by the creation of jobs for blind individuals.

The local nonprofit agency for the blind informed the Committee that the contractor has given it very little business (none in the past two years) and none of this business has been on the strap assembly. The nonprofit agency does not believe this addition to the Procurement List will affect its business relationship with the contractor. The relationship thus is not a reason for the Committee to decline to create jobs for blind individuals at another nonprofit agency. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Strap, Shoring Assembly
5340–03–000–9382
5340–03–000–9383
5340–03–000–9384
5340–03–000–9385

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–20363 Filed 8–8–96; 8:45 am]

BILLING CODE 6353–01–P

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: September 9, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 7 and 14, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (61 FR 29080 and 30224) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions

on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Computer Moving
Morgantown Energy Technology Center
Morgantown, West Virginia

Food Service Attendant
Bradley Air National Guard Base
103rd Fighter Group
East Granby, Connecticut

Food Service Attendant
Air National Guard
Barnes Airport, 104th Fighter Group
Westfield, Massachusetts

Medical Transcription
U.S. Naval Hospital
Patuxent River, Maryland

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–20364 Filed 8–8–96; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Notice and Request for Comments Regarding a Proposed Extension of an Approved Information Collection Requirement

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Public Law 104–13), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. This information collection requirement is currently approved by the Office of Management and Budget (OMB) for use through January 31, 1997. DoD proposes that OMB extend its approval for use through January 31, 2000.

DATES: Consideration will be given to all comments received by October 8, 1996.

ADDRESSES: Written comments and recommendations on the proposed information collection requirement should be sent to: Defense Acquisition Regulations Council, Attn: Mr. Michael Mutty, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350. Please cite OMB Control Number 0704–0214 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Mutty, at (703) 602–0131. A copy of this information collection requirement is available electronically via the INTERNET at: http://www.dtic.mil/dfars/

Paper copies may be obtained from Mr. Michael Mutty, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

Title, Associated Form, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 217, Special Contracting Methods, and related clauses in DFARS Part 252; OMB Control Number 0704–0214.

Needs and Uses: DFARS Part 217 (48 CFR Part 217) prescribes policies and procedures for the acquisition of supplies and services through the use of special contracting methods. The information collected in accordance with DFARS Part 217 is used by contracting officers to (1) Identify contractor sources of supply so that competition can be enhanced for future acquisitions, (2) under a Master Agreement, determine that the contractor is adequately insured, and evaluate requests for reimbursement for repair or replacement of damaged material accountable under the agreement, (3) evaluate requests for change to the place of performance under contracts for bakery and dairy products, and (4) evaluate proposals for over and above work on existing contracts.

Affected Public: Businesses or other for-profit, not-for-profit institutions, and small businesses or organizations.

Annual Burden Hours: 641,175.

Number of Responses: 67,800.

Responses per Respondent: Approximately 2.

Average Burden per Response: 9.46 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This information collection covers the following requirements:

a. DFARS 217.7301, 217.7302(a), and 252.217–7026 require contractors to identify their sources of supply in contracts for supplies when the acquisition is conducted under other than full and open competition.

b DFARS 252.217–7012(d)(3) requires contractors to show evidence of insurance under Master Agreements for repair and alteration of vessels.

c. DFARS 252.217–7012(g)(1)(i) requires contractors to submit to the contracting officer a request for reimbursement of the cost to replace or repair material or equipment as a result of loss or damage to a vessel. The contractor must also submit all documentation necessary to support the request.

d. DFARS 252.217–7018(c) requires contractors to obtain contracting officer approval to change the place of performance after contract award for bakery and dairy products.

e. DFARS 252.217–7028 (c) and (e) require contractors to submit to the contracting officer a work request and a proposal for over and above work.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 96–20337 Filed 8–8–96; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Defense Special Weapons Agency (DSWA); Membership of the Defense Special Weapons Agency Performance Review Board

AGENCY: Department of Defense, Defense Special Weapons Agency.

ACTION: Notice of membership of the Defense Special Weapons Agency Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Defense Special Weapons Agency. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). The Performance Review Board shall provide fair and impartial review of Senior Executive Service performance appraisals and make recommendations regarding performance and performance awards to the Director, Defense Special Weapons Agency.

EFFECTIVE DATES: The effective date of service for the appointees of the DSWA PRB is on or about 5 September 1996.

FOR FURTHER INFORMATION CONTACT: D. DIAL-ALFRED, Human Resources Management Branch (MPCH), (703) 325–1106, Defense Special Weapons Agency, Alexandria, Virginia, 22310–3398.

SUPPLEMENTARY INFORMATION: The names and titles of the members of the DSWA PRB are set forth below. All are DSWA officials unless otherwise identified:

Mr. Robert L. Brittigan, General Counsel
Dr. Paul H. Carew, Director for Information Systems
Dr. Don A. Linger, Director for Programs
Dr. Margaret E. Myers, Director of Acquisition Oversight, Office of the Assistant Secretary of Defense
Mr. George Wauer, Deputy Director for C3I and Strategic Systems, Office of the Secretary of Defense

The following DSWA officials will serve as alternate members of the DSWA PRB, as appropriate.

Mr. Frederick, S. Celec, Deputy Assistant to the Secretary of Defense (Nuclear Matters).
Mr. Michael K. Evenson, Deputy Director, Operations Directorate
Mr. David G. Freeman, Director, Acquisition Management Office
Dr. Kent L. Goering, Chief, Hard Target Defeat Program Office
Mr. Richard L. Gullickson, Chief, Simulation and Test Division
Mr. Clifton B. McFarland, Jr., Director for Weapons Effects
Mrs. Joan Ma Pierre, Director for Electronics and Systems
Dr. Michael J. Shore, Chief, Special Programs Office
Dr. George W. Ullrich, Deputy Director
Mr. Robert C. Webb, Chief, Electronics Technology Division
Dr. Leon A. Wittwer, Chief, Weapons Lethality Division

Dated: August 5, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–20277 Filed 8–8–96; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Privacy Act of 1974; Notice to Amend Systems of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Army is amending twenty-eight systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 9, 1996, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, U.S. Army Information Systems Command, ATTN: ASOP-MP, Fort Huachuca, AZ 85613–5000.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Turner at (602) 538–6856 or DSN 879–6856.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the Federal Register and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 25, 1996.

Patricia Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

AAFES 0207.02

SYSTEM NAME:

Customer Comments, Inquiries, and Direct Line Files *(November 1, 1995, 60 FR 55552).*

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013 and 8013; Army Regulation 25–400–2 (MARKS); and Army Regulation 60–20, Army and Air Force Exchange Service Operating Policies.'

* * * * *

AAFES 0207.02

SYSTEM NAME:

Customer Comments, Inquiries, and Direct Line Files.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598;

Army and Air Force Exchange Service-Europe Region, Building 4001, In der Witz 14–18, 55252 Mainz-Kastel, Germany; and

Exchange Regions and Area Exchanges at posts, bases, and satellites world-wide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Users of the Army and Air Force Exchange Service who make inquiries, complaints, or comments on its operations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Customer's name, address and telephone number, information pertaining to the subject of inquiry, complaint, or comment and response thereto; customer opinion survey data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and 8013; Army Regulation 25–400–2 (MARKS); and Army Regulation 60–20, Army and Air Force Exchange Service Operating Policies.

PURPOSE(S):

To aid the Exchange management in determining needs of customers and action required to settle customer complaints.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, stored in metal cabinets.

RETRIEVABILITY:

By customer's name.

SAFEGUARDS:

Records are accessible only by designated employees having official need therefor. Buildings housing records are protected by security guards.

RETENTION AND DISPOSAL:

Records are destroyed by shredding after 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Director, Public Affairs Division, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide their full name, current address and telephone number, case number that appeared on correspondence received from AAFES, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Director, Public Affairs Division, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide their full name, current address and telephone number, case number that appeared on correspondence received from AAFES, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

AAFES 0401.04

SYSTEM NAME:

Official Personnel Folders *(November 1, 1995, 60 FR 55554).*

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013 and 8013; Army Regulation 215–3, Nonappropriated Funds Personnel Policies and Procedures; and Army Regulation 60–21, Personnel Policies.'

* * * * *

AAFES 0401.04

SYSTEM NAME:

Official Personnel Folders.

SYSTEM LOCATION:

The Official Personnel Folder is located in the Personnel Office at Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598;

Army and Air Force Exchange Service-Europe Region, Building 4001, In der Witz 14–18, 55252 Mainz-Kastel, Germany; and

Exchange Regions and Area Exchanges at posts, bases, and satellites world-wide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

Included in this system are the Employee Service Record Card Files and those records duplicated for maintenance at a site closer to where the employee works (e.g., in an administrative office or supervisor's work folder).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Army and Air Force Exchange Service (AAFES).

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, date of birth, home residence, mailing address, telephone number; records reflecting work experience, educational level achieved; letters of commendation; training courses in which enrolled and certificates of completion; security clearance; personnel actions such as appointments, transfers, reassignments, separations, reprimands; salary and benefits documents to include allowances and insurance data; travel orders; and similar relevant information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and 8013; Army Regulation 215–3, Nonappropriated Funds Personnel Policies and Procedures; and Army Regulation 60–21, Personnel Policies; and E.O. 9397 (SSN).

PURPOSE(S):

The Official Personnel Folder and other general personnel records are the official repository of the records, reports of personnel actions, and the documents and papers required in connection with these actions effected during an employee's service with the Army and Air Force Exchange Service.

Records provide the basic source of factual data about a person's employment with the agency and have various uses by AAFES personnel offices, including screening qualifications of employees, determining status, eligibility, and employee's rights and benefits, computing length of service, and other information needed to provide personnel services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to the Department of Labor, Department of Veterans Affairs, Social Security Administration, Federal agencies that have special civilian employee retirement programs; or a national, state, county, municipal, or other publicly recognized charitable or income security administration agency (e.g., State unemployment compensation agencies), where necessary to adjudicate a claim under the retirement, insurance or health benefits programs or to an agency to conduct studies or audits of benefits being paid under such programs.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; Kardex files; microfilm or microfiche, and in computer storage media.

RETRIEVABILITY:

By individual's surname and Social Security Number.

SAFEGUARDS:

Paper or microfiche/microfilmed records are located in locked metal cabinets or in secured rooms with access limited to those personnel whose official duties require access. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

The Official Personnel Folder is permanent. Upon employee's separation, it is transferred to the National Personnel Records Center (Civilian), 111 Winnebago Street, St. Louis, MO 63118–4199. Duplicate records maintained in an administrative office or at supervisory levels are destroyed 90 days after employee's separation. Service Record Card Files are retained for 5 years following employee's separation and retired to a records holding area for 15 additional years before being destroyed, except that those of employees of discontinued AAFES installations are retired to the National Personnel Records Center (Civilian). Automated personnel records are retained indefinitely for managerial and statistical studies; after an employee's separation, records are not used in making decisions concerning the employee.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Senior Vice President, People Resources Directorate, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individuals must furnish their full name, Social Security Number, current address and telephone number; if terminated, also include date of birth, date of separation, and last employing location.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Senior Vice President, People Resources Directorate, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individuals must furnish their full name, Social Security Number, current address and telephone number; if terminated, also include date of birth, date of separation, and last employing location.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, educational institutions, officials and other individuals of the Army and Air Force Exchange Service, third parties responding to reference checks, previous employers, law enforcement agencies, physicians.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

AAFES 0403.01

SYSTEM NAME:

Application for Employment Files *(November 1, 1995, 60 FR 55555).*

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013 and 8013; Army Regulation 215–3, Nonappropriated Funds Personnel Policies and Procedures; and Army Regulation 60–21, Personnel Policies.'

* * * * *

AAFES 0403.01

SYSTEM NAME:

Application for Employment Files.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598, for applicants of executive and managerial positions.

Records of applicants for all other Army and Air Force Exchange Service positions may be located also at Army and Air Force Exchange Service-Europe Region, Building 4001, In der Witz 14–18, 55252 Mainz-Kastel, Germany; and

Exchange Regions and Area Exchanges at posts, bases, and satellites world-wide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have applied for employment in the Army and Air Force Exchange Service (AAFES).

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications generally include individual's name, date of birth, Social Security Number, home address, information on work and educational experience, military service, convictions for offenses against the law, specialized training, awards or honors; documents reflecting results of written examinations and ratings; reference checks and results; evidence of satisfactory physical condition, pre-employment investigations and clearances deemed appropriate to the position for which application is made; notification from AAFES concerning selection/non-selection.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and 8013; Army Regulation 215–3, Nonappropriated Funds Personnel Policies and Procedures; Army Regulation 60–21, Personnel Policies; and E.O. 9397 (SSN).

PURPOSE(S):

The records are used in considering individuals who have applied for positions in the Army and Air Force Exchange Service by making determinations of qualifications including medical qualifications, for positions applied for, and to rate and rank applicants applying for the same or similar positions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Retrieved by applicant's surname and Social Security Number.

SAFEGUARDS:

Records are maintained in a secured area with access limited to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Applicant records are retained for up to six months; records for applicants hired become part of the person's Official Personnel Folder.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this systems should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Senior Vice President, People Resources Directorate, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide full name, Social Security Number, current address and telephone number, and sufficient details concerning position and location thereof for which application had been submitted.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Senior Vice President, People Resources Directorate, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide full name, Social Security Number, current address and telephone number, and sufficient details concerning position and location thereof for which application had been submitted.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, his/her previous employer(s) and personal references, law enforcement agencies, medical authorities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

AAFES 0403.11

SYSTEM NAME:

Personnel Departure Clearance Records *(February 22, 1993, 58 FR 10008).*

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013 and 8013; Army Regulation 215–3, Nonappropriated Funds Personnel Policies and Procedures; and Army Regulation 60–21, Personnel Policies.'

* * * * *

AAFES 0403.11

SYSTEM NAME:

Personnel Departure Clearance Records.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598; HQ, Army and Air Force Exchange Service-Europe, Pinder Barracks, Schwabacherster 20 8502 Zirndorf; regional offices; base and post exchanges and satellites world-wide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees of the Army and Air Force Exchange Service (AAFES).

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, job data, reason for departure, and clearing offices' approval.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and 8013; Army Regulation 215–3, Nonappropriated Funds Personnel Policies and Procedures; and Army Regulation 60–21, Personnel Policies; and E.O. 9397 (SSN).

PURPOSE(S):

To ensure that departing employees have been properly out-processed.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in locked filing cabinets.

RETRIEVABILITY:

By employee's surname.

SAFEGUARDS:

Information is accessed only by designated individuals having official need therefor in the performance of their duties.

RETENTION AND DISPOSAL:

Records are closed at the end of the fiscal year, held 1 year, and destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Director, Administrative Services Division, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide full name, Social Security Number, current address and telephone number, and date and place of separation.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Director, Administrative Services Division, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide full name, Social Security Number, current address and telephone number, and date and place of separation.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; official personnel actions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

AAFES 0404.01

SYSTEM NAME:

Incentive Awards Case Files *(November 1, 1995, 60 FR 55556).*

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013 and 8013; Army Regulation 215–3, Nonappropriated Funds Personnel Policies and Procedures; and Army Regulation 60–21, Personnel Policies.'

* * * * *

AAFES 0404.01

SYSTEM NAME:

Incentive Awards Case Files.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598;

Army and Air Force Exchange Service-Europe Region, Building 4001, In der Witz 14–18, 55252 Mainz-Kastel, Germany.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All U.S. dollar-paid employees of the Army and Air Force Exchange Service who are recipients of awards.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, grade/step, position title, award for which nominated and justification therefor, accomplishments, requirements of position held, organization in which employed, and similar relevant data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and 8013; Army Regulation 215–3, Nonappropriated Funds Personnel Policies and Procedures; and Army Regulation 60–21, Personnel Policies; and E.O. 9397 (SSN).

PURPOSE(S):

To consider and select employees for incentive awards and other honors and to publicize those granted.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to public and private organizations, including news media, which grant or publicize employee awards or honors.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in filing cabinets.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are accessible only to designated individuals having official need therefor.

RETENTION AND DISPOSAL:

Records are retained for 2 years, following which they are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: PE, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide full name, Social Security Number, current address and telephone number, and sufficient details to permit locating the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: PE, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide full name, Social Security Number, current address and telephone number, and sufficient details to permit locating the record.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the nominating official; approving authority; individual's official personnel file.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

AAFES 0405.03

SYSTEM NAME:

Personnel Appeals and Grievances *(November 1, 1995, 60 FR 55556).*

CHANGES:

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013 and 8013; Army Regulation 215–3; Nonappropriated Funds Personnel Policies and Procedures; and Army Regulation 690–700, Personnel Relations and Services.'

* * * * *

AAFES 0405.03

SYSTEM NAME:

Personnel Appeals and Grievances.

SYSTEM LOCATION:

Office of the General Counsel at Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598; and

Army and Air Force Exchange Service-Europe Region, Building 4001, In der Witz 14–18, 55252 Mainz-Kastel, Germany.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any employee of the Army and Air Force Exchange Service (AAFES) who has filed an appeal of an adverse action and/or is contesting a personnel action when the appeal/grievance has been referred to the appropriate General Counsel's office.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence, documentation, and memoranda concerning the appeal/grievance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and 8013; Army Regulation 215–3; Nonappropriated Funds Personnel Policies and Procedures; and Army Regulation 690–700, Personnel Relations and Services.

PURPOSE(S):

To determine propriety and legal sufficiency or the agency's action in the appeal or grievance matter.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in locked file cabinets.

RETRIEVABILITY:

By employee's surname.

SAFEGUARDS:

Buildings employ security guards. Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

Retained in the servicing General Counsel's office for 1 year after final decision is made; subsequently retired to the AAFES warehouse or servicing General Services Administration records holding center where it is held 6 years before being destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the General Counsel at the Army and Air Force Exchange Service location where appeal/grievance was filed.

Individual should provide full name, current address and telephone number, the latest correspondence received by them from the General Counsel's office, if available, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the General Counsel at the Army and Air Force Exchange Service location where appeal/grievance was filed.

Individual should provide full name, current address and telephone number, the latest correspondence received by them from the General Counsel's office, if available, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From AAFES personnel office responsible for records on the employee; from the AAFES Grievance Examiner; and from the AAFES employee and/or his/her representative.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

AAFES 0405.11

SYSTEM NAME:

Individual Health Records *(February 22, 1993, 58 FR 10010).*

CHANGES:

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013 and 8013; Army Regulation 215–1, The Administration of Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities; and Army Regulation 60–21, Personnel Policies.'

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AAFES 0405.11

SYSTEM NAME:

Individual Health Records.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598; HQ Army and Air Force Exchange Service-Europe, Pinder Barracks, Schwabacherster 20 8502 Zirndorf.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Army and Air Force Exchange Service (AAFES).

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, organizational location, date of birth, medical data recorded by treating nurse/physician, information provided by individual's personal physician regarding diagnosis, prognosis, and return to duty status, and similar relevant data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and 8013; Army Regulation 215–1, The Administration of Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities; and Army Regulation 60–21, Personnel Policies; and E.O. 9397 (SSN).

PURPOSE(S):

To provide health care and medical treatment to employees who become ill or are injured during working hours.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in locked file cabinets.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained in the dispensary, available only to assigned medical personnel.

RETENTION AND DISPOSAL:

Records are maintained for 6 years following termination of individual's employment; then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Director, Administrative Services, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual must furnish full name, details concerning injury or illness and date and location of such, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Director, Administrative Services, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual must furnish full name, details concerning injury or illness and date and location of such, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the employee; his/her physician; witnesses to an injury/accident.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

AAFES 0408.14

SYSTEM NAME:

Tuition Assistance Case Files *(July 13, 1995, 60 FR 36114).*

CHANGES:

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013 and 8013; Army Regulation 215–1, The Administration of Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities; Army Regulation 60–21, Personnel Policies; and E.O. 9397 (SSN).'

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AAFES 0408.14

SYSTEM NAME:

Tuition Assistance Case Files.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Army and Air Force Exchange Service who apply for tuition assistance for degree programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's application, academic transcripts, curricula, grade reports, request for disbursement, agency approval/disapproval, similar relevant documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and 8013; Army Regulation 215–1, The Administration of Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities; Army Regulation 60–21, Personnel Policies; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain information on participants in the tuition assistance program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in locked cabinets.

RETRIEVABILITY:

By employee's Social Security Number.

SAFEGUARDS:

Information is accessed only by designated individuals having need therefor in the performance of official duties.

RETENTION AND DISPOSAL:

Records are destroyed 3 years following individual's completion of degree program/courses.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Senior Vice President, People Resources Directorate, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide his/her full name, Social Security Number, details concerning application for tuition assistance, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Senior Vice President, People Resources Directorate, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide his/her full name, Social Security Number, details concerning application for tuition assistance, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

AAFES 0408.17

SYSTEM NAME:

HPP Employee Upward Mobility Program Files *(November 1, 1995, 60 FR 55557).*

CHANGES:

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and 8013; Army Regulation 215–3, Nonappropriated Funds Personnel Policies and Procedures; Army Regulation 60–21, Personnel Policies; and E.O. 9397 (SSN).

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AAFES 0408.17

SYSTEM NAME:

HPP Employee Upward Mobility Program Files.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598;

Army and Air Force Exchange Service-Europe Region, Building 4001, In der Witz 14–18, 55252 Mainz-Kastel, Germany; and

Exchange Regions and Area Exchanges at posts, bases, and satellites world-wide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Army and Air Force Exchange Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, current job title, grade, job location, primary career field desired, training courses required, and dates training courses completed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and 8013; Army Regulation 215–3, Nonappropriated Funds Personnel Policies and Procedures; Army Regulation 60–21, Personnel Policies; and E.O. 9397 (SSN).

PURPOSE(S):

To assist the servicing personnel office in identifying and referring qualified employees for vacant positions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C.

552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in locked file cabinets.

RETRIEVABILITY:

By employee's surname.

SAFEGUARDS:

Information is accessible only to designated individuals having an official need therefor in the performance of assigned duties.

RETENTION AND DISPOSAL:

Records are retained until (a) the associate is promoted into management, at which time the records are incorporated into the person's Official Personnel Folder; (b) the associate severs his/her employment with the Army and Air Force Exchange Service, at which time they are destroyed; or (c) if associate is reinstated at another AAFES location, record is forwarded to the gaining personnel office.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Senior Vice President, People Resources Directorate, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide full name, Social Security Number, job location, and duty phone.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Senior Vice President, People Resources Directorate, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide full name, Social Security Number, job location, and duty phone.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

AAFES 0409.01

SYSTEM NAME:

AAFES Accident/Incident Reports *(November 1, 1995, 60 FR 55558).*

CHANGES:

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with 'E.O. 12196; Army Regulation 60–21, Personnel Policies; and E.O. 9397 (SSN).'

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete the third paragraph.

* * * * *

SYSTEM NAME:

AAFES Accident/Incident Reports.

SYSTEM LOCATION:

Safety and Security Offices of Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598;

Army and Air Force Exchange Service-Europe Region, Building 4001, In der Witz 14–18, 55252 Mainz-Kastel, Germany; Exchange

Exchange Regions and Area Exchanges at posts, bases, and satellites world-wide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in accidents, incidents, or mishaps resulting in theft or reportable damage to Army and Air Force Exchange Service (AAFES) property or facilities; individuals injured or become ill as a result of such accidents, incidents, or mishaps.

CATEGORIES OF RECORDS IN THE SYSTEM:

AAFES Accident Report, AAFES Incident Report, record of injuries and illnesses; physicians' reports; witness statements; investigatory reports; similar relevant documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 12196; Army Regulation 60–21, Personnel Policies; and E.O. 9397 (SSN).

PURPOSE(S):

To record accidents, incidents, mishaps, fires, theft, etc., involving Government property; and personal injuries/illnesses in connection therewith, for the purposes of recouping damages, correcting deficiencies, initiating appropriate disciplinary action; filing of insurance and/or workmen's compensation claims therefor; and for managerial and statistical reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to the Department of Labor to support workmen's compensation claims.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; computer magnetic tapes and printouts; microfiche.

RETRIEVABILITY:

By name of individual involved or injured and Social Security Number.

SAFEGUARDS:

Records are accessed only by designated individuals having official need therefor in the performance of their duties, within buildings protected by security guards.

RETENTION AND DISPOSAL:

Paper records are retained for 2 years following which it is destroyed by shredding; information on microfiches is retained for 3 years; computer tapes reflecting historical data are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves

is contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Director, Loss Prevention Division, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide their full name, present address and telephone number; sufficient details concerning the accident, mishap, or attendant injury to permit locating the record, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Director, Loss Prevention Division, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide their full name, present address and telephone number; sufficient details concerning the accident, mishap, or attendant injury to permit locating the record, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; medical facilities; investigating official; State Bureau of Motor Vehicles, State and local law enforcement authorities; witnesses; victims; official Department of Defense records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

AAFES 0410.01

SYSTEM NAME:

Employee Travel Files *(July 13, 1995, 60 FR 36115).*

CHANGES:

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013 and 8013; Army Regulation 215–1, The Administration of Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities; Army Regulation 60–20, Army and Air Force Exchange Service Operating Policies; and E.O. 9397 (SSN).'

* * * * *

AAFES 0410.01

SYSTEM NAME:

Employee Travel Files.

SYSTEM LOCATION:

Headquarters, Army and Air force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598;

Commander, AAFES Europe, Unit 24580, APO AE 09245;

Commander, AAFES Pacific Rim Region, Unit 35163, APO AP 96378–163; and

Base on post exchange within the AAFES system. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Army and Air Force Exchange Service (AAFES) authorized to perform official travel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents pertaining to travel of persons on official Government business, and/or their dependents, including but not limited to travel assignment orders, authorized leave en route, availability of quarters and/or shipment of household goods and personal effects, application for passport/visas; security clearance; travel expense vouchers; and similar related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and 8013; Army Regulation 215–1, The Administration of Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities; Army Regulation 60–20, Army and Air Force Exchange Service Operating Policies; and E.O. 9397 (SSN).

PURPOSE(S):

To process official travel requests for military and civilian employees of the Army and Air Force Exchange Service; to determine eligibility of individual's dependents to travel; to obtain necessary clearance where foreign travel is involved, including assisting individual in applying for passports and visas and counseling where proposed travel involves visiting/transiting communist countries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to attache' or law enforcement authorities of foreign countries.

To the U.S. Department of Justice or Department of Defense legal/intelligence/investigative agencies for security, investigative, intelligence, and/or counterintelligence operations.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in locked filing cabinets.

RETRIEVABILITY:

By employee's surname.

SAFEGUARDS:

Information is accessed only by designated individuals having official need therefor in the performance of their duties.

RETENTION AND DISPOSAL:

Records are destroyed after 2 years by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Director, Administrative Services Division, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide full name, Social Security Number, current address and telephone number, details of travel authorization/clearance documents sought, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Director, Administrative Services Division, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide full name, Social Security Number, current address and telephone number, details of travel

authorization/clearance documents sought, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, official travel orders, travel expense vouchers, receipts and similar relevant documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

AAFES 0502.02

SYSTEM NAME:

Biographical Files *(November 1, 1995, 60 FR 55559).*

CHANGES:

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013 and 8013; and Army Regulation 360–5, Public Information.'

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AAFES 0502.02

SYSTEM NAME:

Biographical Files.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598 and the Army and Air Force Exchange Service-Europe Region, Building 4001, In der Witz 14–18, 55252 Mainz-Kastel, Germany.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Key military and civilian employees of the Army and Air Force Exchange Service world-wide.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, position title and organizational location, home address, date and place of birth, marital status including names of spouse and children, educational background, military status, awards and decorations, community and civic interest data, photograph, and similar relevant information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and 8013; and Army Regulation 360–5, Public Information.

PURPOSE(S):

To prepare feature articles for hometown newspapers, trade media, community interests, and similar public service groups.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to public and private organizations including news media.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are accessed only by designated individuals having official need therefor, in buildings protected by security guards or military police.

RETENTION AND DISPOSAL:

Records are retained for 1 year following termination of individual's assignment or employment; then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Director, Public Affairs Division, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide their full name, current address and telephone number, details surrounding the event or incident, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Director, Public Affairs Division, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide their full name, current address and telephone number, details surrounding the event or incident, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; official AAFES records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

AAFES 0602.04a

SYSTEM NAME:

Litigation Initiated by AAFES *(February 22, 1993, 58 FR 10014).*

CHANGES:

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013 and 8013; Army Regulation 215–1, The Administration of Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities; and Army Regulation 60–21, Personnel Policies.'

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AAFES 0602.04a

SYSTEM NAME:

Litigation Initiated by AAFES.

SYSTEM LOCATION:

Office of the General Counsel at Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598; HQ Army and Air Force Exchange Service-Europe, Pinder Barracks, Schwabacherster 20 8502 Zirndorf.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals against whom Army and Air Force Exchange Service (AAFES) has filed a complaint or similar pleading in a court or administrative body.

CATEGORIES OF RECORDS IN THE SYSTEM:

Pleadings and documents filed by parties to the action and documentation, correspondence, and memoranda pertaining thereto.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and 8013; Army Regulation 215–1, The Administration of Morale, Welfare, and Recreation

Activities and Nonappropriated Fund Instrumentalities; and Army Regulation 60–21, Personnel Policies.

PURPOSE(S):

To process complaints against individuals; to initiate litigation as necessary.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To process complaints or pleading on behalf of the Army and Air Force Exchange Service.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701 (a)(3)).

Disclosure of records is limited to the individual's name, address, Social Security Number, and other information necessary to establish the individual's identity; the amount, status, and history of the claim; and the agency program under which the claim arose. This disclosure will be made only after the procedural requirement of 31 U.S.C. 3711(f) has been followed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By surname of defendant in the proceeding.

SAFEGUARDS:

Records are maintained in buildings having security guards and are restricted to authorized personnel who are properly screened, cleared, and trained in Privacy Act matters.

RETENTION AND DISPOSAL:

Records are permanent. They are retained until judicial proceedings have been resolved, after which they are retired to the servicing AAFES warehouse or servicing General Services Administration records holding center.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: General Counsel, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individuals should provide their full name, current address and telephone number, copy of latest correspondence from AAFES, if available, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: General Counsel, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individuals should provide their full name, current address and telephone number, copy of latest correspondence from AAFES, if available, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From official records of the Army and Air Force Exchange Service; from any individual who can provide information concerning the complaint/proceeding; from similar relevant documentation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

AAFES 0602.04b

SYSTEM NAME:

Claims and/or Litigation Against AAFES *(February 22, 1993, 58 FR 10015).*

CHANGES:

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013 and 8013; Army Regulation 215–1, The Administration of Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities; and Army Regulation 60–21, Personnel Policies.'

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AAFES 0602.04b

SYSTEM NAME:

Claims and/or Litigation Against AAFES.

SYSTEM LOCATION:

Office of the General Counsel, Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598; HQ, Army and Air Force Exchange Service-Europe, Pinder Barracks, Schwabacherster 20 8502 Zirndorf.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who has filed a claim against Army and Air Force Exchange Service (AAFES), a complaint or similar pleading in a court or administrative body in which an AAFES employee or the Army and Air Force Exchange Service is named as a defendant.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claims, pleading, motions, briefs, orders, decisions, memoranda, opinions, supporting documentation, and allied materials involved in representing the Army and Air Force Exchange Service in the Federal Court System.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and 8013; Army Regulation 215–1, The Administration of Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities; and Army Regulation 60–21, Personnel Policies.

PURPOSE(S):

To investigate claims and prepare responses; to defend the Army and Air Force Exchange Service in civil suits filed against it in the Federal Court System.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to the Department of Justice and U.S. Attorneys' offices handling a particular case. Most of the information is filed in some manner in the courts in which litigation is pending and therefore is a public record.

In addition, some of the information will appear in the written orders, opinions, and decisions of the courts which, in turn, are published in the

Federal Reporter System under the name or style of the case and are available to individuals with access to a law library.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By last name of claimant/plaintiff.

SAFEGUARDS:

Buildings employ security guards. Records are maintained in areas accessible only to authorized personnel who have need therefor in the performance of official duties.

RETENTION AND DISPOSAL:

Claim records are destroyed after 6 years. Litigation records are permanent; they are retained in the servicing General Counsel's Office until judicial proceedings have been resolved, following which they are retired to the servicing General Services Administration records holding center.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: General Counsel, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide his/her full name, current address and telephone number, latest correspondence received from the servicing General Counsel's office if available, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: General Counsel, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide his/her full name, current address and telephone number, latest correspondence received from the servicing General Counsel's office if available, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From official records of the Army and Air Force Exchange Service; claimants; litigants.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

AAFES 0604.02

SYSTEM NAME:

Unfair Labor Practice Claim/Charges Files *(February 22, 1993, 58 FR 10016).*

CHANGES:

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013 and 8013; E.O. 11491, October 31, 1969, as amended; Army Regulation 215–3, Nonappropriated Funds Personnel Policies and Procedures; and Army Regulation 60–21, Personnel Policies.'

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AAFES 0604.02

SYSTEM NAME:

Unfair Labor Practice Claim/Charges Files.

SYSTEM LOCATION:

Office of the General Counsel at Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598; HQ Army and Air Force Exchange Service-Europe, Pinder Barracks, Schwabacherster 20 8502 Zirndorf; personnel offices at Exchange Regions and Area Exchanges at posts, bases, and satellites world-wide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Army and Air Force Exchange Service (AAFES) who are permitted to file charges/claims pursuant to Executive Order 11491, as amended.

CATEGORIES OF RECORDS IN THE SYSTEM:

Written allegations of unfair labor practice; supporting correspondence/documentation/memoranda.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and 8013; E.O. 11491, October 31, 1969, as amended; Army Regulation 215–3, Nonappropriated Funds Personnel Policies and Procedures; and Army Regulation 60–21, Personnel Policies.

PURPOSE(S):

To review and process charges/claims of unfair labor practices through formal/informal negotiations; for managerial and statistical reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained in areas accessible only to designated persons having official need therefor in the performance of their duties. Buildings housing records are protected by security guards.

RETENTION AND DISPOSAL:

Records are retained 5 years in an active file; then transferred to the servicing AAFES warehouse or General Services Administration records holding center for an additional 5 years, following which they are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: General Counsel, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide their full name, Social Security Number, last employing station, details sufficient to locate the record, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: General Counsel, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide their full name, Social Security Number, last employing station, details sufficient to locate the record, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, the union representative, witnesses, official records of the Army and Air Force Exchange Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

AAFES 0607.01

SYSTEM NAME:

Confidential Financial Disclosure Report *(November 1, 1995, 60 FR 55559).*

CHANGES:

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013 and 8013; Army Regulation 215–5, Nonappropriated Funds Accounting Policy and Reporting Procedures; Army Regulation 60–20; Army and Air Force Exchange Service Operating Policies; E.O. 9397 (SSN); E.O. 12674 as amended by E.O. 12731.'

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AAFES 0607.01

SYSTEM NAME:

Confidential Financial Disclosure Report.

SYSTEM LOCATION:

Office of the General Counsel at Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598 and Army and Air Force Exchange Service-Europe Region, Building 4001, In der Witz 14–18, 55252 Mainz-Kastel, Germany.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Each officer of a uniformed service assigned to AAFES whose pay grade is less than O–7 and each employee whose position is classified at Grade 15 (NF–5/Tier 1) or below and whose basic duties and responsibilities require the employee or officer to participate personally and substantially in a way that the final decision or action will have a direct and substantial economic effect on the interests of any non-Federal entity or the agency concludes in accordance with Federal regulation that the duties and responsibilities of the employee's position require the employee to file such a report to avoid involvement in a real or apparent conflict of interest.

CATEGORIES OF RECORDS IN THE SYSTEM:

Standard Form 450, 'Confidential Financial Disclosure Report,' and endorsements or documents relevant to information on this form.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and 8013; Army Regulation 215–5, Nonappropriated Funds Accounting Policy and Reporting Procedures; Army Regulation 60–20; Army and Air Force Exchange Service Operating Policies; E.O. 9397 (SSN); E.O. 12674 as amended by E.O. 12731.

PURPOSE(S):

These records are maintained to meet requirements of E.O. 12674, as amended by E.O. 12731 (5 CFR 2634.901, Subpart I), on the policies of Confidential Financial Disclosure Reporting. Such statements are required to assure compliance with the standards of conduct for Government employees contained in the Executive Orders, Federal regulations, and Title 18 of the U.S.C., and to determine if a conflict of interest exists between the employment of individuals by the Federal Government and their personal employment or other financial interests.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

These statements and amended statements required by or pursuant to E.O. 12674, as amended by E.O. 12731, are to be held in confidence and no information shall be disclosed except:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is party to a judicial proceeding or in order to comply with the issuance of a subpoena.

c. To disclose information to any source when necessary to obtain information relevant to a conflict-of-interest investigation or determination.

d. By the National Archives and Records Administration, General Services Administration, in record management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

e. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding, in which the filer is directly involved.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in locked file cabinets.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Information is accessible only to designated authorized persons who are properly screened, cleared and trained, having official need therefor in the performance of official duties.

RETENTION AND DISPOSAL:

Retained until individual no longer occupies a position for which Standard Form 450 is required. Destroyed by shredding six years after the individual has left the position, except that documents needed in an on-going investigation will be retained until no longer needed in the investigation.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the General Counsel at the Army and Air Force

Exchange Service location where the reports were filed.

Individuals should provide their full name, period covered by the report filed, locations(s) of employment, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the General Counsel at the Army and Air Force Exchange Service location where the reports were filed.

Individuals should provide their full name, period covered by the report filed, locations(s) of employment, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

AAFES 0702.22

SYSTEM NAME:

Check-Cashing Privilege Files *(July 13, 1995, 60 FR 36116).*

CHANGES:

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013 and 8013; Army Regulation 215–5, Nonappropriated Funds Accounting Policy and Reporting Procedures; Army Regulation 60–20; Army and Air Force Exchange Service Operating Policies; and E.O. 9397 (SSN).'

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AAFES 0702.22

SYSTEM NAME:

Check-Cashing Privilege Files.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598;

AAFES Europe, Europe Accounting Support Office, CMR 429, APO AE 09054;

AAFES Pacific Rim, Accounting Support Center, Unit 35163, APO AP 96378–5163; and

Post and base exchanges within the AAFES system. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers of the Army and Air Force Exchange Service: military, dependents, retirees, and Exchange employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Customer's name, Social Security Number, category of customer (i.e., dependent, retiree, active duty member), amounts of checks not paid by bank, collection efforts, and relevant documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and 8013; Army Regulation 215–5, Nonappropriated Funds Accounting Policy and Reporting Procedures; Army Regulation 60–20; Army and Air Force Exchange Service Operating Policies; and E.O. 9397 (SSN).

PURPOSE(S):

To determine customer's eligibility to cash checks.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

In overseas areas, information is disclosed to military banking facilities. These facilities are branches of U.S. based financial institutions which are under contract to the Department of Defense to provide banking services to U.S. military and affiliated civilian personnel overseas. Any financial losses sustained by these activities in support of the Department of Defense program are underwritten by the Department of Defense using appropriated funds. The financial institutions use the check-cashing information only to determine whether to cash checks or similar negotiable instruments for individuals - not to award or deny other banking privileges.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701 (a)(3)).

Disclosure of records is limited to the individual's name, address, Social Security Number, and other information necessary to establish the individual's identity; the amount, status, and history of the claim; and the agency program under which the claim arose. This disclosure will be made only after the procedural requirement of 31 U.S.C. 3711(f) has been followed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records; computer tapes, discs, and printouts.

RETRIEVABILITY:

By customer name and Social Security Number.

SAFEGUARDS:

All information is stored in locked rooms within secured buildings and is accessed only by designated personnel having official need therefor, primarily by individuals authorized to cash checks.

RETENTION AND DISPOSAL:

Records are retained by the Office of the General Counsel until indebtedness has been satisfied, determined to be uncollectible, or additional administrative action is required. Upon completion, records are transferred to the Accounts Receivable Division (FA-O/R) and maintained with appropriate check cashing privilege records.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the local Exchange where check was cashed (or refused) or to the Commander, Army and Air Force Exchange Service, ATTN: FA, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide full name, Social Security Number or other acceptable identifying information that will facilitate locating the records.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the local Exchange where check was cashed (or refused) or to the

Commander, Army and Air Force Exchange Service, ATTN: FA, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide full name, Social Security Number or other acceptable identifying information that will facilitate locating the records.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; his/her checks; financial institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

AAFES 0702.23

SYSTEM NAME:

Dishonored Check Files *(July 13, 1995, 60 FR 36117).*

CHANGES:

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013 and 8013; Army Regulation 215–5, Nonappropriated Funds Accounting Policy and Reporting Procedures; Army Regulation 60–20; Army and Air Force Exchange Service Operating Policies.'

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AAFES 0702.23

SYSTEM NAME:

Dishonored Check Files.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598;

AAFES-Europe, Europe Accounting Support Office, CMR 429, APO AE 09054;

AAFES Pacific Rim, Accounting Support Center, Unit 35163, APO AP 96378–5163; and

Post and base exchanges within the AAFES system. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have negotiated dishonored checks at Army and Air Force Exchange Service (AAFES) facilities and whose check cashing privilege is under review by the General Counsel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number, indebtedness, collection efforts, and relevant documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and 8013; Army Regulation 215–5, Nonappropriated Funds Accounting Policy and Reporting Procedures; Army Regulation 60–20; Army and Air Force Exchange Service Operating Policies; and E.O. 9397 (SSN).

PURPOSE(S):

To collect dishonored check indebtedness.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to civil or criminal law enforcement agencies for law enforcement purposes.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701 (a)(3)).

Disclosure of records is limited to the individual's name, address, Social Security Number, and other information necessary to establish the individual's identity; the amount, status, and history of the claim; and the agency program under which the claim arose. This disclosure will be made only after the procedural requirement of 31 U.S.C. 3711(f) has been followed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By surname of individual responsible for dishonored check.

SAFEGUARDS:

Records are maintained in buildings having security guard and are accessed only by personnel having official need therefor who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

Records are retained by the Office of the General Counsel until indebtedness has been satisfied, determined to be uncollectible, or additional administrative action is required. Upon completion, records are transferred to the Accounts Receivable Division (FA-O/R) and maintained with appropriate check cashing privilege records

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: General Counsel, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide their full name, Social Security Number, current address and telephone number, latest correspondence from AAFES if available, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: General Counsel, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide their full name, Social Security Number, current address and telephone number, latest correspondence from AAFES if available, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, his/her employer, law enforcement investigative agencies, banking facilities, consumer reporting agencies, and sources that furnish information regarding individual's credit.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

AAFES 0702.34

SYSTEM NAME:

Accounts Receivable Files *(July 13, 1995, 60 FR 36118).*

CHANGES:

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013 and 8013; Federal Claims Collection Act of 1966, 31 U.S.C. 3711; Debt Collection Act of 1982 (Pub. L. 97–365), 31 U.S.C. 5512 through 5514; and E.O. 9397 (SSN); Army Regulation 215–5, Nonappropriated Funds Accounting Policy and Reporting Procedures; Army Regulation 60–20, Army and Air Force Exchange Service Operating Policies.'

* * * * *

AAFES 0702.34

SYSTEM NAME:

Accounts Receivable Files.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598;

AAFES-Europe, Europe Accounting Support Office, CMR 429, APO AE 09054;

AAFES Pacific Rim, Accounting Support Center, Unit 35163, APO AP 96378–5163; and

Post and base exchanges within the AAFES system. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army and Air Force Exchange Service (AAFES) customers (military, retirees, civilian, and civilian dependents).

CATEGORIES OF RECORDS IN THE SYSTEM:

Case files relating to debts owed by individuals, including dishonored checks, deferred payment plans, home layaway, salary/travel advances, pecuniary liability claims and credit cards. These files include all correspondence to the debtor/his or her commander, notices from banks concerning indebtedness, originals or copies of returned checks, envelopes showing attempts to contact the debtor, payment documentation, pay adjustment authorizations, deferred payment plan applications, charges and statements or accounts, and home layaway cards.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and 8013; Federal Claims Collection Act of 1966, 31 U.S.C. 3711; Debt Collection Act of 1982 (Pub. L. 97–365); 31 U.S.C. 5512 through 5514; and E.O. 9397 (SSN); Army Regulation 215–5, Nonappropriated Funds Accounting Policy and Reporting Procedures; Army Regulation 60–20, Army and Air Force Exchange Service Operating Policies.

PURPOSE(S):

To process, monitor, and post audit accounts receivable, to administer the Federal Claims Collection Act, and to answer inquiries pertaining thereto.

To collect indebtedness.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the U.S. Department of Justice/U.S. Attorneys for legal action and/or final disposition of the debt claim.

To the Internal Revenue Service to obtain locator status for delinquent accounts receivables (controls exist to preclude redisclosure of solicited IRS address data; and/or to report write-off amounts as taxable income as pertains to amounts compromised and accounts barred from litigation due to age).

To private collection agencies for collection action when the internal collection efforts have been exhausted.

To civil or criminal law enforcement agencies for law enforcement purposes.

The 'Blanket Routine Uses' that appear at the beginning of the Army's compilation of systems of records notices apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

Disclosure of records is limited to the individual's name, address, Social Security Number, and other information necessary to establish the individual's identity; the amount, status, and history of the claim; and the agency program under which the claim arose. This disclosure will be made only after the procedural requirement of 31 U.S.C. 3711(f) has been followed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in individual file folders.

RETRIEVABILITY:

Retrieved by customer's surname or Social Security Number.

SAFEGUARDS:

Records are maintained in areas accessible only by authorized personnel within AAFES-FA-O/R.

RETENTION AND DISPOSAL:

Records are retained in current files until close of fiscal year in which receivable is cleared. At year end, files are stored for 10 years and subsequently destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Chief, Accounts Receivable Division, Comptroller Division, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individuals should provide full name, Social Security Number, or other acceptable identifying information that will facilitate locating the records.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Chief, Accounts Receivable Division, Comptroller Division, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individuals should provide full name, Social Security Number, or other acceptable identifying information that will facilitate locating the records.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are published in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the customer and from correspondence between AAFES and Vendors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

AAFES 0702.43

SYSTEM NAME:

Travel Advance Files *(July 13, 1995, 60 FR 36119).*

CHANGES:

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013 and 8013; Army Regulation 215–5, Nonappropriated Funds Accounting Policy and Reporting Procedures; Army Regulation 60–21, Personnel Policies; and E.O. 9397 (SSN).'

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AAFES 0702.43

SYSTEM NAME:

Travel Advance Files.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598;

AAFES-Europe, Europe Accounting Support Office, CMR 429, APO AE 09054;

AAFES Pacific Rim, Accounting Support Center, Unit 35163, APO AP 96378–5163; and

Post and base exchanges within the AAFES system. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees required to perform official travel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, organization to which assigned, details of official travel, amount advanced, and similar relevant data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and 8013; Army Regulation 215–5, Nonappropriated Funds Accounting Policy and Reporting Procedures; Army Regulation 60–21, Personnel Policies; and E.O. 9397 (SSN).

PURPOSE(S):

To monitor travel advances against individual's authorized official travel and to ensure settlement of indebtedness to the Government.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in metal filing cabinets.

RETRIEVABILITY:

By employee's Social Security Number.

SAFEGUARDS:

Records are accessed only by designated employees having official need therefor in the performance of their duties.

RETENTION AND DISPOSAL:

Records are destroyed 1 year following settlement of an individual's travel advance account.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Payroll and Employee Benefits Division (FA-O/P), 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide their full name, sufficient details concerning records sought, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Payroll and Employee Benefits Division (FA-O/P), 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide their full name, sufficient details concerning records sought, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, records of the AAFES office issuing travel advance.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

AAFES 0703.07

SYSTEM NAME:

AAFES Employee Pay System Records *(November 1, 1995, 58 FR 55560).*

CHANGES:

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with 'Title 6, GAO Policy and Procedures Manual for Guidance of Federal Agencies; 10 U.S.C. 3013 and 8013; Army Regulation 215–5, Nonappropriated Funds Accounting Policy and Reporting Procedures; Army Regulation 60–21, Personnel Policies; and E.O. 9397 (SSN).'

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AAFES 0703.07

SYSTEM NAME:

AAFES Employee Pay System Records.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598;

Commander, Army and Air Force Exchange Service-Pacific Rim Region, Unit 35163, APO AP 96378–0163; and

Commander, Army and Air Force Exchange Service-Europe, Unit 24580, APO AE 09245.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees of the Army and Air Force Exchange System (AAFES).

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name; Social Security Number; AAFES facility number; individual's pay, leave, and retirement records, withholding/deduction authorization for allotments, health benefits, life insurance, savings bonds, financial institutions, etc.; tax exemption certificates; personal exception and indebtedness papers; subsistence and quarters records; statements of charges, claims; roster and

signature cards of designated timekeepers; payroll and retirement control and working paper files; unemployment compensation data requests and responses; reports of retirement fund deductions; management narrative and statistical reports relating to pay, leave, and retirement.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 6, GAO Policy and Procedures Manual for Guidance of Federal Agencies; 10 U.S.C. 3013 and 8013; Army Regulation 215–5, Nonappropriated Funds Accounting Policy and Reporting Procedures; Army Regulation 60–21, Personnel Policies; and E.O. 9397 (SSN).

PURPOSE(S):

To provide basis for computing civilian pay entitlements; to record history of pay transactions, leave accrued and taken, bonds due and issued, taxes paid; to answer inquiries and process claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Treasury Department to record checks and bonds issued.

To the Internal Revenue Service to report taxable earnings and taxes withheld; to locate delinquent debtors.

To States and Cities/Counties to provide taxable earnings of civilian employees to those states and cities or counties which have entered into an agreement with the Department of Defense and the Department of the Treasury.

To State Employment Offices to provide information relevant to the State's determination of individual's entitlement to unemployment compensation.

To the U.S. Department of Justice/U.S. Attorneys for legal action and/or final disposition of debt claims against the Army and Air Force Exchange Service.

To private collection agencies for collection action when the Army and Air Force Exchange Service has exhausted its internal collection efforts.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

Disclosure of records is limited to the individual's name, address, Social Security Number, and other information necessary to establish the individual's identity; the amount, status, and history of the claim; and the agency program under which the claim arose. This disclosure will be made only after the procedural requirement of 31 U.S.C. 3711(f) has been followed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and in bulk storage; card files; computer magnetic tapes, discs and printouts; microfiches, microfilm.

RETRIEVABILITY:

Automated records are retrieved by employee's Social Security Number within payroll block; manual records are retrieved by individual's surname or Social Security Number.

SAFEGUARDS:

Records are restricted to personnel who are properly cleared and trained and have an official need therefor. In addition, integrity of automated data is ensured by internal audit procedures, data base access accounting reports and controls to preclude unauthorized disclosure.

RETENTION AND DISPOSAL:

The majority of documents are retained 4 years after which they are destroyed by shredding. Exceptions are Time and Attendance sheets: retained 6 years; W-2 data and employer quarterly Federal tax returns are retained 5 years; Payroll Registers are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, HQ Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, HQ Army and Air Force Exchange Service, ATTN: FA, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide their full name, Social Security Number, current address and telephone number; if terminated, include date and place of separation.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, HQ Army and Air Force Exchange Service, ATTN: FA, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide their full name, Social Security Number, current address and telephone number; if terminated, include date and place of separation.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; personnel actions; other agency records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

AAFES 0903.06

SYSTEM NAME:

Personnel Management Information System *(July 13, 1995, 60 FR 36120).*

CHANGES:

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013 and 8013; Army Regulation 215–3, Nonappropriated Funds Personnel Policies and Procedures; Army Regulation 60–21, Personnel Policies; and E.O. 9397 (SSN).'

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AAFES 0903.06

SYSTEM NAME:

Personnel Management Information System.

SYSTEM LOCATION:

Centralized at Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Segments of the system exist at servicing civilian personnel offices at Commander, AAFES Pacific Rim Region, Unit 35163, APO AP 96378–5163;

Commander, AAFES Europe Region, Unit 24580, APO AE 09245; and

U.S. Operations Offices, and post/base exchanges worldwide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees of the Army and Air Force Exchange Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number, Exchange location, home address; date of birth; date hired, leave accrual data, retirement participation data, service award data, citizenship, marital status, sex, security clearance, military status, sponsor affiliation where employee is a dependent of a U.S. Government/military member, job code and title, employment category, pay plan, wage schedule, base hourly rate, scheduled work week, Federal and State tax exemptions, type of insurance coverage, authorized deductions, life insurance coverage, physical examination documents, education and experience, licenses, career plans, Personnel Evaluation Reports, training course data, and similar relevant information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and 8013; Army Regulation 215–3, Nonappropriated Funds Personnel Policies and Procedures; Army Regulation 60–21, Personnel Policies; and E.O. 9397 (SSN).

PURPOSE(S):

To produce reports and statistical analyses of the civilian work force strength trends and composition in support of established manpower and budgetary programs and procedures; verify employment; provide data in support of Equal Employment Opportunity Program requirements; provide locator and emergency notification data; respond to union requests; identify training requirements; provide salary data for current and projected fiscal guidance, personnel data for current and projected staffing requirements; provide suspense system for within grade increases, length of service awards, performance ratings, pay adjustments and tenure groups; provide data for retirement processing, individual personnel actions; analyze leave usage; investigate complaints, grievances and appeals; respond to requests from courts and regulatory bodies; provide incentive awards information; provide qualified candidates to fill position vacancies; counsel employees on career development; plan dependent services in overseas areas; determine validity of individual claims related to pay adjustments; and for other managerial and statistical studies, records, and reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer tapes/discs; printouts.

RETRIEVABILITY:

By name or Social Security Number.

SAFEGUARDS:

Disc and tape files reside in restricted areas accessible only to authorized personnel who are properly screened, cleared, and trained. Manual records and computer printouts containing personal identifiers are maintained in locked file cabinets and are available only to individuals having official need therefor.

RETENTION AND DISPOSAL:

Disc files are retained for 18 months after employee separates and are destroyed with the exception of employees terminated under disciplinary action (ineligible for rehire), retired employees and all employees under the Universal Annual Salary Plan whose file remains a permanent record. Back-up tapes are retained for 90 days. Computer printouts are maintained as follows: system edit reports are destroyed upon verification that errors have been corrected; printouts produced for managerial reports are maintained for periods varying from 2 to 10 years; source documents and computer printouts which are included as part of the employee's Official Personnel Folder are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Senior Vice President, People Resources Directorate, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individuals should provide full name, Social Security Number, current address and telephone number and, if terminated, include date of birth, date of separation, and last employing location.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Senior Vice President, People Resources Directorate, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individuals should provide full name, Social Security Number, current address and telephone number and, if terminated, include date of birth, date of separation, and last employing location.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the employee, his/her supervisor, AAFES records and reports, Official Personnel Folder.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

AAFES 1203.03

SYSTEM NAME:

Appointment of Contracting Officers *(July 13, 1995, 60 FR 36121).*

CHANGES:

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013 and 8013; Army Regulation 215–4, Nonappropriated Fund Contracting; Army Regulation 60–20, Army and Air Force Exchange Service Operating Policies; and E.O. 9397 (SSN).'

* * * * *

AAFES 1203.03

SYSTEM NAME:

Appointment of Contracting Officers.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military or civilian personnel assigned to the Army and Air Force Exchange Service (AAFES) are appointed as contracting officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, job title and grade, qualifications, training and experience, request for appointment as contracting officer, copy of Certificate of Appointment, and other correspondence and documents relating to individual's qualifications therefor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and 8013; Army Regulation 215–4, Nonappropriated Fund Contracting; Army Regulation 60–20, Army and Air Force Exchange Service Operating Policies; and E.O. 9397 (SSN).

PURPOSE(S):

To ascertain an individual's qualifications to be appointed as contracting officer; to determine if limitations on procurement authority are appropriate; to complete Certificate of Appointment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Information is accessible only to designated persons having official need therefor in the performance of their duties. Records are maintained in building entrance which is limited to persons assigned to AAFES.

RETENTION AND DISPOSAL:

Records are maintained in the system until two years after the end of the fiscal year in which the individual's appointment as a contracting officer is terminated. At that time, the records are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Director, Procurement Support and Policy Directorate, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide their full name, and sufficient details to permit locating the pertinent records.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Director, Procurement Support and Policy Directorate, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide their full name, and sufficient details to permit locating the pertinent records.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, personnel records, former employers, educational institutions, AAFES records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

AAFES 1504.03

SYSTEM NAME:

Personal Property Movement and Storage Files *(February 22, 1993, 58 FR 10022).*

CHANGES:

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013 and 8013; Army Regulation 215–1, The Administration of Morale, Welfare, and Recreation Activities and nonappropriated Fund Instrumentalities; and Army Regulation 60–20, Army and Air Force Exchange Service Operating Policies.'

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AAFES 1504.03

SYSTEM NAME:

Personal Property Movement and Storage Files.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598; HQ, Army and Air Force Exchange Service-Europe, Pinder Barracks, Schwabacherster 20 8502 Zirndorf.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Army and Air Force Exchange Service (AAFES) whose permanent change of station is authorized by AAFES.

CATEGORIES OF RECORDS IN THE SYSTEM:

Orders authorizing shipment/storage of personal property to include privately owned vehicles and house trailers/mobile homes; Cash Collection Vouchers; Application for Shipment and/or Storage of Personal Property; Transportation Control and Movement Document; Personal Property Counseling Checklist; Government Bill of Lading; storage contracts, loss and damage claims, and similar related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and 8013; Army Regulation 215–1, The Administration of Morale, Welfare, and Recreation Activities and nonappropriated Fund Instrumentalities; Army Regulation 60–20, Army and Air Force Exchange Service Operating Policies.

PURPOSE(S):

Used by the Army and Air Force Exchange Service to arrange for the movement, storage and handling of personal property; to identify/trace lost or damaged shipments; to answer inquiries and monitor effectiveness of personal property traffic management functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the

DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information is disclosed to commercial carriers for the purposes of identifying ownership, verifying delivery of shipment, supporting billing for services rendered, and justifying claims for loss, damage, or theft.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; microfilm; magnetic tapes, and computer printouts.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Information is maintained in secured areas, accessible only to authorized personnel having an official need-to-know. Automated segments are further protected by code numbers and passwords.

RETENTION AND DISPOSAL:

Documents relating to packing, shipping, and/or storing of household goods within the Continental United States are destroyed after 3 years; those relating to overseas areas are destroyed after 6 years. Documents regarding shipment of privately owned vehicles/mobile homes are destroyed after 2 years. Shipment discrepancy reports are destroyed after 2 years or when claim/investigation is settled, whichever is later. Administrative files reflecting queries and responses are retained for 2 years; then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Director, Administrative Services Division, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide their full name, Social Security Number, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Director, Administrative Services Division, 3911 S. Walton Walker Boulevard, Dallas, TX 75266–0202.

Individual should provide their full name, Social Security Number, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Provided by the individual whose personal property is shipped/stored; by the carrier/storage facility.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

AAFES 1609.02

SYSTEM NAME:

AAFES Customer Service *(November 1, 1995, 60 FR 55562).*

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Army and Air Force Exchange Service (AAFES) customers who use the services of the Customer Service Desk, including but not limited to those who purchase merchandise on a time payment, layaway, or special order basis, or who need purchase adjustments or refunds.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's Social Security Number, copies of layaway tickets, requests for refunds, special order forms/procurement request/logs, cash receipt/charge or credit vouchers, rebate coupons, register transaction journal/log, repair vouchers, warranty documents, correspondence between AAFES and the customer and/or vendor.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013 and 8013; Army Regulation 215–2, The Management and Operation of Army Morale, Welfare, and Recreation Programs and nonappropriated Fund instrumentalities; Army Regulation 60–10, Army and Air Force Exchange Service General Policies; and E.O. 9397 (SSN).'

* * * * *

PURPOSE(S):

Add '; to monitor individual customer refunds; to perform market basket analysis; to improve efficiency of marketing system(s).' to end of entry.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete second paragraph.

* * * * *

STORAGE:

Delete entry and replace with 'Paper records in file boxes and cabinets; and on electronic records stored in computers, on tapes or disk drives.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Cancelled or completed layaway tickets are held for 6 months after cancellation or delivery of merchandise; purchase orders are retained for 2 years; transaction records are retained for 2 years; refund vouchers are retained for 6 years; returned merchandise slips are retained for 6 years; cash receipt vouchers are retained for 3 years; repair/replacement order slips are held 2 years. All records are destroyed by shredding, all electronic records are destroyed by erasing/reformatting the media.'

* * * * *

AAFES 1609.02

SYSTEM NAME:

AAFES Customer Service.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598;

Army and Air Force Exchange Service-Europe Region, Building 4001, In der Witz 14–18, 55252 Mainz-Kastel, Germany; and

Exchange Regions and Area Exchanges at posts, bases, and satellites world-wide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army and Air Force Exchange Service (AAFES) customers who use the services of the Customer Service Desk,

including but not limited to those who purchase merchandise on a time payment, layaway, or special order basis, or who need purchase adjustments or refunds.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's Social Security Number, copies of layaway tickets, requests for refunds, special order forms/procurement request/logs, cash receipt/charge or credit vouchers, rebate coupons, register transaction journal/log, repair vouchers, warranty documents, correspondence between AAFES and the customer and/or vendor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and 8013; Army Regulation 215–2, The Management and Operation of Army Morale, Welfare, and Recreation Programs and nonappropriated Fund instrumentalities; Army Regulation 60–10, Army and Air Force Exchange Service General Policies; and E.O. 9397 (SSN).

PURPOSE(S):

To record customer transactions/payment for layaway and special orders; to determine payment status before finalizing transactions; to identify account delinquencies and prepare customer reminder notices; to mail refunds on canceled layaway or special orders; to process purchase refunds; to document receipt from customer of merchandise subsequently returned to vendors for repair or replacement and initiate follow-up actions; to monitor individual customer refunds; to perform market basket analysis; to improve efficiency of marketing system(s).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

Disclosure of records is limited to the individual's name, address, Social Security Number, and other information necessary to establish the individual's identity; the amount, status, and history of the claim; and the agency program under which the claim arose. This disclosure will be made only after the procedural requirement of 31 U.S.C. 3711(f) has been followed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file boxes and cabinets; and on electronic records stored in computers, on tapes or disk drives.

RETRIEVABILITY:

By customer's surname, Social Security Number, document control number, and/or due date.

SAFEGUARDS:

Records are maintained in secured areas, accessible only to authorized personnel having need for the information in the performance of their duties.

RETENTION AND DISPOSAL:

Cancelled or completed layaway tickets are held for 6 months after cancellation or delivery of merchandise; purchase orders are retained for 2 years; transaction records are retained for 2 years; refund vouchers are retained for 6 years; returned merchandise slips are retained for 6 years; cash receipt vouchers are retained for 3 years; repair/replacement order slips are held 2 years. All records are destroyed by shredding, all electronic records are destroyed by erasing/reformatting the media.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: SD, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide name and sufficient details of purchase to enable locating pertinent records, current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: SD, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide name and sufficient details of purchase to enable locating pertinent records, current address and telephone number.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; vendor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

AAFES 1609.03

SYSTEM NAME:

AAFES Catalog System *(February 22, 1993, 58 FR 10024).*

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013 and 8013; Army Regulation 215–2, The Management and Operation of Army Morale, Welfare, and Recreation Programs and Nonappropriated Fund Instrumentalities; Army Regulation 60–20, Army and Air Force Exchange Service Operating Policies.'

* * * * *

AAFES 1609.03

SYSTEM NAME:

AAFES Catalog System.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598; HQ, Army and Air Force Exchange Service-Europe, Pinder Barracks, Schwabacherster 20 8502 Zirndorf.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Exchange customers who place a catalog sales order.

CATEGORIES OF RECORDS IN THE SYSTEM:

Customer name, Social Security Number, mailing address; name and address of recipient of order, description and price of item ordered, method of shipment, amount of order/refund, returned check identifier, claim

data for returns/damages to shipments, and similar relevant data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and 8013; Army Regulation 215–2, The Management and Operation of Army Morale, Welfare, and Recreation Programs and Nonappropriated Fund Instrumentalities; Army Regulation 60–20, Army and Air Force Exchange Service Operating Policies; and E.O. 9397 (SSN).

PURPOSE(S):

To locate order information to reply to customer inquiries, complaints; to create labels for shipment to proper location; to refund customer remittances or to collect monies due; to provide claim and postal authorities with confirmation/ certification of shipment for customer claims for damage or lost shipments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records; magnetic tapes and printouts; microfiche, microfilm.

RETRIEVABILITY:

By customer order information, Social Security Number, or insurance number assigned to shipment.

SAFEGUARDS:

Access to information is restricted to persons having official need therefor; computer operations rooms are locked and visitors screened for entry.

RETENTION AND DISPOSAL:

Information is maintained in computer files for 180 days following completion of shipment. Microfilm and microfiche are retained for 2 years for postal claim purposes; destroyed after 6 years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Chief, Catalog Sales Center, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide name, current address and telephone number, and sufficient details to permit locating pertinent records.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Chief, Catalog Sales Center, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide name, current address and telephone number, and sufficient details to permit locating pertinent records.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

AAFES 1703.03

SYSTEM NAME:

Personnel Security Clearance Case Files *(November 1, 1995, 60 FR 55553).*

CHANGES:

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with 'E.O. 12065; Army Regulation 215–4, Nonappropriated Fund Contracting; and Army Regulation 60–20, Army and Air Force Exchange Service Operating Policies.'

* * * * *

AAFES 1703.03

SYSTEM NAME:

Personnel Security Clearance Case Files.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598;

Army and Air Force Exchange Service-Europe Region, Building 4001, In der Witz 14–18, 55252 Mainz-Kastel, Germany; and

Exchange Regions and Area Exchanges at posts, bases, and satellites world-wide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons affiliated with the Army and Air Force Exchange Service (AAFES) by assignment, employment, contractual relationship, or as the result of an interservice support agreement on whom a personnel security clearance determination has been completed, is in process, or may be pending.

CATEGORIES OF RECORDS IN THE SYSTEM:

File may contain pending and completed personnel security clearance actions on individuals by personal identifying data. It may also contain briefing/debriefing statements for special programs, sensitive positions, and other related information and documents required in connection with personnel security clearance determinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 12065; Army Regulation 215–4, Nonappropriated Fund Contracting; and Army Regulation 60–20, Army and Air Force Exchange Service Operating Policies.

PURPOSE(S):

To assist in the processing of personnel security clearance actions; to record security clearances issued or denied; and to verify eligibility for access to classified information or assignment to a sensitive position. Records may be used by AAFES commanders for adverse personnel actions such as removal from sensitive duties, removal from employment, denial to a restricted or sensitive area, and revocation of security clearance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be released to Federal agencies based on formal accreditation as specified in official directives; regulations; to Federal, State, local, and foreign law enforcement,

intelligence, or security agencies in connection with a lawful investigation under their jurisdiction.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in folders; cards; computer tapes, punched cards, or discs.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are located in locked safes or cabinets; access is restricted to designated individuals having need therefor in the performance of official duties.

RETENTION AND DISPOSAL:

Records are permanent. They are retained in active file until the end of the fiscal year in which the individual is no longer employed or associated with the Army and Air Force Exchange Service; held 2 additional years in inactive status and retired to the National Personnel Records Center, 111 Winnebago Street, St. Louis, MO 63118–4199.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Director, Loss Prevention Division, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide their full name, Social Security Number, present address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Director, Loss Prevention Division, 3911 S. Walton Walker Boulevard, Dallas, TX 75266–0202.

Individual should provide their full name, Social Security Number, present address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; investigative results furnished by the Defense Investigative Service and other Federal, Department of Defense, State, local, and/or foreign law enforcement agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0351–17bUSMA

SYSTEM NAME:

U.S. Military Academy Personnel Cadet Records *(February 22, 1993, 58 FR 10110).*

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EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete '(k)(6)' from the entry.

* * * * *

A0351–17bUSMA

SYSTEM NAME:

U.S. Military Academy Personnel Cadet Records.

SYSTEM LOCATION:

U.S. Military Academy, West Point, NY 10996–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former Cadets of the U.S. Military Academy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application and evaluations of cadet for admission; letters of recommendation/endorsement; academic achievements, awards, honors, grades, and transcripts; performance counseling; health, physical aptitude and abilities and athletic accomplishments, peer appraisals; supervisory assessments; suitability data, including honor code infractions and disposition. Basic biographical and historical summary of cadet's tenure at the U.S. Military Academy is maintained on cards in the Archives Office or on microfiche in the Cadet Records Section.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and 4334, and E.O. 9397 (SSN).

PURPOSE(S):

To record the cadet's appointment to the Academy, his/her scholastic and athletic achievements, performance, motivation, discipline, final standing, and potential as a military career officer.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Academic transcripts may be provided to educational institutions.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual records in file folders; microfilm.

RETRIEVABILITY:

By surname or Social Security Number.

SAFEGUARDS:

Access to records is limited to persons having official need therefor; records are maintained in secure file cabinets and/or in locked rooms.

RETENTION AND DISPOSAL:

Records of Cadets who are commissioned become part of his/her Official Military Personnel File. Records of individuals not commissioned are destroyed after 5 years. Microfilmed records maintained by USMA are permanent; hard copy files are destroyed after being microfilmed.

SYSTEM MANAGER(S) AND ADDRESS:

Superintendent, U.S. Military Academy, West Point, NY 10996–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Superintendent, U.S. Military Academy, West Point, NY 10996–5000.

Individual should provide the full name, Social Security Number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written

inquiries to the Superintendent, U.S. Military Academy, West Point, NY 10996–5000.

Individual should provide the full name, Social Security Number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, his/her sponsors, peer evaluations, grades and reports of U.S. Military Academy academic and physical education department heads, transcripts from other educational institutions, medical examination/assessments, supervisory counseling/performance reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(k)(5) or (k)(7), as applicable.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. 96–19517 Filed 8–8–96; 8:45 am]

BILLING CODE 5000–04–F

Department of the Navy

Notice of Public Hearing for the Draft Environmental Impact Statement for Capital Improvements at Naval Surface Warfare Center (NSWC) Acoustic Research Detachment (ARD) Bayview, ID

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency a Draft Environmental Impact Statement (DEIS) for proposed capital improvements at NSWC Carderock Division, ARD Bayview, Idaho. The DEIS has been distributed to various federal, state and local agencies, elected officials, special interest groups, and the public. A Notice of Availability of the DEIS was published in the Federal Register on August 9, 1996. It also is on file and available for review at the following locations: (1) Bayview Community Center, 16304 Perimeter Road, Bayview, ID; (2) Kootenai County Public Library, 3835 N. Government Way, Hayden Lake, ID; 30399 Third Street, Athol, Id; 1652 Highway 41, Rathdrum, ID; 217 N. Fifth Street, Spirit Lake, ID; (3) East Bonner County Library, 419 N. Second Avenue, Sandpoint, ID; and (4) Coeur d'Alene Public Library, 201 E. Harrison Avenue, Coeur d'Alene, ID..

The Navy proposes to implement a capital improvement plan at NSWC, ARD Bayview, Idaho. Currently, functions and facilities are scattered among dispersed facilities causing inefficiency in operations. Planning for future operations at ARD has identified a need to consolidate these dispersed facilities and functions, bringing together related functions for an increased operations efficiency. This DEIS addresses two alternative plans, each composed of capital improvement projects designed to increase operational efficiency at ARD. The DEIS focuses on the environmental impacts anticipated from the construction and operation of two major capital improvement projects. The DEIS also addresses ARD operations supported by these facilities, including acoustic experimentation in Lake Pend Oreille. Anticipated environmental impacts of these projects and other, associated capital improvements are presented in a comparative analysis. The proposed action may result in temporary, construction-related impacts such as increased turbidity near construction sites, construction noise and construction traffic. Long term impacts would include increased stormwater runoff, redistribution of sediment deposition in Lake Pend Oreille nearshore areas not affecting Kokanee salmon spawning habitat, minor visual obstruction of the lake from some viewpoints, and changes in land use through acquisition of a private-family residence and Bayview Public Park. Specific mitigation measures are provided which will either avoid, or reduce impacts. The two alternative improvement plans differ in level of water quality impacts and view impacts. The No Action Alternative would result in continuing operations at ARD and using the existing facilities without change.

ADDRESSES: The Navy will conduct a public hearing on Thursday, September 5, 1996, beginning at 7:00 p.m. at Bayview Community Center, 16304 Perimeter Road, Bayview, Idaho, to inform the public of the DEIS findings and to solicit comments. Federal, state and local agencies, and interested parties are invited to be present or represented at the hearing. Oral comments will be heard and transcribed by a stenographer. To assure accuracy of the record, all comments should be submitted in writing. All comments, both oral and written, will become part of the public record in the study. In the interest of available time, each speaker will be asked to limit oral comments to five minutes. Longer comments should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed below. Written comments must be received by Monday, September 23, 1996, to become part of the official record.

FOR FURTHER INFORMATION CONTACT: Mr. Peter W. Havens (Code 232PH), Engineering Field Activity Northwest, Naval Facilities Engineering Command, 19917 Seventh Avenue NE, Poulsbo, Washington 98370–7570, email address: envplan@efanw.navfac.navy.mil, telephone (360) 396–0916.

Dated: August 6, 1996.

M.A. Waters,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–20336 Filed 8–8–96; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF ENERGY

National Environmental Policy Act Record of Decision for the Disposal of Decommissioned, Defueled Cruiser, Ohio Class, and Los Angeles Class Naval Reactor Plants

SUMMARY: This Record of Decision has been prepared on the proposed disposal of defueled reactor plants from U.S. Navy nuclear-powered cruisers, OHIO Class submarines and LOS ANGELES Class submarines, pursuant to the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and in accordance with the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR Parts 1500–1508). The Navy, with the concurrence of the Department of Energy, has decided to dispose of these reactor plants by land burial of the entire reactor compartment at the Department of Energy Low-Level Waste Burial Grounds at Hanford, Washington. The Department of Energy participated as a cooperating agency in the development of the Environmental Impact Statement on this federal action and has adopted the Environmental Impact Statement.

ADDRESSES: Requests for further information should be directed to either

Mr. John Gordon (Code 1160), Puget Sound Naval Shipyard, 1400 Farragut Avenue, Bremerton, Washington 98314–5001, telephone (360) 476–7111, or, Mr. Paul Dunigan, National Environmental Policy Act Compliance Officer, Department of Energy, Richland Operations Office, P.O. Box 550, Richland, Washington 99352, telephone (509) 376–6667.

SUPPLEMENTARY INFORMATION: The Final Environmental Impact Statement analyzes the alternative ways for disposing of decommissioned, defueled, reactor compartments from U.S. Navy nuclear-powered cruisers (BAINBRIDGE, TRUXTUN, LONG BEACH, CALIFORNIA Class and VIRGINIA Class) and submarines (LOS ANGELES and OHIO Class). A disposal method for the defueled reactor compartments is needed when the cost of continued operation is not justified by the ship's military capability, or when the ships are no longer needed. Navy reactor plants constructed prior to the USS LOS ANGELES (SSN 688) (referred to as pre-LOS ANGELES Class submarines) share many common design characteristics with reactor plants from nuclear-powered cruisers, OHIO Class submarines and LOS ANGELES Class submarines. Defueled reactor plants from pre-LOS ANGELES Class submarines are currently being disposed of at the Department of Energy Hanford Site in Eastern Washington by the Navy, consistent with its 1984 Record of Decision.

The alternatives examined in detail in the Final Environmental Impact Statement were the preferred alternative—shipment of the prepared compartments from the Puget Sound Naval Shipyard in Bremerton, Washington for land burial of the entire reactor compartment at the Department of Energy Low-Level Waste Burial Grounds at Hanford, Washington; the no action alternative—protective waterborne storage for an indefinite period; disposal and reuse of subdivided portions of the reactor compartments; and indefinite storage above ground at Hanford.

Among these four alternatives, the subdivision alternative had the highest impacts, primarily due to the high occupational radiation exposure that would be received by workers dismantling the reactor compartments. The other three alternatives had very small environment impacts. Of these three, only the reactor compartment land burial alternative provided for permanent disposal of the defueled reactor plants. Thus, the alternative of land burial of the defueled reactor compartments at Hanford is the environmentally preferable alternative.

Under this alternative, the Department of the Navy will prepare the defueled reactor compartments for shipment at the Puget Sound Naval Shipyard. These preparations involve draining the piping systems, tanks, vessels and other components to the maximum extent practical, sealing the radioactive systems, removing the reactor compartment and enclosing it in a high integrity all-welded steel package. The reactor compartment packages will meet the type B requirements of the Department of Transportation, the Nuclear Regulatory Commission, and the Department of Energy. Non-radioactive metal, such as submarine hulls, could be recycled. The reactor compartment packages will be transported by barge out of Puget Sound through the Strait of Juan de Fuca, down the Washington coast, and up the Columbia River to the Port of Benton where they will be loaded onto an overland transporter and hauled to the Department of Energy's Hanford Site near Richland, Washington.

The Department of Energy will accept the approximately 100 cruiser, OHIO Class and LOS ANGELES Class submarine reactor compartments for disposal at the 218–E–12B Low-Level Burial Ground, a 173-acre waste disposal facility in the 200 East area of the Hanford Site. To date, 55 pre-LOS ANGELES Class submarine reactor compartments have been transported safely and disposed of in one area of this facility. The Department of Energy will oversee the future placement of reactor compartments into this area of the disposal facility and manage subsequent disposal operations in accordance with all applicable requirements. The Washington State Department of Ecology will regulate the reactor compartment disposal packages as a dangerous waste under Washington Administrative Code 173–303, Dangerous Waste Regulations, due to the over 100 tons of permanent lead shielding in each reactor compartment. Treatment before disposal is not required because the solid elemental lead shielding is encapsulated by thick metal sheathing plates that meet Resource Conservation and Recovery Act treatment standards for disposal of radioactive lead solids.

The Draft Environmental Impact Statement was made available for public review, and little public input was received. Review comments from state regulatory agencies in Washington and Oregon were positive. The U.S. Environmental Protection Agency (EPA) assigned a rating of LO–1 to the Draft Environmental Impact Statement, which indicates that EPA review did not identify any potential environmental impacts requiring substantive changes to the preferred alternative. The Final Environmental Impact Statement, which includes responses to public comments, has been issued and distributed to interested parties.

The Navy, with the concurrence of the Department of Energy, has decided to proceed with the preferred alternative of land burial of the defueled reactor compartments at Hanford because this alternative is the environmentally preferable alternative, it supports the Navy's mission by providing for responsible, permanent disposal of the defueled reactor plants from the Navy's nuclear-powered ships, and it can be accomplished safely and at reasonable cost.

As discussed in the Environmental Impact Statement, the Navy's current method of disposing of pre-LOS ANGELES Class submarine reactor plants consists of conservative engineering practices, which serve to assure that environmental impacts will be very small. These conservative engineering practices have been incorporated in the Navy's preferred alternative for nuclear-powered cruisers, OHIO Class submarines and LOS ANGELES Class submarines. No additional mitigative measures have been identified which are needed to further reduce the small impacts which were described in the Environmental Impact Statement. Accordingly, all practicable means to avoid or minimize environmental harm from the preferred alternative have been adopted.

Dated: July 3, 1996.

Robert B. Pirie, Jr.,

Assistant Secretary of the Navy (Installations and Environment).

Alvin Alm,

Assistant Secretary for Environmental Management, Departmet of Energy.

[FR Doc. 96–20237 Filed 8–8–96; 8:45 am]

BILLING CODE 3810–FF–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Board Policy on Board Oversight of Department of Energy Decommissioning Activities at Defense Nuclear Facilities

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice of Board adoption of policy guidance.

SUMMARY: The Defense Nuclear Facilities Safety Board has unanimously

adopted a policy statement which establishes procedures that the Board will use in carrying out its oversight responsibilities for decommissioning activities at Department of Energy defense nuclear facilities.

FOR FURTHER INFORMATION CONTACT: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901, (202) 208–6387.

SUPPLEMENTARY INFORMATION: This policy statement describes the decommissioning phase of a Department of Energy defense nuclear facility and identifies the Board's safety oversight responsibilities for decommissioning activities.

Policy Statement (PS–3)

Congress directed the Defense Nuclear Facilities Safety Board (Board) to oversee Department of Energy (DOE) practices at defense nuclear facilities that could adversely affect public health and safety during any stage in the life cycle of those facilities, from design, construction, and operation through decommissioning. The Board's objective during decommissioning is identical to its objective during any other phase of a facility's life cycle: to ensure that DOE provides adequate protection of worker and public health and safety at defense nuclear facilities. Congress specifically tasked the Board with reviewing and evaluating:

> The content and implementation of the standards relating to the design, construction, operation, and decommissioning of defense nuclear facilities of the Department of Energy (including all applicable Department of Energy orders, regulations, and requirements) at each Department of Energy defense nuclear facility. The Board shall recommend to the Secretary of Energy those specific measures that should be adopted to ensure that public health and safety are adequately protected. 42 U.S.C. 2286a(a)(1) (emphasis added).

Thus, the Board's principal oversight function during the decommissioning phase of a facility is to ensure that appropriate nuclear safety rules, orders, and procedures are developed by DOE and then put in practice while the facility is being taken out of service.

An unambiguous definition of ''decommissioning'' is essential to understanding the Board's responsibilities for safety oversight during this phase, and to establishing effective cooperation and/or processes for transition to external regulation by other federal and state agencies having statutory responsibilities for final cleanup and site restoration activities that the term decommissioning also encompasses. As used in the Board's enabling statute, decommissioning is a broad term that encompasses activities leading up to environmental restoration, including deactivation, decontamination, final process runs, removal of special nuclear material, residues, and wastes, and other activities necessary to ensure adequate protection of public health and safety. Under the Atomic Energy Act (AEA), decommissioning begins when operation ceases, and ends when source material, byproduct material, and special nuclear material (''AEA materials''), as well as radioactive materials related to the defense mission, such as tritium, have been adequately removed from a facility. When completed properly, these actions taken to remove radioactive materials obviate the need for continued Board oversight to ensure adequate protection of worker or public health and safety from radiological hazards.

This definition of decommissioning is broader than that currently used administratively by DOE. DOE segments the period following operation into a deactivation phase and a decommissioning phase. The DOE Office of Environmental Management separates the deactivation phase from other functions commonly associated with operations, and defines it as:

> The process of placing a facility in a safe and stable condition to minimize the long-term cost of a surveillance and maintenance program that is protective of workers, the public, and the environment until decommissioning is complete. Actions include the removal of fuel, draining and/or de-energizing of nonessential systems, removal of stored radioactive and hazardous materials and related actions. As the bridge between operations and decommissioning, based upon facility-specific considerations and final disposition plans, deactivation can accomplish operations-like activities such as final process runs, and also decontamination activities aimed at placing the facility in a safe and stable condition. Decommissioning Resource Manual, DOE/EM–0246, § 3.3.

DOE distinguishes deactivation from decommissioning activities for administrative purposes including budget determinations and delineation of various responsibilities within DOE. The Board believes that DOE's functional description of what takes place during deactivation is useful, but also recognizes that deactivation is a continuation and completion of the operations which are necessary to accomplish decommissioning. The Board's inclusion of deactivation as a part of decommissioning is consistent with Nuclear Regulatory Commission and International Atomic Energy Agency policies on decommissioning.

DOE defines decommissioning more narrowly as only those activities which take place:

> After deactivation and includes surveillance and maintenance, decontamination and/or dismantlement. These actions are taken at the end of life of the facility to retire it from service with adequate regard for the health and safety of workers and the public and protection of the environment. The ultimate goal of decommissioning is unrestricted release or restricted use of the site.
>
> * * * * *
>
> Surveillance and Maintenance is a program established during deactivation and continuing until phased out during decommissioning to provide in a cost effective manner for satisfactory containment of contamination; physical safety and security controls; and maintenance of the facility in a manner that is protective of workers, the public, and the environment. *Id.* § 3.3.

To avoid confusion, the Board refers to surveillance and maintenance which occurs during decommissioning as ''decommissioning surveillance and maintenance'' to distinguish between the routine surveillance and maintenance activities that occur during normal operations. Nuclear safety organizations generally consider operations to be ended and decommissioning initiated once reactor fuel has been removed from a nuclear reactor, for nonreactor facilities, decommissioning begins with the removal of radioactive process materials.

The Board's interest in decommissioning activities follows the risk to worker or public health and safety from exposure to radioactive materials at or near defense nuclear facilities. DOE's separation of activities into such categories as decontamination, surveillance and maintenance, and demolition may be descriptive and useful to DOE. However, labels or designation applied to the different activities within the decommissioning phase of a facility do not determine the scope of the Board's duties. The Board retains oversight responsibility and interest so long as residual quantities and states of radioactive materials are sufficient to require continued Board oversight in the interests of public and worker safety. Given this condition, the Board will continue to exercise its oversight jurisdiction to ensure that standards applicable to the DOE activity, including DOE safety orders, rules, and other requirements, are sufficient to provide adequate protection to the worker or public health and safety, and are implemented by DOE and its contractors in accordance with a safety management

plan that does, in fact, provide such adequate protection.

The Board's concern for safety at a facility diminishes as radioactive materials are withdrawn and the facility is removed from service. The Board is ready to work with the federal and state regulatory agencies also involved in these decommissioning activities to effect a coordinated, integrated decommissioning effort. Together with this policy statement, the Board is endorsing and issuing Board technical report, DNFSB/TECH–12, prepared by senior staff entitled, ''Regulation and Oversight of Decommissioning Activities at Department of Energy Defense Nuclear Facilities.'' That document elaborates upon the issues discussed in this policy statement and fully describes the type of cooperative arrangement the Board envisions with other federal and state regulators.

The Board's oversight responsibility for decommissioning activities focuses primarily on the health and safety aspects of the facility and materials within the facility. To a lesser extent, the Board involves itself with protection of the environment surrounding the facility which is subject to substantial regulation by other agencies. Specifically, the Board is concerned if the immediate environment contains or can be contaminated with radioactive materials from a facility under the Board's jurisdiction, and can possess a sufficient concentration of radionuclides to pose a potential threat to worker and public health and safety. Similarly, the Board is concerned if the environment poses a nonradiological hazard which can cause an undue risk to worker and public health and safety as a result of its proximity to a defense nuclear facility. The Board's environmental interest is greatest if the materials originated with DOE defense nuclear facility activities and exposure to the materials could result in undue harm to workers or the public. The Board's interest is shared with other regulatory agencies where the contaminants result (1) from a release, bringing Comprehensive Emergency Response, Compensation, and Liability Act (CERCLA) or Resource Conservation and Recovery Act (RCRA) requirements into play, along with United States Environmental Protection Agency (EPA) or state regulation of removal and remediation activities, or (2) from activities under a RCRA permit. In such cases, the Board is prepared to work in an advisory or assist role with federal or state agencies having statutory responsibility for forcing corrective or remedial measures.

The Board shares oversight responsibility with other regulatory agencies for other facilities containing or contaminated with radioactive materials mixed with RCRA hazardous waste. RCRA mixed waste has two components: a RCRA hazardous waste (which excludes AEA materials) and a radioactive waste. Such facilities are subject to regulation by EPA and state agencies with environmental responsibilities. Treatment, storage, and disposal of the hazardous waste component must meet RCRA requirements and is regulated by the EPA, or the state when authorized by EPA. Treatment, storage, and disposal of the radioactive component must meet AEA requirements and is regulated by DEO subject to Board oversight. Thus, the Board has a primary interest in the radioactive component, but must share its responsibility for oversight of the mixed waste with the regulator of the hazardous component. If the mixed waste is scheduled for treatment and disposal without separating the two components, the treatment and disposal facilities must meet both the hazardous waste laws and those pertaining to radioactive waste.

Board oversight of public health and safety practices at a defense nuclear facility does not end until decommissioning has been completed. However, it does diminish as the inventory of radioactive materials is reduced. This policy statement is designed to provide guidance pertaining to the Board's interpretation of its statutory role in decommissioning activities. The Board will be structuring future Board reviews and oversight of the decommissioning process at defense nuclear facilities accordingly. The policy statement recognizes that the Board shares responsibility for public health, safety, and environmental issues with state agencies and EPA during decommissioning at defense nuclear facilities. In the delineation of the Board's responsibilities and interest, the Board's objective is to facilitate a smooth transition of Board oversight to state and federal regulation as a defense nuclear facility passes through operational and decommissioning phases to state and EPA-regulated final cleanup, demolition, and environmental restoration activities.

John T. Conway,

Chairman.

Dated: August 5, 1996.

Robert M. Andersen,

General Counsel.

Appendix—Transmittal Letter to the Secretary of Energy

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

625 Indiana Avenue, NW, Suite 700, Washington, D.C. 20004, (202) 208–6400

August 1, 1996.

The Honorable Hazel R. O'Leary,
Secretary of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–1000

Dear Secretary O'Leary: Enclosed for your consideration are two documents just issued by the Defense Nuclear Facilities Safety Board (Board) related to safety oversight of decommissioning activities at Department of Energy (DOE) defense nuclear facilities: Board Policy Statement No. 3, entitled ''Policy Statement on Board Oversight of Department of Energy Decommissioning Activities at Defense Nuclear Facilities'' and a Board technical report, DNFSB/TECH–12, ''Regulation and Oversight of Decommissioning Activities at Department of Energy Defense Nuclear Facilities.'' Together these documents examine the various definitions of decommissioning in use by nuclear organizations, delineate the Board's oversight responsibilities for decommissioning activities at defense nuclear facilities, and review the roles of federal and state regulators for aspects of decommissioning, including environmental cleanup and final restoration.

The Board believes these documents are important because they provide structure and guidance for continuing Board safety oversight of the decommissioning phase, which encompasses an expanding number of activities throughout the defense nuclear complex. As DOE's mission continues to evolve, and an emphasis is placed on decommissioning, waste processing, and environmental restoration, it becomes increasingly important that the Board and other federal and state regulators cooperate to provide a smooth transition from oversight of Atomic Energy Act nuclear materials to regulation of environmental restoration and cleanup. DNFSB/TECH–12 outlines the principles for cooperation and efficient, nonduplicative, oversight and regulation of decommissioning activities. These principles were incorporated in the 1996 Memorandum of Understanding entered into by DOE, the Board, the United States Environmental Protection Agency, and the State of Colorado for decommissioning activities at the Rocky Flats Environmental Technology Site, near Denver, Colorado. As recently acknowledged by the Senate Armed Services Committee, similar arrangements could result in efficient and effective oversight and regulation of the decommissioning phase at other defense nuclear facilities throughout the complex.

Sincerely,

John T. Conway,

Chairman.

Enclosures

c: Mr. Mark B. Whitaker, Jr.

[FR Doc. 96–20313 Filed 8–8–96; 8:45 am]

BILLING CODE 3670–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER96–2516–000; EC96–28–000 and EL96–69–000]

PJM Companies/Atlantic City, et al.; Notice of Filing

August 5, 1996.

Take notice that on July 24, 1996, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, and Public Service Electric and Gas Company filed the following documents pursuant to 18 CFR 35.12 or 35.13 as part of the restructuring of the Pennsylvania-New Jersey-Maryland Interconnection (PJM Pool):

1. Transmission Owners Agreement to which is attached the PJM Control Area Open Access Transmission Tariff;

2. Reserve Sharing Agreement;

3. Mid-Atlantic Market Operations Agreement;

4. PJM Dispute Resolution Agreement;

Copies have been served on the regulatory commissions of Delaware, the District of Columbia, Maryland, New Jersey, Pennsylvania and Virginia.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 19, 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. 96–20296 Filed 8–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. QF88–218–004; QF88–218–006]

Burney Forest Products, a Joint Venture; Notice of Application for Commission Recertification of Qualifying Status of a Small Power Production Facility and Certification of Qualifying Status of a Cogeneration Facility

July 23, 1996.

On April 30, 1996, as completed on July 11, 1996, Burney Forest Products, a Joint Venture of 35586–B, Highway 299 East, Burney, California 96013, submitted for filing an application for recertification of a facility as a qualifying small power production facility and certification as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing

According to the applicant, the biomass-fueled facility is located in Shasta County, California. The Commission previously certified the facility as a 24.0 MW small power production facility. The facility consists of two wood-fired boilers and a condensing/extraction steam turbine generator. Thermal energy recovered from the facility will be used by Big Valley Lumber in its sawmill for lumber drying. Power from the facility is sold to Pacific Gas & Electric Company. According to the applicant, the recertification is requested to report a change in the ownership and an increase in the maximum net capacity of the facility to 31.5 MW.

Any person who wishes to be heard or to object to granting qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. A motion or protest must be filed within 15 days after the date of publication of this notice and must be served on the applicant. 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. A person who wishes to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–20440 Filed 8–8–96; 8:45 am]

BILLING CODE 6717–01–MS

[Docket No. RP96–212–003]

CNG Transmission Corporation; Notice of Section 4 Filing

August 5, 1996.

Take notice that on July 31, 1996, CNG Transmission Corporation (CNGT), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume 1A, the following sheets:

Second Substitute Original Sheet No. 11
Second Substitute Original Sheet No. 12
Substitute Original Sheet No. 13
Substitute Original Sheet No. 63
Substitute Original Sheet No. 82
Second Substitute Original Sheet No. 103
Second Substitute Original Sheet No. 104

CNGT further states that the filing is made to correct line classifications previously approved by the Commission.

Any person desiring to protest this 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 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 the protestants parties to the proceedings. 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. 96–20300 Filed 8–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–2381–000]

Florida Power & Light Company; Notice of Filing

August 5, 1996.

Take notice that on July 9, 1996, Florida Power & Light Company (FPL) tendered for filing an open access transmission tariff. FPL states that the open access tariff will supersede FPL's existing T–1, T–2, T–3, and T–4 tariffs. FPL proposes to place customers presently receiving transmission service pursuant to those tariffs under the open access transmission tariff. Through its

filing, FPL proposes to change the rates for its customers and, in addition, proposes rates for various ancillary schedules.

In addition, FPL is filing to supersede service under the following long term transmission service agreements with service under the open access tariff: The St. Lucie Delivery Service Agreement between Florida Power & Light Company and the Florida Municipal Power Agency (Rate Schedule 72); The Stanton Transmission Agreement between Florida Power & Light Company and the Florida Municipal Power Agency (Rate Schedule 92); The Stanton Tri-City Transmission Agreement between Florida Power & Light Company and the Florida Municipal Power Agency (Rate Schedule 93); The Long-Term Firm Transmission Agreement For Stanton Unit Two between Florida Power & Light Company and the Florida Municipal Power Agency (Rate Schedule 109); Agreement to Provide Specified Transmission Service between Florida Power & Light Company and Metropolitan Dade County, Florida (Rate Schedule 124). FPL's filing changes the rates in those agreements as well as the rates in the Amended Agreement to Provide Specified Transmission Service between Florida Power & Light Company and Seminole Electric Cooperative, Inc. (Rate Schedule 78), and the rates in the Orlando Delivery Service Agreement between Florida Power & Light Company and the Orlando Utilities Commission (Rate Schedule 69).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 16, 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. 96–20295 Filed 8–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP96–678–000; CP96–679–000]

Garden Banks Gas Pipeline, LLC; Notice of Application

August 5, 1996.

Take notice that on July 30, 1996, Garden Banks Gas Pipeline, LLC (GBGP), as successor in interest to the certificate of public convenience and necessity issued to Shell Gas Pipeline Company (SGPC) in Docket No. CP96–307–000, filed an application pursuant to Section 7(c) of the Natural Gas Act requesting (1) a blanket transportation certificate under Part 284 of the Commission's Regulations; (2) approval of proposed initial rates, terms and conditions of service on the pipeline facilities certificated in Docket No. CP96–307–000; (3) a Part 157 blanket construction certificate; (4) authorization to construct and operate certain minor facilities necessary to effect deliveries to ANR Pipeline Company and Sea Robin Pipeline Company; and (5) pre-granted abandonment under Section 7(b) of the Natural Gas Act in the event the facilities certificated in Docket No. CP96–307–000 are ultimately determined to be gathering facilities that are not subject to the jurisdiction of the Commission under Section 1(b) of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

GBGP states that by order issued May 16, 1996, in Docket No. CP96–307–000, the Commission granted SGPC authority to construct and operate a 30-inch diameter natural gas pipeline and related facilities extending approximately 50 miles from the ''A'' Platform in Garden Banks Block 128, offshore Louisiana, to the ''P'' Platform in South Marsh Island 76, offshore Louisiana. The order required that proposed rates, terms and conditions of service be filed within 75 days of the date of issuance of the May 16 order.

Pursuant to a waiver of 18 CFR 157.20(e) granted in the May 16 order, SGPC transferred the certificate to GBGP, a Delaware limited liability company. The members of GBGP are Shell Enchilada Gas Pipeline Company (SEGP), a wholly owned subsidiary of Shell Gas Pipeline Company, and Hess Garden Banks Gas Gathering, Inc. (HGB), a wholly owned subsidiary of Amerada Hess Corporation. SEGP has an 80% membership interest in GBGP and HGB has a 20% membership interest.

GBGP requests the issuance of a Part 284 blanket transportation certificate under which GBGP will offer FT–1, FT–2 and IT–1 transportation services GBGP states that (1) the FT–1 service is a traditional firm transportation service with fixed MDQ and reservation charge; (2) the FT–2 service is a flexible firm service with variable MDQ and rates based on volumes shipped; and (3) the IT–1 service is a traditional interruptible transportation service.

GBGP proposes to conduct an open season for subscriptions to capacity on the 30-inch line from November 4 to November 25, 1996. GBGP states that capacity pre-subscribed by those shippers who execute Precedent Agreements for FT–2 service on or before July 26, 1996 will not be included in the open season.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 26, 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 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by 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 matters finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission of 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 GBGP to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–20331 Filed 8–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–320–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 5, 1996.

Take notice that on July 31, 1996, Koch Gateway Pipeline Company (Koch Gateway) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective August 1, 1996:

First Revised Sheet No. 102
First Revised Sheet No. 103
Second Revised Sheet No. 202
First Revised Sheet No. 304
Second Revised Sheet No. 305
Second Revised Sheet No. 2901
Original Sheet No. 2902
First Revised Sheet No. 3200
Second Revised Sheet No. 3607
Second Revised Sheet No. 3702

Koch Gateway states this filing is submitted as an application pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. 717c (1988), and Part 154 of the Rules and Regulations of the Commission.

Koch Gateway states that it files the above tariff sheets to give Koch Gateway the ability to negotiate rates as contemplated by the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking Methodologies, issued January 31, 1996.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's regulations. All such motions or protest must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–20301 Filed 8–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TM96–7–16–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

August 5, 1996.

Take notice that on July 31, 1996, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Tenth Revised Sheet No. 5A, with a proposed effective date of August 1, 1996.

National states that under Article II, Section 2, of the approved settlement in the above-captioned proceedings, National is required to recalculate monthly the maximum Interruptible Gathering (IG) rate and charge that rate on the first day of the following month if the result is an IG rate 2 cents above or below the IG rate. The recalculation produced an IG rate of 13 cents per dth.

National further states that pursuant to Article II, Section 4, National is required to file a revised tariff sheet in a Compliance Filing each time the effective IG rate is revised within 30 days of the effective date of the revised IG rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or 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. 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. 96–20305 Filed 8–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–99–002]

Nora Transmission Company; Notice of Compliance Filing

August 5, 1996.

Take notice that on June 14, 1996, Nora Transmission Company (Nora) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, with an effective date of February 1, 1996:

First Revised Sheet No. 4

Nora states that filing is being made in compliance with the Commission's May 31, 1996, order in the above referenced proceeding.

Any person desiring to protest this 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 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 the protestants parties to the proceedings. 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. 96–20299 Filed 8–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–92–000]

Southern Natural Gas Company; Notice of Refund Report

August 5, 1996.

Take notice that on July 31, 1996, Southern Natural Gas Company (Southern) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Refund Report reflecting its refund of certain amounts to its eligible firm shippers. These amounts represents a follow-through of refunds received from the Gas Research Institute (GRI).

Southern states that the report states that Southern refunded $1,487,413 to its eligible shippers on July 16, 1996, which represents the amount received from GRI as required by the Commission's Order dated February 22, 1995.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 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 August 12, 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 Southern's filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–20297 Filed 8–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–322–000]

Southern Natural Gas Company; Notice of Termination of Gathering Service

August 5, 1996.

Take notice that on July 31, 1996, Southern Natural Gas Company (Southern) tendered for filing, pursuant to Section 4 of the Natural Gas Act, a notice of termination of gathering service that will apply to gathering service provided by Laurel Fuel Company (Laurel Fuel) upon the transfer of Southern to Laurel Fuel of certain gathering facilities located in Gwinville Field, Jefferson Davis and Simpson Counties, Mississippi. Southern proposes the effective date of such termination of gathering services to be August 31, 1996.

Southern states that copies of the filing have been served upon each of Southern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed 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. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–20302 Filed 8–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–323–000]

Southern Natural Gas Co.; Notice of GSR Revised Tariff Sheets

August 5, 1996.

Take notice that on July 31, 1996, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets with the proposed effective date of August 1, 1996:

Twelfth Revised Sheet No. 14
Thirty Fourth Revised Sheet No. 15
Twelfth Revised Sheet No. 16
Thirty Fourth Revised Sheet No. 17
Twenty Second Revised Sheet No. 29
Twenty Second Revised Sheet No. 30

Southern submits the revised tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, to reflect a change in its FT/FT-NN GSR Surcharge, due to an increase in GSR billing units effective August 1, 1996, a credit for excess firm transportation reservation quantities and the removal of a credit for excess firm transportation reservation quantities included in its June 28, 1996, filing in the above referenced dockets.

Southern states that copies of the filing were served upon all parties listed on the official service list compiled by the Secretary in these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests 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. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–20303 Filed 8–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TM96–7–16–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

August 5, 1996.

Take notice that on July 31, 1996, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Tenth Revised Sheet No. 5A, with a proposed effective date of August 1, 1996.

National states that under Article II, Section 2, of the approved settlement in the above-captioned proceedings, National is required to recalculate monthly the maximum Interruptible Gathering (IG) rate and charge that rate on the first day of the following month if the result is an IG rate 2 cents above or below the IG rate. The recalculation produced an IG rate of 13 cents per dth.

National further states that pursuant to Article II, Section 4, National is required to file a revised tariff sheet in a Compliance Filing each time the effective IG rate is revised within 30 days of the effective date of the revised IG rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or 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. 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. 96–20306 Filed 8–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–545–001]

Transcontinental Gas Pipe Line Corporation; Notice of Amendment to Application

August 5, 1996.

Take notice that on August 1, 1996, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP96–545–001 an amendment to its application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity for authorization to construct and operate the SeaBoard Expansion Project, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that the purpose of the amendment is to (1) remove from the list of proposed SeaBoard facilities the 7.10 miles of 36-inch diameter pipeline loop beginning at milepost 18.96 and ending at milepost 26.06 in Burlington County, New Jersey, and (2) submit minor amendments to the precedent agreements of Delmarva Power and Light Company (Delmarva), Enron Capital and Trade Resources

Corporation (Enron) and Sun Company, Inc. (Sun). It is stated that the amendments to the precedent agreements of Delmarva and Sun clarify that a portion of their firm Sea Board volumes will be transported utilizing secondary firm capacity and of Enron corrects a clerical error made by Transco.

Any person desiring to be heard or to make a protest with reference to said amendment should on or before August 15, 1996, file with the Federal Energy Regulatory Commission, Washington, DC 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 18 CFR 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 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 with further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is 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 Transco to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–20294 Filed 8–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–670–000]

Virginia Gas Pipeline Company; Notice of Application

August 5, 1996.

Take notice that on July 26, 1996, Virginia Gas Pipeline Company (VGPC), P.O. Box 2407, Abingdon, Virginia 24212, filed in Docket No. CP96–670–000 an application pursuant to Section 7(c) of the Natural Gas Act (NGA) requesting a blanket certificate of public convenience and necessity authorizing VGPC to transport natural gas under Section 284.224 of the Commission's Regulations, as may be amended from time to time, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that VGPC is an intrastate gas company owned by Virginia Gas Company. It is asserted that VGPC proposes to provide storage service from the Saltville gas storage field located in Smyth and Washington Counties, Viriginia. VGPC states that it will provide firm and interruptible storage services as well as transfers of gas in-place and will offer an Authorized Overrun Service to its firm customers. VGPC asserts that it will provide 450,000 MMBtu equivalent of storage service, with an additional 200,000 MMBtu equivalent of cushion gas. It is stated that VGPC will utilize new and existing facilities, including the rehabilitation of 2 salt cavern wells, the installation of a 1,200 horsepower compressor station, and the construction of 6 miles of 8-inch pipeline to connect its facilities to those of East Tennessee Gas Company and approximately one mile of smaller diameter gathering lines to connect individual wells to the compressor station. The cost of developing the storage field is estimated at $10.8 million.

VGPC states that it qualifies for a Hinshaw exemption and should be exempt from regulation by the Commission under Section 1(c) of the NGA. It is explained that VGPC receives all of its gas within or at the boundaries of the state of Virginia, and the gas is consumed within Virginia. VGPC states that its rates, services and facilities are subject to regulation by the Corporation Commission of the State of Virginia (VSCC). VGPC states that it will use its rates and tariffs on file with the VSCC for the services rendered under the blanket certificate requested in the subject application. VGPC further states that it will comply with all applicable conditions contained in paragraph (e) of § 284.224 of the Commission's Regulations.

Any person desiring to be heard or to make any protest with reference to said application should, on or before August 26, 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 VGPC to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–20293 Filed 8–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–324–000]

West Texas Gas, Inc.; Notice for Limited Waiver

August 5, 1996.

Take notice that on July 31, 1996, West Texas Gas, Inc. (WTG) tendered for filing with the Commission a request for a limited waiver of Section 19.3 of its FERC Gas Tariff and the Commission's Regulations to the extent necessary to permit it to file its annual PGA less than 60 days prior to the proposed effective date.

WTG states that its annual PGA filing, which is due to be effective October 1, 1996, would require a filing date of August 1, 1996. WTG requests that the Commission grant WTG a limited waiver of its tariff to permit it to make its annual PGA filing on August 30, 1996, to be effective October 1, 1996.

Any person desiring to be heard or to protest said filing should file a motion

to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or 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. 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. 96–20304 Filed 8–8–96; 8:45 am]

BILLING CODE 6717–01–M

Notice of Application Filed With the Commission

August 5, 1996.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. Type of Application: Lease of Project Property.

b. Project No.: Project No. 2280–002.

c. Date Filed: June 6, 1996.

d. Applicants: The Cleveland Electric Illuminating Company (Transferor) and Jersey Central Power & Light Company (Transferee).

e. Name of Project: Kinzua (A.K.A. Seneca) Pumped Storage.

f. Location: On the Allegheny River in Kinzua, Warren County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicants' Contact: Mr. Michael C. Regulinski, Esq., Centerior Energy Corporation, 6200 Oak Tree, IND450, Independence, Ohio 44131, Telephone: (216) 447–2191; Mr. James K. Mitchell, Esq., Reid & Priest, Market Square, 701 Pennsylvania Ave., #800, Washington, DC 20004, Telephone: (202) 508–4002.

i. FERC Contact: Mr. Thomas F. Papsidero, (202) 219–2715.

j. Comment Date: September 18, 1996.

k. Description of Transfer: The Cleveland Electric Illuminating Company (Cleveland Electric) and Pennsylvania Electric Company, licensees for Project No. 2280, and the Jersey Central Power & Light Company (Jersey Central) request approval of a lease of project property between Cleveland Electric and Jersey Central. Under the lease, and addendum to the lease, Cleveland Electric would convey to Jersey Central its ownership share of the project's output (*see* Docket Nos. ER96–1471–000 and EC96–26–000) and would convey to Jersey Electric the right to exercise Cleveland Electric's rights under the Facilities and Operating Agreements between the licensees, which affect the timing and generation of electricity at the project.

1. This notice also consists of the following standard paragraphs: B, C2 and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C2. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS,'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number of the particular application to which the filing refers. Any of these documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of a notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 96–20298 Filed 8–8–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5550–3]

Agency Information Collection Activities; Environmental Protection Agency/Chemical Manufacturers Association Root Cause Analysis Pilot Project

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 EPA is planning to submit the following proposed and/or continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Environmental Protection Agency/Chemical Manufacturers Association Root Cause Analysis Pilot Project. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 8, 1996.

ADDRESSES: Tracy Back (2224A) or Sally Sasnett (2224A), U.S. EPA, 401 M St., SW., Washington DC 20460. Interested persons may obtain a copy of the ICR without charge by calling Tracy Back at (202) 564–7076.

FOR FURTHER INFORMATION CONTACT: Tracy Back, (202) 564–7076, or Sally Sasnett, (202) 564–7074. Facsimile number: (202) 564–0009.

SUPPLEMENTARY INFORMATION:

Affected Entities: Entities potentially affected by this action are Chemical Manufacturers Association member companies that voluntarily choose to participate in the pilot project.

Title: Environmental Protection Agency/Chemical Manufacturers Association Root Cause Analysis Pilot Project.

Abstract: The Environmental Protection Agency (EPA), in conjunction with the Chemical Manufacturers Association (CMA), is developing a pilot project to improve environmental performance and regulatory compliance. To achieve this goal, EPA and CMA will analyze past compliance information of

CMA member companies to: (1) Identify fundamental causes of noncompliance; (2) identify common features or trends among these causes; and (3) develop innovative compliance management recommendations and potential pollution prevention opportunities to help facilities achieve and maintain compliance. The pilot project will focus on areas of noncompliance that have been addressed through a Federal civil administrative or judicial enforcement actions that were commenced and closed between fiscal years 1990–1995.

To identify the fundamental causes of noncompliance, EPA and CMA will develop a survey tool for participating CMA member companies. The survey will seek responses regarding the fundamental causes of identified noncompliance, actions taken by facilities to remedy the noncompliance, and additional recommendations for compliance activities or potential pollution prevention opportunities to continuously improve compliance. In addition, the survey may also seek information regarding CMA's Responsible Care® program and its impact on compliance. To support completion of the survey and help identify the fundamental causes of noncompliance, EPA will supply participating CMA member companies with compliance data for fiscal years 1990–1995 from closed Federal civil administrative or judicial enforcement actions specific to their facilities. Participating CMA member companies will be afforded the opportunity to review and verify compliance data provided to them. Participation by CMA member companies in this pilot project is voluntary. 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 EPA is soliciting comments to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including 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.

Burden Statement: It is estimated that approximately 100 facilities may voluntarily participate on the EPA/CMA Root Cause Analysis Pilot Project. Each participant will be asked to complete the EPA/CMA-developed ''one-time'' survey. In addition, participating facilities will be provided the opportunity to review and verify EPA-supplied compliance data. EPA estimates that participating facilities may need to spend up to seven hours to research compliance files and complete the survey. Therefore, a total of 700 facility hours may be expended to provide EPA and CMA with data for use in the pilot project. This burden hour estimate translates to a cost of $308.70 per facility and a total cost to industry of $30,870. The respondent costs were calculated based on $21.00 per hour, plus 110 percent overhead. 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.

Dated: August 2, 1996.

Elaine Stanley,

Director, Office of Compliance.

[FR Doc. 96–20367 Filed 8–8–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5550–8]

Request for Nominations to the National Advisory Council for Environmental Policy and Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for nominations.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is inviting nominations of qualified candidates to consider for appointment to fill vacancies on its National Advisory Council for Environmental Policy and Technology (NACEPT). Nominations will be accepted until close of business September 6, 1996.

ADDRESSES: Submit nominations to: Mr. Gordon Schisler, Acting Director, Office of Cooperative Environmental Management, U.S. Environmental Protection Agency, 1601–F, 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon Schisler, Designated Federal Official for NACEPT, U.S. Environmental Protection Agency, 1601–F, Washington, D.C. 20460; telephone 202–260–9741.

SUPPLEMENTARY INFORMATION: NACEPT is a federal advisory committee under the Federal Advisory Committee Act, PL 92463. NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues. The Administrator has asked NACEPT to concentrate on regulatory incentives that could be used to promote a community-based approach (CBEP) to environmental management, assess whether EPA's information systems are designed to support CBEP and various new approaches to environmental protection relative to partnerships with states and regulated entities, and identify criteria and recommend a framework that the Agency can use to measure the success of its reinvention efforts.

The following standing committees were formed in FY'96 to examine different aspects of the Agency's community-based approach to environmental protection; the Agency's regulatory reinvention efforts, and information resource requirements to support the Agency's broad environmental goals.

- The Information Impacts Committee has been tasked with reviewing Agency information strategies, and providing recommendations on how to effectively position information resources to support new, comprehensive and long-term initiatives such as the Common Sense Initiative, Performance Partnerships, and Project XL, as well as the community-based approach to environmental protection.
- The Reinvention Criteria Committee is identifying evaluation criteria the Agency can use to measure the progress and success of specific reinvention projects. The selection of the projects is coordinated with the EPA Regulatory Reinvention Team.
- The Community-Based Environmental Protection (CBEP) Committee is examining the defining

elements of sustainable economies and the opportunities for harmonizing environmental policy, economic activity, and ecosystem management; and is identifying regulatory and non-regulatory incentives that could be used to promote CBEP activities.

NACEPT comprises a representative cross-section of EPA's partners and constituents in order to gain insights and perspectives from all interested parties.

EPA is seeking nominations for representation from all sectors, including state and local planning agencies, industry, tribal organizations, environmental NGOs, and community organizations.

Nominations for membership must include a résumé and short biography describing the educational and professional qualifications of the nominee and the nominee's current business address and daytime telephone number.

Dated: August 2, 1996.

Gordon Schisler,

Designated Federal Official.

[FR Doc. 96–20369 Filed 8–8–96; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–5472–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or (202) 564–7153. Weekly receipt of Environmental Impact Statements Filed July 29, 1996 Through August 02, 1996 Pursuant to 40 CFR 1506.9.

EIS No. 960353, DRAFT EIS, FHW, PA, US 202 Section 700 Corridor, Improvements from PA 63 in Montgomeryville to the PA–611 Bypass in Doylestown Township, COE Section 404 Permit and Right-of-Way, Montgomery and Bucks Counties, PA, Due: September 27, 1996, Contact: Manuel A. Marks (717) 782–3461.

EIS No. 960354, FINAL EIS, NPS, AZ, CA, Programmatic EIS—Juan Bautista de Anza National Historic Trail Comprehensive Management Plan, Implementation, several counties, AZ and CA, Due: September 09, 1996, Contact: Stanley T. Albright (415) 744–3876.

EIS No. 960355, FINAL EIS, BLM, WY, Grass Creek Resource Management Plan, Implementation, Big Horn, Washakie, Hot Springs and Park Counties, WY, Due: September 09, 1996, Contact: Joe Patty (307) 775–6101.

EIS No. 960356, FINAL EIS, NPS, VA, Richmond National Battlefield Park General Management Plan and Land Protection Plan, Implementation, Hanover, Henrico and Chesterfield Counties, VA, Due: September 09, 1996, Contact: Cynthia Macleod (804) 226–1981.

EIS No. 960357, FINAL EIS, AFS, AK, King George Timber Sale Project, Timber Harvesting and Road Construction, Implementation, Tongass National Forest, Stikine Area, Etolin Island, AK, Due: September 09, 1996, Contact: Meg Mitchell (907) 874–2323.

EIS No. 960358, FINAL EIS, FHW, OK, Canadian River Bridge Crossing Construction, OK–37 east of Tuttle northward to OK–152 in or near Mustang, Funding, COE Section 404 and EPA NPDES Permits Issuance, Canadian and Grady Cos. OK, Due: September 09, 1996, Contact: Pete Lombard (817) 334–3646.

EIS No. 960359, DRAFT EIS, BLM, ID, Challis Land and Resource Management Plan, Implementation, Upper Columbus-Salmon Clearwater Districts, Salmon River, Lemhi and Custer Counties, ID, Due: November 21, 1996, Contact: Kathe Rhodes (208) 756–5440.

EIS No. 960360, FINAL EIS, AFS, OR, Foss Perkins Analysis Area, Vegetation Management and Timber Sale, Ochoco National Forest, Snow Mountain Ranger District, Harney County, OR, Due: September 09, 1996, Contact: Bill Rice (541) 573–4300.

EIS No. 960361, DRAFT EIS, FHW, WI, US 12 Corridor Project, Improvement from IH90/94 at Lake Delton south to Ski Hi Road, Funding and COE Section 404 Permits, Sauk County, WI, Due: September 23, 1996, Contact: Richard Madrzak (608) 829–7500.

EIS No. 960362, FINAL SUPPLEMENT, COE, MS, Mississippi River and Tributaries Flood Control Plan, Big Sunflower River Maintenance Project, Yazoo Basin, Sunflower, Washington, Humphreys, Sharkey and Yazoo Counties, MS, Due: September 9, 1996, Contact: Marvin Cannon (601) 631–5437.

EIS No. 960363, DRAFT EIS, CGD, Atlantic Protected Living Marine Resource Initiative, Implementation, Atlantic Ocean, from Maine to Florida, Due: September 16, 1996, Contact: Commander Rooth (202) 267–1456. Under Section 1506.10(d) of the Council on Environmental Quality Regulations For Implementing The Procedural Provisions of the National Environmental Policy Act a 7-day Waiver of the Prescribed Period has been Granted.

EIS No. 960364, DRAFT EIS, AFS, MT, Lewis and Clark National Forest Plan, Implementation, Oil and Gas Leasing Analysis, Upper Missouri River Basin, several counties, MT, Due: October 08, 1996, Contact: Robin Strathy (406) 791–7726.

EIS No. 960365, DRAFT EIS, USN, ID, Naval Surface Warfare Center (NSWC), Acoustic Research Detachment (ARD), Carderock Division (CD), Capital Improvements Plan, Implementation, in the Town of Bayview, Kootenai County, ID, Due: September 23, 1996, Contact: Peter W. Havens (360) 396–0916.

EIS No. 960366, FINAL EIS, OSM, TN, Fern Lake Petition Area for Surface Coal Mining Operations, Designation or Nondesignation as Unsuitable for Coal Mining Operations, Claiborne County, TN, Due: September 09, 1996, Contact: Sam K. Bae (202) 208–2633.

EIS No. 960367, DRAFT EIS, AFS, CA, Cavanah Multi-Resource Management Project, Implementation, Enhancing Forest Health and Productivity, Tahoe National Forest, Foresthill Ranger District, Placer County, CA, Due: September 23, 1996, Contact: John Bradford (916) 478–6254.

EIS No. 960368, DRAFT EIS, NOA, WA, Programmatic EIS—Commencement Bay Restoration Plan, Implementation, COE Section 10 and 404 Permits, CZMA and NPDES Applications, Puget Sound, Pierce County, WA, Due: October 08, 1996, Contact: Judy Lantor (360) 753–6056.

Amended Notices

EIS No. 960217, LEGISLATIVE DRAFT EIS, AFS, CA, Tahoe National Forest and Portions of Plumas and EL Dorado National Forests, Implementation, Twenty-Two Westside Rivers for Suitability and inclusion in the National Wild and Scenic Rivers System, Wild and Scenic River Study, Placer, Nevada, Sierra, Plumas, EL Dorado and Yuba Counties, CA, Due: August 09, 1996, Contact: Phil Horning (916) 478–6210. Published FR 05–02–96—Review Period extended.

EIS No. 960289, DRAFT EIS, GSA, NY, US Brooklyn Court Project, Demolition of the Emanuel Celler Federal Building, Construction of a New Courthouse and Renovation/Adaptive Reuse of the General Post Office at Cadman Plaza East, Kings County, NY, Due: August 27, 1996, Contact: Peter A. Sneed (GSA) (212) 264–3581. Published FR 06–28–96—Review Period Extended.

Dated: August 06, 1996.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–20380 Filed 8–08–96; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–5472–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 22, 1996 Through July 26, 1996 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 05, 1996 (61 FR 15251).

Draft EISs

ERP No. D–COE–G85180–LA Rating EO2, Estelle Plantation Partnership Municipal Golf Course and Housing Development, Implementation, Jefferson Parish, LA.

Summary: EPA expressed environmental objections to the proposal and requested additional information in the final EIS. Additional information needed in the FEIS include: (1) the need for expanded alternative analysis, (2) development of purpose and need to support practicable alternative, (3) minimization of direct and secondary impacts, (4) lack of a mitigation plan to offset unavoidable impacts, (5) water quality management, and (6) lack of consideration of Executive Order 11990 (Wetlands Protection) and Executive Order 11988 (Floodplain Management).

ERP No. D–NOA–C90016–NJ Rating EC2, Mullica River—Great Bay National Estuarine Research Reserve Establishment, Site Designation and Plan Implementation, Ocean, Atlantic and Burlington Counties, NJ.

Summary: EPA expressed environmental concerns about the impacts that may be caused by construction and operation of the proposed facilities. Additional information to address this issue is requested in the final EIS.

ERP No. D–USA–C11012–NJ Rating EC2, Evans Subpost Disposal and Reuse, Implementation, Fort Monmouth, Ocean and Monmouth Counties, NJ.

Summary: EPA expressed environmental concerns about the project's potential impacts to ground water and has requested additional information to address this issue in the final EIS.

ERP No. D–USN–E11037–FL Rating EC2, Programmatic EIS—Mayport Naval Station, To Evaluate Facilities Development Necessary to Support Potential Aircraft Carrier Homporting, Duval County, FL.

Summary: EPA expressed environmental concerns about ODMDS capacity and mounding effects, and impacts to the ozone maintenance area. EPA requested that these issue be addressed in the final document.

Final EISs

ERP No. F–AFS–E65046–SC, Francis Marion National Forest Land and Resource Management Plan, Implementation, Charleston and Berkeley Counties, SC.

Summary:

EPA's review found that the document adequately addressed impacts associated with the selected forest plan. No major objections to the selected plan were found.

ERP No. F–FRC–C02000–PR, Eco Ele'ctrica Liquefied Natural Gas (LNG) Import Terminal and Electric Cogeneration Project Construction and Operation, Permits and Approvals, Guayanilla Bay, PR.

Summary: EPA expressed environmental concerns involving site contamination. Accordingly, EPA requested that this issue be addressed in the project's authorization order.

ERP No. F–TVA–E32075–TN, Upper Tennessee River Navigation Improvement Project, Rehabilitation and/or Construction, Chickamauga Dam—Navigation Lock Structural Improvement Alternative, Funding, NPDES Permit, Coast Guard Bridge Permit and COE Section 404 Permits, Tennessee River, Hamilton County, TN.

Summary: EPA continued to express environmental concerns about the proposed project's potential for industrial development, comparison of water quality information to standards, NEPA discussion of proposed bridges, cumulative impact speculations, and noise level documentation.

Dated: August 5, 1996.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–20381 Filed 8–08–96; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5550–2]

Open Meeting of the Industrial Non-Hazardous Waste Stakeholders Focus Group

AGENCY: Environmental Protection Agency.

ACTION: Notice of open meeting of the Industrial Non-Hazardous Waste Stakeholders Focus Group.

SUMMARY: As required by section 10 (a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), EPA is giving notice of the second meeting of the Industrial Non-Hazardous Waste Policy Dialogue Committee, also known as the Industrial Non-Hazardous Waste Stakeholders Focus Group. The purpose of this committee is to advise EPA and ASTSWMO (the Association of State and Territorial Solid Waste Management Officials) in developing voluntary guidance for the management of industrial nonhazardous waste in land-based disposal units. The Focus Group will facilitate the exchange of information and ideas among the interested parties relating to the development of such guidance. The purpose of the second meeting will be to continue discussion of issues related to development of such guidance. The agenda will include a discussion of tailoring management practices to risk, liner system designs, groundwater monitoring, location considerations, waste minimization, and public involvement. There will be an opportunity for limited public comment at the end of each day of the meeting.

DATES: The committee will meet on September 11–12, 1996, from 9:00 A.M. to 5:00 p.m. on September 11, and from 8:30 a.m. to 3:00 p.m. on September 12.

ADDRESSES: The location of the meeting is the Quality Hotel Arlington, 1200 Courthouse Road, Arlington, VA. The seating capacity of the room is approximately 60 people, and seating will be on a first-come basis. Supporting materials are available for viewing at Docket # F–96–INHA–FFFFF in the RCRA Information Center (RIC), located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA. The RIC is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays. To review docket materials, the public must make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $.15/page. For general information, contact the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). In the Washington

metropolitan area, call 703–412–9610 or TDD 703–412–3323.

FOR FURTHER INFORMATION, CONTACT: Persons needing further information on the committee should contact Paul Cassidy, Municipal and Industrial Solid Waste Division, Office of Solid Waste, at (703) 308–7281.

SUPPLEMENTARY INFORMATION:

Background

EPA and ASTSWMO have formed a State/EPA Steering Committee to jointly develop voluntary facility guidance for the management of industrial nonhazardous waste in land-based disposal units. The purpose of the guidance is to recommend management practices that are environmentally sound, that are protective of public health, and that recognize opportunities for pollution prevention and waste minimization. The guidance will address such topics as appropriate groundwater monitoring and corrective action requirements, liner designs, daily operating requirements, and closure and post-closure practices.

The State/EPA Steering Committee has convened this Stakeholders Focus Group to obtain recommendations from individuals who are members of a broad spectrum of public interest groups and affected industries. All recommendations from Focus Group participants will be forwarded to the State/EPA Steering Committee for consideration, as the Stakeholders' Focus Group will not strive for consensus. The State/EPA Steering Committee will also provide an opportunity for public comment on the draft guidance document.

''Industrial nonhazardous waste'' under the federal Resource Conservation and Recovery Act (RCRA) means waste that is neither municipal solid waste under RCRA Subtitle D nor a hazardous waste under RCRA Subtitle C. Industrial nonhazardous waste consists primarily of manufacturing process wastes, including wastewaters and non-wastewater sludges and solids.

EPA estimates there are 7.6 billion tons of industrial nonhazardous waste generated annually in the U.S. and disposed on-site by approximately 12,000 industrial facilities in surface impoundments, landfills, land application units, or waste piles. Most of this waste is managed in surface impoundments, which are designed to hold wastewaters. These wastes, which include inert materials as well as materials which may be declared hazardous at some future date, present a broad range of risk.

Under RCRA Subtitle D, the states are responsible for regulating the management of industrial nonhazardous waste. State requirements vary widely, and may include standards for design and operation, location, monitoring, and record keeping. This guidance is intended to complement existing state programs.

EPA's role in the management of industrial nonhazardous waste is very limited. Under RCRA Subtitle D, EPA issued minimal criteria prohibiting ''open dumps'' (40 CFR 257) in 1979. The states, not EPA, are responsible for implementing the ''open dumping criteria,'' and EPA has no back-up enforcement role.

Copies of the minutes of all Stakeholder Focus Group meetings will be made available through the docket at the RCRA Information Center, including minutes of the first Focus Group meeting, which was held on April 11–12, 1996.

Participants

The Stakeholders Focus Group consists of approximately 25 members, who represent public interest groups, affected industries, states, and federal officials. Following is a list of representatives from the interested parties:

Public interest groups—Michael Gregory, Sierra Club; John Harney, Citizens Round Table/Pennsylvanians United to Rescue the Environment; and Richard Lowerre, Henry, Lowerre, Johnson, Hess & Frederick.

Industry sectors—Tim Saylor, International Paper; Gary Robbins, Exxon Company USA; Walter Carey, New Milford Farms/Nestle USA; Robert Giraud, Dupont Company; Paul Bork, Dow Chemical Company; Bruce Steiner, American Iron and Steel Institute; James Meiers, Indianapolis Power and Light Company; Andrew Miles, The Dexter Corporation; Scott Murto, General Motors Corporation; Lisa Williams, The Aluminum Association; Jonathan Greenberg, Browning-Ferris Industries; and Ed Skernolis, WMX Technologies, Inc.

States—James Warner, Minnesota Pollution Control Agency; Anne Dobbs, Texas Natural Resources Conservation Commission; Gene Mitchell, Wisconsin Department of Natural Resources; and Bill Pounds, Pennsylvania Department of Environmental Resources.

Federal officials—Paul Cassidy, Deborah Dalton, Robert Dellinger, Richard Kinch, John Sager and Carol Weisner of the U.S. Environmental Protection Agency.

Dated: August 1, 1996.

Michael H. Shapiro,

Director, Office of Solid Waste.

[FR Doc. 96–20371 Filed 8–8–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5533–9]

Final NPDES General Permit for New and Existing Sources in the Offshore Subcategory of the Oil and Gas Extraction Category for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico (GMG290000)

AGENCY: United States Environmental Protection Agency.

ACTION: Final issuance of NPDES general permit.

SUMMARY: Region 6 of the United States Environmental Protection Agency (EPA) today issues a National Pollutant Discharge Elimination System (NPDES) General Permit for the Oil and Gas Extraction Point Source Category in the Western Portion of the Outer Continental Shelf (OCS) of the Gulf of Mexico. The permit authorizes discharges from New Sources in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR Part 435, Subpart A) located in and discharging pollutants to federal waters in lease blocks located seaward of the outer boundary of the territorial seas of Louisiana and Texas as well as produced water discharges to federal waters from New Source facilities located in the territorial seas offshore of Louisiana and Texas.

The New Source General Permit (GMG390000) is also being combined with the existing NPDES general permit for the Western Gulf of Mexico OCS general permit (GMG290000) since the conditions of the New Source permit are essentially the same as those of the existing Western Gulf of Mexico OCS general permit. The NPDES permit number of this combined permit is hereby designated as GMG290000. The existing permit (58 FR 63964, December 3, 1993) authorizes discharges in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR Part 435, Subpart A) from new dischargers and existing dischargers to the Western Portion of the Outer Continental Shelf (OCS) of the Gulf of Mexico. The effect of this action will be to expand the coverage of GMG290000 to cover both New Sources and existing dischargers. The combined permit's expiration date will be November 18, 1997, since that is the expiration date of the existing General Permit for the Western Gulf of Mexico OCS.

A modification of the permit is also proposed in this Federal Register notice which will authorize new discharges of seawater and freshwater to which treatment chemicals have been added. It is necessary for operators to add corrosion inhibitors, scale inhibitors, or biocides to seawater and freshwater used in many miscellaneous processes offshore to ensure safe and efficient operation. The existing permit does not authorize these discharges; therefore, they are proposed to be authorized with this modification.

DATES: All limits and monitoring requirements pertaining to new sources and all changes which affect existing and new dischargers shall become effective September 9, 1996. Unchanged terms of the existing permit which cover existing and new dischargers shall remain effective.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Caldwell, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 655–7513.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those which operate offshore oil and gas extraction facilities located in the Outer Continental Shelf of the western Gulf of Mexico.

Category	Examples of regulated entities
Industry	Offshore Oil and Gas Extraction Platforms.

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 [facility, company, business, organization, etc.] is regulated by this action, you should carefully examine the applicability criteria in Part I. Section A.1. of the rule. 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.

Pursuant to section 402 of the Clean Water Act (CWA), 33 U.S.C. section 1342, EPA proposed and solicited public comment on an NPDES New Source General Permit GMG390000 at 58 FR 53200 (October 14, 1993). This permit was proposed in response to newly promulgated new source performance standards and the new designation of new sources. Notice of this proposed permit was also published in the Houston Post and New Orleans Times Picayune on October 16, 1993. The comment period closed on November 29, 1993.

Region 6 received written comments from the American Petroleum Institute (API), Offshore Operators Committee (OOC), Shell Offshore Inc., and Murphy Exploration and Production Company.

EPA Region 6 has considered all comments received. In some instances minor wording changes were made in the final permit in order to clarify some points as a result of comments or to correct typographical errors. In response to the comments submitted on the proposed New Source permit, the following substantive changes were made in the final permit. The New Source general permit has been combined with the existing Western Gulf of Mexico OCS general permit. Use of diffusers, multi-port discharges, and the addition of seawater to the produced water waste stream are allowed to obtain additional dilution to achieve compliance with the permit's produced water toxicity limits. The permit allows produced water to be discharged to OCS waters of the Western Gulf of Mexico from facilities located in the Territorial Seas of Texas and Louisiana. The maximum produced water discharge rate within any 100 meter mixing zone is limited to 25,000 bbl/day, except when the discharge is divided into multiple ports which are vertically separated sufficiently to prevent the plumes from colliding. Discharge of all garbage within 12 nautical miles from shore is prohibited and the discharge of all garbage except comminuted edible food waste is prohibited farther than 12 nautical miles from shore. A single grab sample is allowed for oil and grease monitoring of the produced water waste stream. The additional discharge of hydraulic fluids from the sub-sea production wellhead assembly is allowed under the permit. Permit language was also clarified regarding when a produced water sample is to be collected for toxicity testing.

Several minor permit language changes were made to the proposed permit which result from combining it with the existing OCS general permit. Those changes are: the test methods to be used for radionuclide monitoring were referenced in the permit, and well treatment, completion, and workover fluids are to be monitored as produced water when commingled in the produced water waste stream.

Several minor modifications, as discussed in the following paragraph, were required in the existing Western Gulf of Mexico OCS general permit (GMG290000) in order to combine the two permits. Given the generally nonsubstantive nature of these minor permit changes, Region 6 does not anticipate members of the public will wish to submit adverse comments on this action. It is accordingly publishing these minor changes as ''direct final'' modifications. If, however, Region 6 receives written notice within 30 days of this publication that any person wishes to submit adverse comments on these changes, the modifications will not take effect. In that event, the Region will republish these modifications as a proposal, thus affording reasonable opportunity for public comment. After 30 days, OCS operators covered by the permits may thus wish to contact Ms. Caldwell at the above address or telephone number to determine whether EPA has received adverse comments on this minor modification action.

The following minor modifications were made in the existing OCS permit. Permit language for drill cuttings limits and monitoring requirements was clarified to show that toxicity monitoring is not required on the cuttings, only on the associated drilling fluids. A typographical error in the produced water oil and grease monitoring requirements was corrected so that the permit allows the results of a single grab sample or the arithmetic average of the results of four grab samples to be reported. Language was clarified to show that the only discharge from the territorial seas to the Outer Continental Shelf allowed under the permit is produced water. The sum of produced water discharges within the 100 meter mixing zone of greater than 25,000 bbl/day are permitted as long as the discharge from any single discharge port is not greater than 25,000 bbl/day and the permittee vertically separates the discharge ports enough to prevent the effluent plumes from colliding. Facilities which have not previously reported a produced water flow on the discharge monitoring report are now required to use the most recent monthly average flow to determine produced water monitoring requirements for toxicity, naturally occurring radionuclides, and bioaccumulation. Garbage and domestic waste limitations were corrected to correspond with Coast Guard Regulations.

The biomonitoring permit language used in both the proposed New Source OCS General Permit and the existing OCS general permit was written prior to proposal of the existing OCS general permit on April 16, 1991. EPA Region 6 has revised the toxicity testing language included in permits several times since the April 16, 1991 proposal.

In order to ensure that the test requirements and protocol permittees use for produced water toxicity compliance monitoring is up to date, the most recent revision of the toxicity testing language was included in the final combined permit.

Proposed Permit Modification

At this time, EPA is also proposing to modify the permit to authorize discharges of hydrotest and other seawater or freshwater to which treatment chemicals or biocides have been added. The existing OCS permit and proposed new source general permit both include miscellaneous discharges of uncontaminated seawater and uncontaminated freshwater. Both uncontaminated seawater and uncontaminated freshwater are defined as water to which no chemicals have been added. In most cases, where seawater or freshwater is used for hydrotesting piping, non-contact cooling water, continuous operation of fire control or utility pumps, pressure maintenance and secondary recovery, or ballast water, operators add treatment chemicals to inhibit corrosion and scaling, or biocides to prevent fouling. EPA recognizes that addition of chemicals for these uses is necessary to safe and efficient operations in the offshore environment and is therefore proposing to authorize discharges containing them in the combined permit.

Permittees use a broad range of chemicals to treat sea water and fresh water used in offshore operations. It is impossible to limit each chemical used individually since more than one hundred different chemicals are used. Also, if the permit were to limit specific chemicals it could potentially halt the development and use of new more beneficial treatment chemicals which would not be specifically listed in the permit and for which discharge would therefore not be authorized.

Best Available Technology Economically Achievable (BAT) limits established by best professional judgement are proposed to be included in the permit for these discharges. Many of the chemicals normally added to treat seawater or freshwater, especially biocides, have manufacturers recommended maximum concentrations. Additionally, information obtained from offshore operators demonstrates that it is unnecessary to use any of the treatment chemicals or biocides in concentrations greater than 500 mg/l. The proposed technology based limitations for treatment chemicals or biocides in miscellaneous discharges of seawater or freshwater are the manufacturers maximum recommended concentration but in no case greater than 500 mg/l.

Water quality based limits are included in the permit to ensure compliance with Ocean Discharge Criteria promulgated under CWA section 403(c). Acute toxicity monitoring and limits of no acute toxicity are proposed for the new discharges. The limits were developed using the dilutions calculated at the edge of the mixing zone and an acute to chronic ratio of ten to one. An acute toxicity test based on an appropriate acute to chronic ratio is considered an equivalent test to a chronic toxicity test. The ten to one acute to chronic ratio is the normal ratio for most industrial effluents and has been used in other NPDES permits where the effluent is highly diluted in the receiving stream and an acute test is required in place of a chronic test. In addition, the acute test is less burdensome to permittees because it is less costly than a chronic test and because the acute test will be run on less dilute effluent there is less chance for laboratory error. As with produced water toxicity limits, tables have been included in the permit from which permittees will obtain their critical dilution based on their discharge rate, pipe diameter, and the water depth at which they are discharging. Permittees will be required to conduct a 48-hour acute toxicity test to determine compliance with the limit.

The discharge of free oil is proposed to be prohibited in these discharges to help to prevent the discharge of toxic pollutants contained in oil, which may contaminate these discharges and cause unreasonable degradation of the marine environment. Ocean discharge criteria (40 CFR 125.122) include ten factors which must be considered in determining whether a discharge will cause unreasonable degradation of the marine environment. One of the ten factors which must be examined is the potential impacts on human health through direct and indirect pathways. 40 CFR 110.4 defines quantities of oil which may be harmful to public health or welfare of the United States as a discharge which causes a sheen or discoloration on the receiving water. These discharges are proposed to be limited to no free oil as measured using the visual sheen test method.

Monitoring for toxicity is required in the permit based on the discharge rate. As with produced water, larger discharges are required to be monitored more frequently than small ones because they are less dilute at the edge of the mixing zone and have a greater potential to cause toxic effects. The proposed monitoring frequencies are:

Discharge rate	Toxicity testing frequency
0–499 bbl/day	Once per year.
500–4,599 bbl/day	Once per quarter.
4,600 bbl/day and above.	Once per month.

The frequency of free oil monitoring is required to be once per week. This is the same frequency as required for well treatment, completion, and workover fluids and should not be too onerous since the test method is simple and can be accomplished on site.

DATES: Comments on the proposed permit modification must be received by October 8, 1996.

ADDRESSES: Comments on the proposed permit modification to add coverage of the new miscellaneous discharges should be sent to: Regional Administrator Region 6, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Caldwell, Region 6, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202–2733. Telephone: (214) 655–7513.

A copy of the proposed modified permit or a detailed fact sheet for the modification (neither of which are included in this Federal Register notice) may be obtained from Ms. Caldwell. In addition, the current administrative record on the proposal is available for examination at the Region's Dallas offices during normal working hours after providing Ms. Caldwell 24 hours advanced notice.

Other Legal Requirements

Oil Spill Requirements

CWA section 311 prohibits the discharge of oil and hazardous materials in harmful quantities. Discharges in compliance with NPDES permit limits are excluded from this prohibition, but the final combined permit neither precludes enforcement action for violations of CWA section 311 nor relieves permittees from any responsibilities, liabilities, or penalties for other unauthorized discharges of oil or hazardous materials subject to CWA section 311.

Endangered Species Act

As explained at 58 FR 53203, EPA has found that issuance of the New Source General Permit will not adversely affect any listed threatened or endangered species or designated critical habitat and requested written concurrence on

that determination from the National Marine Fisheries Service (NMFS). The same determination was made and concurrence received from National Marine Fisheries Service when the existing OCS general permit was reissued on November 19, 1992 and modified on December 3, 1993. On November 4, 1993, NMFS again provided such concurrence on the proposed New Source General Permit for the Western Portion of the Gulf of Mexico (GMG390000).

Ocean Discharge Criteria Evaluation

At 58 FR 41476 and 58 FR 63964 EPA Region 6 determined that discharges in compliance with the modified Western Gulf of Mexico Outer Continental Shelf general permit (GMG290000) would not cause unreasonable degradation of the marine environment. Since the modified existing general permit and the New Source General Permit are nearly identical and EPA Region 6 has determined that neither permit will cause unreasonable degradation of the marine environment, the Region finds that issuance of the combined general permit will not cause unreasonable degradation of the marine environment.

Environmental Impact Statement

EPA determined that issuance of the NPDES New Source General Permit for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico was a major Federal action significantly affecting the quality of the human environment. Thus, pursuant to the National Environmental Policy Act of 1969 (NEPA) evaluation of the potential environmental consequences of the permit action in the form of an Environmental Impact Statement (EIS) was required. The Minerals Management Service (MMS) had previously examined the environmental consequences in their final EIS which was conducted for oil and gas lease sales 142 and 143 in the OCS Region of the Gulf of Mexico. EPA adopted that EIS and prepared a Supplemental EIS (SEIS) to allow for additional consideration and evaluation of potential impacts on air quality, water quality, including radium in produced water, and cumulative effects. The Draft SEIS and Final SEIS were completed in October 1993 and December 1994, respectively. EPA considered all the information gathered during that NEPA review including the impact analysis, comments received on the Draft SEIS and Final SEIS, input received from the scoping meeting and public hearings on the Draft SEIS and the proposed NPDES permit, and other information provided by interested parties during the SEIS process. Additionally, to address impacts relative to applicable Federal and State regulatory statutes, programs, and regulations, consultation was undertaken with the Advisory Council on Historic Preservation, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the Texas Natural Resource Conservation Commission. Through this process EPA found no predicted unacceptable or potentially significant adverse impacts, individually or cumulatively, that were not subject to control through regulation or mitigation. The Record of Decision for that process was prepared and dated September 28, 1995. Based on that Record of Decision, EPA is issuing the New Source general permit.

Coastal Zone Management Act

The Region found the proposed New Source General Permit consistent with Louisiana's approved Coastal Zone Management Plan and submitted that determination and a copy of the proposed permit to the Louisiana Coastal Commission for certification. After informal consultation, the Commission provided such certification on August 1, 1994. The Commission also previously provided such certification for the modification of the existing Western Gulf of Mexico Outer Continental Shelf general permit on October 14, 1993.

Marine Protection and Sanctuaries Act

Pursuant to the Marine Protection and Sanctuaries Act, the National Oceanographic and Atmospheric Administration has designated the Flower Garden Banks, an area within the coverage of the OCS general permit, a marine sanctuary. The OCS general permit prohibits discharges in areas of biological concern, including marine sanctuaries. No change adopted today affects that prohibition.

State Water Quality Certification

Because discharges to state waters are not covered by the combined OCS general permit, its terms are not subject to state water quality certification under CWA section 401.

Executive Order 12866

The Office of Management and Budget (OMB) has exempted this action from the review requirements of Executive Order 12291 pursuant to Section 8(b) of that order. Guidance on Executive Order 12866 contain the same exemptions on OMB review as existed under Executive Order 12291. In fact, however, EPA prepared a regulatory impact analysis in connection with its promulgation of the guidelines on which a number of the New Source permit's and the existing permit's provisions are based and submitted it to OMB for review. See 58 FR 12494.

Paperwork Reduction Act

The information collection required by this permit has been approved by OMB under the provisions of the Paperwork Reduction Act in EPA submissions for the NPDES program assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports). When it issued the existing OCS general permit, EPA estimated it would take an affected facility three hours to prepare a request for coverage and 38 hours per year to prepare discharge monitoring reports. Likewise, when EPA proposed the New Source General Permit it estimated the same amount of time needed to prepare requests for coverage and discharge monitoring reports, since there would be few differences between the requirements for the two different permits. Changes made in the final combined permit will not add to the time needed to fill out discharge monitoring reports or request coverage under the permit.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires that federal agencies prepare a regulatory flexibility analysis for regulations that will have a significant impact on a substantial number of small entities. In promulgating the Offshore Subcategory New Source Performance Standards on which many of today's New Source permit issuance is based, EPA prepared an economic impact analysis showing they would directly impact no small entities. See 58 FR 12492. Based on those findings and pursuant to 5 U.S.C. § 605(b), EPA Region 6 has certified that issuance of this final permit will not have a significant impact on a substantial number of small entities.

NPDES Permit GMG290000 is hereby combined with the proposed New Source General Permit for the Western Gulf of Mexico Outer Continental Shelf (Permit No. GMG390000) and is modified to read as it appears below.

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq. the ''Act''), operators of lease blocks in the Oil and Gas Extraction Point Source Category which are located in Federal waters of the Western Portion of the Gulf of Mexico

(defined as seaward of the outer boundary of the territorial seas off Louisiana and Texas) are authorized to discharge to the Western Portion of the Federal Waters of the Gulf of Mexico in accordance with effluent limitations, monitoring requirements, and other conditions set forth in Parts I, II, and III hereof. Also, operators of lease blocks located in the territorial seas of Louisiana and Texas are authorized to discharge produced water from those lease blocks to the Western Portion of the Federal Waters of the Gulf of Mexico in accordance with effluent limitations, monitoring requirements, and other conditions set forth in Parts I, II, and III hereof.

Operators of lease blocks located within the general permit area must submit written notification to the Regional Administrator that they intend to be covered (See Part I.A.2). Unless otherwise notified in writing by the Regional Administrator after submission of the notification, owners or operators requesting coverage are authorized to discharge under this general permit. Operators of lease blocks within the general permit area who fail to notify the Regional Administrator of intent to be covered by this general permit are not authorized under this general permit to discharge pollutants from those facilities. Operators who have previously submitted a written notification of intent to be covered by this permit need not submit an additional notification of intent to be covered.

Facilities which adversely affect properties listed or eligible for listing in the National Register of Historic Places are not authorized to discharge under this permit.

This permit shall become effective at Midnight Central Daylight Savings Time on September 9, 1996.

This permit and the authorization to discharge shall expire at midnight, Central Daylight Savings Time, November 18, 1997.

Signed this 18th day of April, 1996.

Oscar Ramirez,

Acting Director, Water Quality Protection Division, EPA Region 6.

Part I. Requirements for NPDES Permits

Section A. Permit Applicability and Coverage Conditions

1. Operations Covered

This permit establishes effluent limitations, prohibitions, reporting requirements, and other conditions on discharges from oil and gas facilities engaged in production, field exploration, developmental drilling, well completion, and well treatment operations.

The permit coverage area consists of lease blocks located in and discharging to Federal waters in the Gulf of Mexico seaward of the outer boundary of the territorial seas offshore of Louisiana and Texas and shall include lease blocks west of the western boundary of the outer continental shelf lease areas defined as: Mobile, Viosca Knoll (north part), Destin Dome, Desoto Canyon, Lloyd, and Henderson. In Texas, where the state has mineral rights to 3 leagues, some operators with state lease tracts are required to request coverage under this Federal NPDES general permit. In addition, permit coverage consists of produced water discharges to those Federal waters of the western Gulf of Mexico from lease blocks located in the territorial seas of Texas and Louisiana. This permit does not authorize discharges from facilities discharging to the territorial seas of Louisiana or Texas or from facilities defined as ''coastal'', ''onshore'', or ''stripper'' (see 40 CFR Part 435, Subparts C, D, and E).

2. Notification Requirements

Written notification of intent to be covered including the legal name and address of the operator, the lease block number assigned by the Department of Interior or the state or, if none, the name commonly assigned to the lease area, and the number and type of facilities located within the lease block shall be submitted at least fourteen days prior to the commencement of discharge. If the lease block was previously covered by this or another permit, the operator shall also include the previous permit number in the notification. Additionally, if an application for an individual permit for the activity was previously submitted to EPA Region 6, the notice of intent shall include the application/permit number of that application or the permit number of any individual NPDES permit issued by EPA Region 6 for this activity.

Permittees located in lease blocks that (a) are neither in nor adjacent to MMS-defined ''no activity'' areas, or (b) do not require live-bottom surveys are required only to submit a notice of intent to be covered by this general permit. Permittees who are located in lease blocks that are either in or adjacent to ''no activity'' areas or require live bottom surveys are required to submit both a notice of intent to be covered that specifies they are located in such a lease block, and in addition are required to submit a notice of commencement of operations.

Permittees located in lease blocks either in or immediately adjacent to MMS-defined ''no activity'' areas, shall be responsible for determining whether a controlled discharge rate is required. The maximum discharge rate for drilling fluids is determined by the distance from the facility to the ''no activity'' area boundary and the discharge rate equation provided in Appendix A. The permittee shall report the distance from the permitted facility to the ''no activity'' area boundary and the calculated maximum discharge rate to EPA with its notice of commencement of operations.

For permittees located in lease blocks that require live-bottom surveys, the final determination of the presence or absence of live-bottom communities, the distance of the facility from identified live-bottom areas, and the calculated maximum discharge rate shall be reported with the notice of commencement of operations.

All notifications of intent to be covered and any subsequent reports under this permit shall be sent to the following address: Operations Support Office (6WQ-O), Region 6, U.S. Environmental Protection Agency, 1445 Ross Ave., Dallas, TX 75202.

Operators who have previously submitted a written notification of intent to be covered by this permit need not submit an additional notification of intent to be covered.

3. Termination of Operations

Lease block operators shall notify the Regional Administrator within 60 days after the permanent termination of discharges from their facilities within the lease block.

4. Intent to be Covered by a Subsequent Permit

Lease block operators authorized to discharge by this permit shall notify the Regional Administrator on or before May 19, 1997, that they intend to be covered by a subsequent permit that will authorize discharge from these facilities after the termination date of this permit (November 18, 1997). The notification shall include the previous permit number assigned to the lease block.

Section B. Effluent Limitations and Monitoring Requirements

1. Drilling Fluids

The discharge of drilling fluids shall be limited and monitored by the permittee as specified in Table 2 of Appendix A and as below.

Special Note: The permit prohibitions and limitations that apply to drilling fluids, also apply to fluids that adhere to drill cuttings. Any permit condition that may apply to the

drilling fluid discharges, therefore, also applies to cuttings discharges.

(Exception) The discharge rate limit for drilling fluids does not apply to drill cuttings.

(a) Prohibitions

Oil-Based Drilling Fluids. The discharge of oil-based drilling fluids and inverse emulsion drilling fluids is prohibited.

Oil Contaminated Drilling Fluids. The discharge of drilling fluids which contain waste engine oil, cooling oil, gear oil or any lubricants which have been previously used for purposes other than borehole lubrication, is prohibited.

Diesel Oil. Drilling fluids to which any diesel oil has been added as a lubricant may not be discharged.

(b) Limitations

Mineral Oil. Mineral oil may be used only as a carrier fluid (transporter fluid), lubricity additive, or pill.

Cadmium and Mercury in Barite. There shall be no discharge of drilling fluids to which barite has been added, if such barite contains mercury in excess of 1.0 mg/kg (dry weight) or cadmium in excess of 3.0 mg/kg (dry weight). The permittee shall analyze a representative sample of all stock barite used once, prior to drilling each well, and submit the results for total mercury and cadmium in the Discharge Monitoring Report (DMR).

If more than one well is being drilled at a site, new analyses are not required for subsequent wells, provided that no new supplies of barite have been received since the previous analysis. In this case, the results of the previous analysis should be used on the DMR.

Alternatively, the permittee may provide certification, as documented by the supplier(s), that the barite being used on the well will meet the above limits. The concentration of the mercury and cadmium in the barite shall be reported on the DMR as documented by the supplier.

Analyses shall be conducted by absorption spectrophotometry (see 40 CFR Part 136, flame and flameless AAS) and the results expressed in mg/kg (dry weight).

Toxicity. Discharged drilling fluids shall meet both a daily minimum and a monthly average minimum 96-hour LC50 of at least 30,000 ppm in a 9:1 seawater to drilling fluid suspended particulate phase (SPP) volumetric ratio using *Mysidopsis bahia.* Monitoring shall be performed at least once per month for both a daily minimum and the monthly average. In addition, an end-of-well sample is required for a daily minimum. The type of sample required is a grab sample, taken from beneath the shale shaker. Permittees shall report pass or fail on the DMR using either the full toxicity test or the partial toxicity test as specified at 58 FR 12512; however, if the partial toxicity test shows a failure, all testing of future samples from that well shall be conducted using the full toxicity test method to determine the 96-hour LC50.

Free Oil. No free oil shall be discharged. Monitoring shall be performed using the static sheen method once per week when discharging. The number of days a sheen is observed must be recorded.

Discharge Rate. All facilities are subject to a maximum discharge rate of 1,000 barrels per hour.

For those facilities subject to the discharge rate limitation requirement because of their proximity to areas of biological concern, the discharge rate of drilling fluids shall be determined by the following equation:

$$R=10\ [3\ \mathrm{Log}\ (d/15)+T_t]$$

Where:

R=discharge rate (bbl/hr)

d=distance (meters) from the boundary of a controlled discharge rate area

T_t=toxicity-based discharge rate term $[\log (LC50\times 8\times 10-^{-6})]\ /\ 0.3657$

Drilling fluids discharges (based on a mud toxicity of 30,000 ppm) equal to or less than 544 meters from areas of biological concern shall comply with the discharge rate obtained from the equation above. Drilling fluids discharges which are shunted to the bottom as required by MMS lease stipulation are not subject to this discharge rate control requirement.

All discharged drilling fluids, including those fluids adhering to cuttings must meet the limitations of this section except that discharge rate limitations do not apply before installation of the marine riser.

(c) Monitoring Requirements

Drilling Fluids Inventory. The permittee shall maintain a precise chemical inventory of all constituents and their total volume or mass added downhole for each well.

2. Drill Cuttings

The discharge of drill cuttings shall be limited and monitored by the permittee as specified in Appendix A, Table 2 and as below.

(a) Prohibitions

Cuttings from Oil Based Drilling Fluids. The discharge of cuttings that are generated while using an oil-based or invert emulsion mud is prohibited.

Cuttings from Oil Contaminated Drilling Fluids. The discharge of cuttings that are generated using drilling fluids which contain waste engine oil, cooling oil, gear oil or any lubricants which have been previously used for purposes other than borehole lubrication, is prohibited.

Cuttings Generated Using Drilling Fluids which Contain Diesel Oil. Drill cuttings generated using drilling fluids to which any diesel oil has been added as a lubricant may not be discharged.

Cuttings Generated Using Mineral Oil. The discharge of cuttings generated using drilling fluids which contain mineral oil is prohibited except when the mineral oil is used as a carrier fluid (transporter fluid), lubricity additive, or pill.

Cadmium and Mercury in Barite. Drill cuttings generated using drilling fluids to which barite has been added shall not be discharged if such barite contains mercury in excess of 1.0 mg/kg (dry weight) or cadmium in excess of 3.0 mg/kg (dry weight).

Toxicity. Drill cuttings generated using drilling fluids with a daily minimum or a monthly average minimum 96-hour LC50 of less than 30,000 ppm in a 9:1 seawater to drilling fluid suspended particulate phase (SPP) volumetric ratio using *Mysidopsis bahia* shall not be discharged.

(b) Limitations

Free Oil. No free oil shall be discharged. Monitoring shall be performed using the static sheen test method once per week when discharging. The number of days a sheen is observed must be recorded.

3. Deck Drainage

(a) Limitations

Free Oil. No free oil shall be discharged, as determined by the visual sheen method on the surface of the receiving water. Monitoring shall be performed once per day when discharging, during conditions when an observation of a visual sheen on the surface of the receiving water is possible in the vicinity of the discharge, and the facility is manned. The number of days a sheen is observed must be recorded.

4. Produced Water

(a) Limitations

Flow Rate. Produced water discharges from all outfalls located within 100 meters of each other shall not exceed 25,000 bbl/day. This limitation includes any seawater which has been added to the produced water waste stream.

(Exception) The combined flow from vertically separated discharges within the same mixing zone may exceed 25,000 bbl/day if the discharge ports are sufficiently vertically separated to prevent the discharge plumes from colliding. Dispersion modeling to determine sufficient separation between discharge ports shall be accomplished

using CORMIX1 with the input parameters and Brooks Equation as described later in this permit. The produced water flow from a single discharge point (including any added seawater) shall not exceed 25,000 bbl/day.

Oil and Grease. Produced water discharges must meet both a daily maximum of 42 mg/l and a monthly average of 29 mg/l for oil and grease. The sample type shall be either grab, or a 24-hour composite which consists of the arithmetic average of the results of 4 grab samples taken over a 24-hour period. If only one sample is taken for any one month, it must meet both the daily and monthly limits. Samples shall be collected prior to the addition of any seawater to the produced water waste stream. The analytical method is that specified at 40 CFR Part 136.

Toxicity. The 7-day average minimum and monthly average minimum No Observable Effect Concentration (NOEC) must be equal to or greater than the critical dilution concentration specified in Table 1 of this permit. Critical dilution shall be determined using Table 1 of this permit and is based on the discharge rate most recently reported on the discharge monitoring report, discharge pipe diameter, and water depth between the discharge pipe and the bottom. Facilities which have not previously reported produced water flow on the discharge monitoring report shall use the most recent monthly average flow for determining the critical dilution from Table 1 of this permit. The monthly average minimum NOEC value is defined as the arithmetic average of all 7-day average NOEC values determined during the month.

(Exception) Permittees wishing to increase mixing may use a horizontal diffuser, add seawater, or may install multiple discharge ports.

Permittees using a horizontal diffuser shall install the diffuser designed so that the 7-day average minimum and monthly average minimum No Observable Effect Concentration (NOEC) is equal to or greater than the critical dilution concentration as calculated by the following method.

The method for running CORMIX2 is as follows:

1 The horizontal diffuser predicted mixing shall be determined by the permittee using the CORMIX2 model and the Brooks equation (defined in Step 3, below) with the following input conditions:

Density Gradient=0.15 σ_τm
Ambient seawater density at diffuser depth=1017 kg/m^3
Produced water density=1070 kg/m^3
Current speed=10 cm/sec.

2 Calculate the near field dilution factor (S) at the end of the impingement region, the calculated collapsed plume width (H), and downstream distance where the impingement region ends (x) from the CORMIX2 model.

3 Using the input conditions from Step 1 and calculated factors from Step 2, above, calculate the far field dilution factor, C_i/C, using the Brooks equation:

$$\frac{C_i}{C} = \left(\mathrm{erf}\left[\left(\frac{1.5}{\left(1 + 8AH^{\frac{4}{3}} \frac{t}{H^2}\right)^3 - 1} \right)^{\frac{1}{2}} \right] \right)^{-1}$$

where:

C_i=concentration at end of impingement
C=concentration at edge of 100 m mixing zone
H=collapsed plume width, in meters
A=4/3 power law dispersion parameter = 0.000453 m$^{2/3}$/sec
u=current speed
x=downstream distance where impingement region ends (from step 1, above)
t=travel time from end of impingement to 100 m, = (100m − x)/u and;
erf=the error function

4 The total dilution at the 100 m mixing zone is defined as the product of the near-field dilution factor, S, found in step 2 and the far-field dilution factor, C_i/C, calculated is Step 3.

Permittees shall state the calculated critical dilution corresponding to that diffuser on the annual Discharge Monitoring Report (DMR) with a certification that the diffuser is installed. The CORMIX2 model runs shall be retained by the permittee as part of its NPDES records.

Permittees using vertically aligned multiple discharge ports shall provide vertical separation between ports which is consistent with Table 1A of this permit. When multiple discharge ports are installed, the depth difference between the discharge port closest to the sea floor and the sea floor shall be the depth difference used to determine the critical dilution from Table 1 of this permit. The critical dilution value shall be based on the port flow rate (total flow rate divided by the number of discharge ports) and based on the diameter of the discharge port (or smallest discharge port if they are of different styles).

When seawater is added to the produced water prior to discharge, the total produced water flow, including the added seawater, shall be used in determining the critical dilution from Table 1.

(b) Monitoring Requirements

Flow. Once per month, an estimate of the flow (MGD) must be recorded.

Toxicity. The flow used to determine the frequency of toxicity testing shall be the flow most recently reported on the discharge monitoring report for the facility. Facilities which have not previously reported produced water flow on the discharge monitoring report shall use the most recent monthly average flow. The required frequency of testing shall be determined as follows:

Discharge rate	Toxicity testing frequency
0–499 bbl/day	Once per year
500-4,599 bbl/day	Once per quarter
4,600 bbl/day and above.	Once per month

Samples for monitoring produced water toxicity shall be collected after addition of any added substances, including seawater that is added prior to discharge, and before the flow is split for multiple discharge ports. Samples also shall be representative of produced water discharges when scale inhibitors, corrosion inhibitors, biocides, paraffin inhibitors, well completion fluids, workover fluids, and/or well treatment fluids are used in operations.

If the permittee has been compliant with this toxicity limit for one full year (12 consecutive months), the required testing frequency shall be reduced to once per year.

Bioaccumulation. Facilities which discharge more than 4,600 barrels of produced water per day shall collect and monitor marine organism tissue samples twice per year. The discharge rate used to determine participation under these requirements shall be the flow most recently reported to EPA Region 6 on the discharge monitoring report. Facilities which have not previously reported produced water flow on the discharge monitoring report shall use the most recently recorded monthly average flow to determine if they are required to conduct bioaccumulation monitoring. Marine organism edible tissue shall be monitored for the following pollutants: Benzo (a) Pyrene, Fluorene, Bis (2-ethylhexyl) Phthalate, Ethylbenzene, Toluene, Benzene, Phenol, Arsenic, Cadmium, Mercury, Radium 226, and Radium 228. Three marine species, with five adults from each of those species, shall be collected and sampled twice annually from the receiving waters. Samples shall be collected within 100 meters downcurrent, from the point of discharge, at the time of discharge of produced water. Organisms taken shall

include one species of mollusc, one species of crustacea, and one species of nektonic fish. Species sampled for edible tissue shall be from the following list:

Crustacea	Mollusc	Nektonic Fish
Blue Crab	Eastern Oyster.	Atlantic Croaker
Stone Crab ...	Clam Species.	Snapper Species
Shrimp Species.	Mussel Species.	Grouper Species

Sampling shall be conducted once during the summer months (June through August) and once during the winter months (December through February). Results shall be reported in the DMR for the reporting period in which samples are collected and analyzed. Permittees newly covered under this permit who discharge in excess of 4,600 bbl/day of produced water shall commence bioaccumulation monitoring within two years after the discharge exceeds 4,600 bbl/day. Permittees previously covered by permit No. GMG290000 who did not participate in the EPA Region 6 approved industry wide bioaccumulation study were required to commence monitoring within 2 years of November 19, 1992.

Alternatively, operators required to conduct bioaccumulation monitoring under this permit may participate in the EPA Region 6 approved industry-wide bioaccumulation monitoring study. Monitoring conducted under the study shall constitute compliance with the bioaccumulation monitoring requirements of Part I.B.4.(b) of this permit for those permittees who participate in such a study.

Radioactivity. Produced water discharges shall be monitored for Radium 226 and Radium 228 (See Part I.D.7). The flow used to determine the frequency of radiation monitoring shall be the flow most recently reported on the discharge monitoring report for the facility. Facilities which have not previously reported produced water flow on the discharge monitoring report shall use the most recently recorded monthly average flow. The required frequency of testing shall be determined as follows:

Discharge rate	Monitoring frequency
0–499 bbl/day	Once per year.
500–4,599 bbl/day ...	Once per quarter.
4,600 bbl/day and above.	Once per month.

When the permittee has monitored for radioactivity for one full year the required testing frequency shall be reduced to once per year.

5. Produced Sand

There shall be no discharge of produced sand.

6. Well Treatment Fluids, Completion Fluids, and Workover Fluids

(a) Limitations

Free Oil. No free oil shall be discharged. Monitoring shall be performed using the static sheen test method once per day when discharging and the facility is manned. The number of days a sheen is observed must be recorded.

Oil and Grease. Well treatment, completion, and workover fluids must meet both a daily maximum of 42 mg/l and a monthly average of 29 mg/l limitation for oil and grease. The sample type may be either grab, or a 24-hour composite consisting of the arithmetic average of the results of 4 grab samples taken within the 24-hour period. If only one sample is taken for any one month, it must meet both the daily and monthly limits. The analytical method is that specified at 40 CFR Part 136.

Priority Pollutants. For well treatment fluids, completion fluids, and workover fluids, the discharge of priority pollutants is prohibited except in trace amounts. Information on the specific chemical composition of any additives containing priority pollutants shall be recorded.

(Note) If materials added downhole as well treatment, completion, or workover fluids contain no priority pollutants, the discharge is assumed not to contain priority pollutants except possibly in trace amounts.

(b) Monitoring Requirements

This discharge shall be considered produced water for monitoring purposes when commingled with produced water.

7. Sanitary Waste (Facilities Continuously Manned by 10 or More Persons)

(a) Prohibitions

Solids. No floating solids may be discharged. Observations must be made once per day, during daylight in the vicinity of sanitary waste outfalls, following either the morning or midday meals and at the time during maximum estimated discharge.

(b) Limitations

Residual Chlorine. Total residual chlorine is a surrogate parameter for fecal coliform. Discharge of residual chlorine must meet a minimum of 1 mg/l and shall be maintained as close to this concentration as possible. A grab sample must be taken once per month and the concentration recorded (approved method, Hach CN–66–DPD).

(Exception) Any facility which properly operates and maintains a marine sanitation device (MSD) that complies with pollution control standards and regulations under section 312 of the Act shall be deemed in compliance with permit limitations for sanitary waste. The MSD shall be tested yearly for proper operation and the test results maintained at the facility.

8. Sanitary Waste (Facilities Continuously Manned by 9 or Fewer Persons or Intermittently by Any Number)

(a) Prohibitions

Solids. No floating solids may be discharged to the receiving waters. An observation must be made once per day for floating solids. Observation must be made during daylight in the vicinity of sanitary waste outfalls following either the morning or midday meal and at a time during maximum estimated discharge. The number of days solids are observed must be recorded.

(Exception) Any facility which properly operates and maintains a marine sanitation device (MSD) that complies with pollution control standards and regulations under section 312 of the Act shall be deemed to be in compliance with permit limitations for sanitary waste. The MSD shall be tested yearly for proper operation and the test results maintained at the facility.

9. Domestic Waste

(a) Prohibitions

Solids. No floating solids or foam shall be discharged.

(b) Monitoring Requirements

An observation shall be made once per day during daylight in the vicinity of domestic waste outfalls following the morning or midday meal and at a time during maximum estimated discharge. The number of days solids are observed must be recorded.

10. Miscellaneous Discharges

Desalination Unit Discharge
Diatomaceous Earth Filter Media
Blowout Preventer Fluid
Uncontaminated Ballast Water
Uncontaminated Bilge Water
Mud, Cuttings, and Cement at the Seafloor
Uncontaminated Freshwater
Uncontaminated Seawater

Boiler Blowdown
Source Water and Sand
Excess Cement Slurry

(a) Limitations

Free Oil. No free oil shall be discharged. Discharge is limited to those times that a visual sheen observation is possible unless the operator uses the static sheen method. Monitoring shall be performed using the visual sheen method on the surface of the receiving water once per week when discharging, or by use of the static sheen method at the operator's option. The number of days a sheen is observed must be recorded.

(Exceptions) Uncontaminated seawater, uncontaminated freshwater, source water and source sand, uncontaminated bilge water, and uncontaminated ballast water may be discharged from platforms that are on automatic purge systems without monitoring for free oil when the facilities are not manned. Additionally, discharges at the seafloor of: muds and cuttings prior to installation of the marine riser, cement, and blowout preventer fluid may be discharged without monitoring with the static sheen test when conditions make observation of a visual sheen on the surface of the receiving water impossible.

Section C. Other Discharge Limitations

1. Floating Solids or Visible Foam

There shall be no discharge of floating solids or visible foam from any source in other than trace amounts.

(Exception) For new sources, this limitation only applies to miscellaneous discharges and domestic waste discharges.

2. Halogenated Phenol Compounds

There shall be no discharge of halogenated phenol compounds as a part of any waste stream authorized in this permit.

3. Dispersants, Surfactants, and Detergents

The facility operator shall minimize the discharge of dispersants, surfactants and detergents except as necessary to comply with the safety requirements of the Occupational Safety and Health Administration and the Minerals Management Service. This restriction applies to tank cleaning and other operations which do not directly involve the safety of workers. The restriction is imposed because detergents disperse and emulsify oil, thereby increasing toxicity and making the detection of a discharge of oil more difficult.

4. Garbage

The discharge of garbage (See Part II.G.32) is prohibited.

(Exception) Comminuted food waste (able to pass through a screen with a mesh no larger than 25 mm, approx. 1 inch) may be discharged when 12 nautical miles or more from land.

5. Area of Biological Concern

There shall be no discharge in Areas of Biological Concern, including marine sanctuaries. The Flower Garden Banks has been determined to be a Marine Sanctuary and is within the geographical area covered under this permit.

Section D. Other Conditions

1. Samples of Wastes

If requested, the permittee shall provide EPA with a sample of any waste in a manner specified by the Agency.

2. Drilling Fluids Toxicity Test

The approved test method for permit compliance is identified as: Drilling Fluids Toxicity Test 58 FR 12453, Appendix 2.

3. Produced Water Toxicity Testing Requirements (7-day Chronic NOEC Marine Limits)

The approved test methods for permit compliance are identified in 40 CFR Part 136 and published at 60 FR 53528.

(a) The permittee shall utilize the Mysidopsis bahia (Mysid shrimp) chronic static renewal 7-day survival and growth test using Method 1007.0.

(b) The permittee shall utilize the *Menidia beryllina* (Inland Silverside minnow) chronic static renewal 7-day larval survival and growth test (Method 1006.0).

(c) When the testing frequency stated above is less than monthly and the effluent fails the survival endpoint at the low-flow effluent concentration (critical dilution), the permittee shall be considered in violation of this permit limit and the frequency for the affected species will increase to monthly until such time compliance with the Lethal No Observed Effect Concentration (NOEC) effluent limitation is demonstrated for a period of three consecutive months, at which time the permittee may return to the testing frequency stated in Part I.B.4.b of this permit. During the period the permittee is out of compliance, test results shall be reported on the DMR for that reporting period.

(d) This permit may be reopened to require chemical specific effluent limits, additional testing, and/or other appropriate actions to address toxicity.

(e) The permittee shall prepare a full report of the results of all tests conducted pursuant to this section in accordance with the Report Preparation Section of ''Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms'', EPA/600/4–91/003, or the most current publication, for every valid or invalid toxicity test initiated whether carried to completion or not. The permittee shall retain each full report pursuant to the provisions of Part II.C.3 of this permit. The permittee shall submit full reports only upon the specific request of the Agency.

(f) In accordance with Part II.D.4 of this permit, the permittee shall report on the DMR for the reporting period the lowest Whole Effluent Lethality values determined for either species for the 30–Day Average Minimum and 7–Day Minimum under Parameter No. 22414, and the permittee shall report the results of the valid toxicity test as follows:

1. Menidia Beryllina (Inland Silverside Minnow).

(A) If the Inland Silverside minnow No Observed Effect Concentration (NOEC) for survival is less than the critical effluent dilution, enter a ''1''; otherwise, enter a ''0''. Parameter No. TLP6B on the Discharge Monitoring Report.

(B) Report the Inland Silverside minnow NOEC value for survival, Parameter No. TOP6B on the Discharge Monitoring Report.

(C) Report the Inland Silverside minnow NOEC value for growth, Parameter No. TPP6B on the Discharge Monitoring Report.

(D) Report the % coefficient of variation (larger of critical dilution and control), Parameter No. TQP6B on the Discharge Monitoring Report.

2. *Mysidopsis Bahia* (Mysid Shrimp).

(A) If the Mysid shrimp NOEC for survival is less than the critical effluent dilution, enter a ''1''; otherwise, enter a ''0''. Parameter No. TLP3E on the Discharge Monitoring Report.

(B) Report the Mysid shrimp NOEC value for survival, Parameter No. TOP3E on the Discharge Monitoring Report.

(C) Report the Mysid shrimp NOEC value for growth, Parameter No. TPP3E on the Discharge Monitoring Report.

(D) Report the % coefficient of variation (larger of critical dilution and control), Parameter No. TQP3E on the Discharge Monitoring Report.

4. Bioaccumulation Testing

The approved test methods for bioaccumulation testing of edible fish tissue are:

Organics: Gas Chromatograph/Mass Spectrometric, Method Number 516, Standard Methods for Examination of Water and Waste Water, 16th Edition.

Metals: Electrothermal Atomic Absorption Spectrometry, Method Number 304, Standard Methods for Examination of Water and Waste Water, 16th Edition.

5. Visual Sheen Test

The visual sheen test is used to detect free oil by observing the surface of the receiving water for the presence of a sheen while discharging. The operator must conduct a visual sheen test only at times when a sheen could be observed. This restriction eliminates observations when atmospheric or surface conditions prohibit the observer from detecting a sheen (e.g., overcast skies, rough seas, etc.).

The observer must be positioned on the rig or platform, relative to both the discharge point and current flow at the time of discharge, such that the observer can detect a sheen should it surface down current from the discharge. For discharges that have been occurring for a least 15 minutes previously, observations may be made any time thereafter. For discharges of less than 15 minutes duration, observations must be made during both discharge and at 5 minutes after discharge has ceased.

6. Static Sheen Test

a. Scope and Application

The static sheen test is to be used as a compliance test for the ''no free oil'' requirement for discharges of drilling fluids; drill cuttings; and well treatment, completion, and workover fluids. For all other discharges with a ''no free oil discharge'' requirement except deck drainage, the static sheen test is to be used as a compliance test when it is not possible for the operator to accomplish a visual sheen observation on the surface of the receiving water. This would preclude an operator from attempting a visual sheen observation when atmospheric or surface conditions prohibit the observer from detecting a sheen (e.g., during rough seas, etc.). Free oil refers to any oil contained in a waste stream that when discharged will cause a film or sheen upon or a discoloration of the surface of the receiving water.

b. Summary of Method

15 ml samples of drilling fluids; well treatment, completion and workover fluids, formation test fluids, or treated wastewater from drilling fluid dewatering activities, or 15 gm (wet weight basis) samples of drill cuttings or produced sand are introduced into ambient seawater in a container having an air to liquid interface area of 1000 cm^2 (155.5 in^2). Samples are dispersed within the container and observations made no more than one hour later to ascertain if these materials cause a sheen, iridescence, gloss, or increased reflectance on the surface of the test seawater. The occurrence of any of these visual observations will constitute a demonstration that the tested material contains ''free oil'', and therefore, results in a prohibition on its discharge into receiving waters.

c. Interferences

Residual ''free oil'' adhering to sampling containers, the magnetic stirring bar used to mix drilling Fluids, and the stainless steel spatula used to mix drill cuttings will be the principal sources of contamination problems. These problems should only occur if improperly washed and cleaned equipment are used for the test. The use of disposable equipment minimizes the potential for similar contamination from pipets and the test container.

d. Apparatus, Materials, and Reagents

d.1 Apparatus

d.1.1 Sampling Containers—1 L polyethylene beakers and 1 L glass beakers.

d.1.2 Graduated cylinder—100 ml graduated cylinder required only for operations where predilution of mud discharges is required.

d.1.3 Plastic disposable weighing boats.

d.1.4 Triple-beam scale

d.1.5 Disposable pipets—25 ml disposable pipets.

d.1.6 Magnetic stirrer and stirring bar.

d.1.7 Stainless steel spatula

d.1.8 Test container—open plastic container whose internal cross-section parallel to its opening has an area of 1000±50 cm^2 (155.5±7.75 in^2), and a depth of at least 13 cm (5 inches) and no more than 30 cm (11.8 inches).

d.2 Materials and Reagents

d.2.1 Plastic liners for the test container—Oil free, heavy duty plastic trash can liners that do not inhibit the spreading of an oil film. Liners must be of sufficient size to completely cover the interior surface of the test container. Permittees must determine an appropriate local source of liners that do not inhibit the spreading of 0.05 ml diesel fuel added to the lined test container under the test conditions and protocol described below.

d.2.2 Ambient receiving water.

e. Calibration

None currently specified.

f. Quality Control Procedures

None currently specified.

g. Sample Collection and Handling

g.1 Sampling containers must be thoroughly washed with detergent, rinsed a minimum of three times with fresh water, and allowed to air dry before samples are collected.

g.2 Samples of drilling fluid to be tested shall be taken at the shale shaker after cuttings have been removed. The sample volume should range between 200 ml and 500 ml.

g.3 Samples of drill cuttings will be taken from the shale shaker screens with a clean spatula or similar instrument and placed in a glass beaker. Cuttings samples shall be collected prior to the addition of any washdown water and should range between 200 g and 500 g.

g.4 Samples of well treatment, completion and workover fluids, formation test fluids, and treated wastewater from drilling fluid dewatering activities must be obtained from the holding facility prior to discharge; the sample volume should range between 200 ml and 500 ml.

g.5 Samples must be tested no later than 1 hour after collection.

g.6 Drilling fluid samples must be mixed in their sampling containers for 5 minutes prior to the test using a magnetic bar stirrer. If predilution is imposed as a permit condition, the sample must be mixed at the same ratio with the same prediluting water as the discharged muds and stirred for 5 minutes.

g.7 Drill cuttings must be stirred and well mixed by hand in their sampling containers prior to testing, using a stainless steel spatula.

h. Procedure

h.1 Ambient receiving water must be used as the ''receiving water'' in the test. The temperature of the test water shall be as close as practicable to the ambient conditions in the receiving water, not the room temperature of the observation facility. The test container must have an air to liquid interface area of 1000±50 cm^2. The surface of the water should be no more than 1.27 cm (½ inch) below the top of the test container.

h.2 Plastic liners shall be used, one per test container, and discarded afterwards. Some liners may inhibit spreading of added oil; operators shall determine an appropriate local source of liners that do not inhibit the spreading of the oil film.

h.3 A 15 ml sample of drilling fluid, well treatment, completion and workover fluids, formation test fluids, or treated wastewater from drilling fluid

dewatering activities must be introduced by pipet into the test container 1 cm below the water surface. Pipets must be filled and discharged with test material prior to the transfer of test material and its introduction into test containers. The test water-test material mixture must be stirred using the pipet to distribute the test material homogeneously throughout the test water. The pipet must be used only once for a test and then discarded.

h.4 Drill cuttings should be weighed on plastic weighing boats; 15 gram samples must be transferred by scraping test material into the test water with a stainless steel spatula. Drill cuttings shall not be prediluted prior to testing. Also, drilling fluids and cuttings must be tested separately. The weighing boat must be immersed in the test water and scraped with the spatula to transfer any residual material to the test container. The drill cuttings must be stirred with the spatula to an even distribution of solids on the bottom of the test container.

h.5 Observations must be made no later than 1 hour after the test material is transferred to the test container. Viewing points above the test container should be made from at least three sides of the test container, at viewing angles of approximately 60° and 30° from the horizontal. Illumination of the test container must be representative of adequate lighting for a working environment to conduct routine laboratory procedures. It is recommended that the water surface of the test container be observed under a fluorescent light source such as a dissecting microscope light. The light source shall be positioned above and directed over the entire surface of the pan.

h.6 Detection of a ''silvery'' or ''metallic'' sheen, gloss, or increased reflectivity; visual color; or iridescence; or an oil slick, on the water surface of the test container surface shall constitute a demonstration of ''free oil''. These visual observations include patches, streaks, or sheets of such altered surface characteristics shall constitute a demonstration of free oil. If the free oil content of the sample approaches or exceeds 10 percent, the water surface of the test container may lack color, a sheen or iridescence, due to the increased thickness of the film; thus, the observation for an oil slick is required. The surface of the test container shall not be disturbed in any manner that reduced the size of any sheen or slick that may be present.

If an oil sheen or slick occurs on *less than one-half* of the surface area after drilling muds or cuttings are introduced to the test container, observations will continue for up to one hour. If the sheen or slick increases in size and covers greater than one-half of the surface area of the test container during the observation period, the discharge of the material shall cease. If the sheen or slick does not increase in size to cover greater than one-half of the test container surface area after one hour of observation, discharge may continue and additional sampling is not required.

If a sheen or slick occurs on *greater than one-half* of the surface area of the test container after the test material is introduced, discharge of the tested material shall cease. The permittee may retest the material causing the sheen or slick. If subsequent tests do not result in a sheen or slick covering greater than one-half of the surface area of the test container, discharge may continue.

7. Radionuclide test

The approved test methods for monitoring produced water for radionuclides are:

Radium 226: Method Number 7500–Ra C, Standard Methods for the Examination of Water and Wastewater, Seventeenth Edition, APHA, AWWA, and WPCF.

Radium 228: Method Number 7500–Ra D, Standard Methods for the Examination of Water and Wastewater, Seventeenth Edition, APHA, AWWA, and WPCF.

PART II. STANDARD CONDITIONS FOR NPDES PERMITS

Section A. General Conditions

1. Introduction

In accordance with the provisions of 40 CFR Part 122.41, et seq., this permit incorporates by reference ALL conditions and requirements applicable to NPDES permits set forth in the Clean Water Act, as amended (hereinafter known as the ''Act'') as well as ALL applicable regulations.

2. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action or for requiring a permittee to apply and obtain an individual NPDES permit.

3. Toxic Pollutants

a. Notwithstanding Part II.A.5, if any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under section 307(a) of the Act for a toxic pollutant which is present in the discharge, and that standard or prohibition is more stringent than any limitation on the pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition.

b. The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Act for toxic pollutants within the time provided in the regulations that established those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

4. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. The application shall be submitted at least 180 days before the expiration date of this permit. The Director may grant permission to submit an application less than 180 days in advance but no later than the permit expiration date. Continuation of expiring permits shall be governed by regulations promulgated at 40 CFR Part 122.6 and any subsequent amendments.

5. Permit Flexibility

This permit may be modified, revoked and reissued, or terminated for cause in accordance with 40 CFR 122.62–64. The filing of a request for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

6. Property Rights

This permit does not convey any property rights of any sort, or any exclusive privilege.

7. Duty to Provide Information

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

8. Criminal and Civil Liability

Except as provided in permit conditions on ''Bypassing'' and ''Upsets'', nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. Any false or materially misleading representation or

concealment of information required to be reported by the provisions of the permit, the Act, or applicable regulations, which avoids or effectively defeats the regulatory purpose of the permit may subject the permittee to criminal enforcement pursuant to 18 U.S.C. section 1001.

9. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the Act.

10. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State Law or regulation under authority preserved by section 510 of the Act.

11. Severability

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

Section B. Proper Operation and Maintenance

1. Need to Halt or Reduce not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. The permittee is responsible for maintaining adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failure either by means of alternate power sources, standby generators or retention of inadequately treated effluent.

2. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

3. Proper Operation and Maintenance

a. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by permittee as efficiently as possible and in a manner which will minimize upsets and discharges of excessive pollutants and will achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

b. The permittee shall provide an adequate operating staff which is duly qualified to carry out operation, maintenance and testing functions required to insure compliance with the conditions of this permit.

4. Bypass of Treatment Facilities

a. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts II.B.4.b and 4.c.

b. Notice

(1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(2) Unanticipated bypass. The permittee shall, within 24 hours, submit notice of an unanticipated bypass as required in Part II.D.7.

c. Prohibition of Bypass

(1) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and,

(c) The permittee submitted notices as required by Part II.B.4.b.

(2) The Director may allow an anticipated bypass after considering its adverse effects, if the Director determines that it will meet the three conditions listed at Part II.B.4.c(1).

5. Upset Conditions

a. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Part II.B.5.b. are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

b. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of the upset as required by Part II.D.7; and,

(4) The permittee complied with any remedial measures required by Part II.B.2.

c. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

6. Removed Substances

Solids, sewage sludges, filter backwash, or other pollutants removed in the course of treatment or wastewater control shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters. Any substance specifically listed within this permit may be discharged in accordance with specified conditions, terms, or limitations.

Section C. Monitoring and Records

1. Inspection and Entry

The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by the law to:

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect at reasonable times any facilities, equipment (including

monitoring and control equipment), practices or operations regulated or required under this permit; and

d. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

2. Representative Sampling

Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report, or application. This period may be extended by request of the Director at any time.

The operator shall maintain records at development and production facilities for 3 years, wherever practicable and at a specific shore-based site whenever not practicable. The operator is responsible for maintaining records at exploratory facilities while they are discharging under the operators control and at a specific shore-based site for the remainder of the 3-year retention period.

4. Record Contents

Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individual(s) who performed the sampling or measurements;

c. The date(s) and time(s) analyses were performed;

d. The individual(s) who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

5. Monitoring Procedures

a. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit or approved by the Regional Administrator.

b. The permittee shall calibrate and perform maintenance procedures on all monitoring and analytical instruments at intervals frequent enough to insure accuracy of measurements and shall maintain appropriate records of such activities.

c. An adequate analytical quality control program, including the analyses of sufficient standards, spikes, and duplicate samples to insure the accuracy of all required analytical results shall be maintained by the permittee or designated commercial laboratory.

6. Flow Measurements

Appropriate flow measurement devices and methods consistent with accepted scientific practices shall be selected and used to ensure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated, and maintained to insure that the accuracy of the measurements is consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of less than 10% from true discharge rates throughout the range of expected discharge volumes.

Section D. Reporting Requirements

1. Planned Changes

The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR Part 122.29(b); or,

(2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements listed at Part II.D.10.a.

2. Anticipated Noncompliance

The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

3. Transfers

This permit is not transferable to any person except after notice to the Regional Administrator. The Regional Administrator may require modification or revocation and reissuance of the permit to change the name of the permittee and to incorporate such requirements as may be necessary under the Act.

4. Discharge Monitoring Reports and Other Reports

The operator of each lease block shall be responsible for submitting monitoring results for all facilities within each lease block. The monitoring results for the facilities (platform, drilling ship, or semisubmersible) within the particular lease block shall be summarized on the annual Discharge Monitoring Report for that lease block.

Monitoring results obtained during the previous 12 months shall be summarized and reported on a Discharge Monitoring Report (DMR) form (EPA No. 3320–1). In addition, the highest monthly average for all activity within each lease block shall be reported. The highest daily maximum sample taken during the reporting period shall be reported as the daily maximum concentration.

If any category of waste (discharge) is not applicable for all facilities within the lease block, due to the type of operations (e.g., drilling, production) no reporting is required; however, ''no discharge'' must be recorded for those categories on the DMR. If all facilities within a lease block have had no activity during the reporting period then ''no activity'' must be written on the DMR. Operators may list a summary of all lease blocks where there is no activity on one DMR. All pages of the DMR must be signed and certified as required by Part II.D.11 and returned when due.

5. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR Part 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report (DMR). Such increased monitoring frequency shall also be indicated on the DMR.

6. Averaging of Measurements

Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified.

7. Twenty-Four Hour Reporting

a. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall be provided within 5 days of the time the permittee becomes aware of the

circumstances. The report shall contain the following information:

(1) A description of the noncompliance and its cause;

(2) The period of noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and,

(3) Steps being taken to reduce, eliminate, and prevent recurrence of the noncomplying discharge.

b. The following shall be included as information which must be reported within 24 hours:

(1) Any unanticipated bypass which exceeds any effluent limitation in the permit;

(2) Any upset which exceeds any effluent limitation in the permit; and,

(3) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in Part II of the permit to be reported within 24 hours.

c. The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

8. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under Parts II.D.4 and D.7 at the time monitoring reports are submitted. The reports shall contain the information listed at Part II.D.7.

9. Other Information

Where the permittee becomes aware that he failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, he shall promptly submit such facts or information.

10. Changes in Discharges of Toxic Substances

The permittee shall notify the Director as soon as it knows or has reason to believe:

a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant listed at 40 CFR Part 122, Appendix D, Tables II and III (excluding Total Phenols) which is not limited in the permit, if that discharge will exceed the highest of the following ''notification levels'':

(1) One hundred micrograms per liter (100 µg/l);

(2) Two hundred microgram per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitro-phenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(3) The level established by the Director.

b. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following ''notification levels'':

(1) Five hundred micrograms per liter (500 µg/l);

(2) One milligram per liter (1 mg/l) for antimony;

(3) The level established by the Director.

11. Signatory Requirements

All applications, reports, or information submitted to the Director shall be signed and certified.

a. All permit applications shall be signed as follows:

(1) For a corporation—by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

(a) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation; or,

(b) The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) For a partnership or sole proprietorship—by a general partner or the proprietor, respectively.

(3) For a municipality, State, Federal, or other public agency—by either a principal executive officer or ranking elected official. For purposes of this election, a principal executive officer of a Federal agency includes:

(a) The chief executive officer of the agency, or

(b) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

b. All reports required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described above;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or an individual occupying a named position; and,

(3) The written authorization is submitted to the Director.

c. Certification. Any person signing a document under this section shall make the following certification:

''I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.''

12. Availability of Reports

Except for applications, effluent data, permits, and other data specified in 40 CFR 122.7, any information submitted pursuant to this permit may be claimed as confidential by the submitter. If no claim is made at the time of submission, information may be made available to the public without further notice.

Section E. Penalties for Violations of Permit Conditions

1. Criminal

a. Negligent Violations

The Act provides that any person who negligently violates permit conditions implementing section 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less $2,500 nor more then $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

b. Knowing Violations

The Act provides that any person who knowingly violates permit conditions implementing section 301, 302, 306, 307, 308, 318 or 405 of the Act is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

c. Knowing Endangerment

The Act provides that any person who knowingly violates permit conditions implementing section 301, 302, 303, 306, 307, 308, 318, or 405 of the Act and

who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.

d. False Statements

The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both. (See section 309.c.4 of the Clean Water Act)

2. Civil Penalties

The Act provides that any person who violates a permit condition implementing section 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $25,000 per day for each violation.

3. Administrative Penalties

The Act provides that any person who violates a permit conditions implementing section 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

a. Class I Penalty

Not to exceed $10,000 per violation nor shall the maximum amount exceed $25,000.

b. Class II Penalty

Not to exceed $10,000 per day for each day during which the violation continues nor shall the maximum amount exceed $125,000.

Section F. Additional General Permit Conditions

1. When the Regional Administrator May Require Application for an Individual NPDES Permit

The Regional Administrator may require any person authorized by this permit to apply for and obtain an individual NPDES permit when:

(a) The discharge(s) is a significant contributor of pollution;

(b) The discharger is not in compliance with the conditions of this permit;

(c) A change has occurred in the availability of the demonstrated technology or practices for the control or abatement of pollutants applicable to the point sources;

(d) Effluent limitations guidelines are promulgated for point sources covered by this permit;

(e) A Water Quality Management Plan containing requirements applicable to such point source is approved;

(f) The point source(s) covered by this permit no longer:

(1) Involve the same or substantially similar types of operations;

(2) Discharge the same types of wastes;

(3) Require the same effluent limitations or operating conditions;

(4) Require the same or similar monitoring; and

(5) In the opinion of the Regional Administrator, are more appropriately controlled under an individual permit than under a general permit.

(g) The bioaccumulation monitoring results show concentrations of the listed pollutants in excess of levels safe for human consumption.

The Regional Administrator may require any operator authorized by this permit to apply for an individual NPDES permit only if the operator has been notified in writing that a permit application is required.

2. When an Individual NPDES Permit may be Requested

(a) Any operator authorized by this permit may request to be excluded from the coverage of this general permit by applying for an individual permit.

(b) When an individual NPDES permit is issued to an operator otherwise subject to this general permit, the applicability of this permit to the owner or operator is automatically terminated on the effective date of this individual permit.

(c) A source excluded from coverage under this general permit solely because it already has an individual permit may request that its individual permit be revoked, and that it be covered by this general permit. Upon revocation of the individual permit, this general permit shall apply to the source.

3. Permit Reopener Clause

If applicable new or revised effluent limitations guidelines or New Source Performance Standards covering the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR 435) are promulgated in accordance with sections 301(b), 304(b)(2), and 307(a)(2), and the new or revised effluent limitations guidelines or New Source Performance Standards are more stringent than any effluent limitations in this permit or control a pollutant not limited in this permit, the permit may, at the Director's discretion, be modified to conform to the new or revised effluent limitations guidelines.

Notwithstanding the above, if an offshore oil and gas extraction point source discharge facility is subject to the ten year protection period for new source performance standards under the Clean Water Act section 306(d), this reopener clause may not be used to modify the permit to conform to more stringent new source performance standards or technology based standards developed under section 301(b)(2) during the ten year period specified in 40 CFR Part 122.29(d).

The Director may modify this permit upon meeting the conditions set forth in this reopener clause.

Section G. Definitions

All definitions contained in section 502 of the Act shall apply to this permit and are incorporated herein by references. Unless otherwise specified in this permit, additional definitions of words or phrases used in this permit are as follows:

1. ''Act'' means the Clean Water Act (33 U.S.C. 1251 et. seq.), as amended.

2. ''Administrator'' means the Administrator of the U.S. Environmental Protection Agency.

3. ''Annual Average'' means the average of all discharges sampled and/or measured during a calendar year in which daily discharges are sampled and/or measured, divided by the number of discharges sampled and/or measured during such year.

4. ''Applicable effluent standards and limitations'' means all state and Federal effluent standards and limitations to which a discharge is subject under the Act, including, but not limited to, effluent limitations, standards or performance, toxic effluent standards and prohibitions, and pretreatment standards.

5. ''Applicable water quality standards'' means all water quality standards to which a discharge is subject under the Act.

6. ''Areas of Biological Concern'' means a portion of the OCS identified by EPA, in consultation with the Department of Interior as containing potentially productive or unique biological communities or as being potentially sensitive to discharges associated with oil and gas activities.

7. ''Blow-Out Preventer Control Fluid'' means fluid used to actuate the hydraulic equipment on the blow-out preventer or subsea production wellhead assembly.

8. ''Boiler Blowdown'' means discharges from boilers necessary to minimize solids build-up in the boilers, including vents from boilers and other heating systems.

9. ''Bulk Discharge'' any discharge of a discrete volume or mass of effluent from a pit

tank or similar container that occurs on a one-time, infrequent or irregular basis.

10. ''Bypass'' means the intentional diversion of waste streams from any portion of a treatment facility.

11. ''Completion Fluids'' means salt solutions, weighted brines, polymers and various additives used to prevent damage to the well bore during operations which prepare the drilled well for hydrocarbon production. These fluids move into the formation and return to the surface as a slug with the produced water. Drilling muds remaining in the wellbore during logging, casing, and cementing operations or during temporary abandonment of the well are not considered completion fluids and are regulated by drilling fluids requirements.

12. ''Controlled Discharge Rates Areas'' means zones adjacent to areas of biological concern.

13. ''Daily Discharge'' means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in terms of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the sampling day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the sampling day. Daily discharge determination of concentration made using a composite sample shall be the concentration of the composite sample. When grab samples are used, the daily discharge determination of concentration shall be arithmetic average (weighted by flow value) of all samples collected during that sampling day.

14. ''Daily Average'' (also known as monthly average) discharge limitations means the highest allowable average of daily discharge(s) over a calendar month, calculated as the sum of all daily discharge(s) measured during a calendar month divided by the number of daily discharge(s) measured during that month. When the permit establishes daily average concentration effluent limitations or conditions, the daily average concentration means the arithmetic average (weighted by flow) of all daily discharge(s) of concentration determined during the calendar month where C=daily concentration, F=daily flow, and n=number of daily samples; daily average discharge=

$$\frac{C_1F_1 + C_2F_2 + \cdots + C_nF_n}{F_1 + F_2 + \cdots + F_n}.$$

15. ''Daily Maximum'' discharge limitations means the highest allowable ''daily discharge'' during the calendar month.

16. ''Desalinization Unit Discharge'' means wastewater associated with the process of creating freshwater from seawater.

17. ''Deck Drainage'' means any waste resulting from deck washings, spillage, rainwater, and runoff from gutters and drains including drip pans and work areas within facilities covered under this permit.

18. ''Development Drilling'' means the drilling of wells required to efficiently produce a hydrocarbon formation or formations.

19. ''Development Facility'' means any fixed or mobile structure that is engaged in the drilling of productive wells.

20. ''Diatomaceous Earth Filter Media'' means filter media used to filter seawater or other authorized completion fluids and subsequently washed from the filter.

21. ''Diesel Oil'' means the grade of distillate fuel oil, as specified in the American Society for Testing and Materials Standard Specification D975–81, that is typically used as the continuous phase in conventional oil-based drilling fluids.

22. ''Director'' means the U.S. Environmental Protection Agency Regional Administrator or an authorized representative.

23. ''Domestic Waste'' means material discharged from galleys, sinks, showers, safety showers, eye wash stations, hand washing stations, fish cleaning stations, and laundries.

24. ''Drill Cuttings'' means particles generated by drilling into the subsurface geological formations including cured cement carried to the surface with the drilling fluid.

25. ''Drilling Fluids'' means the circulating fluid (mud) used in the rotary drilling of wells to clean and condition the hole and to counterbalance formation pressure. A water-based drilling fluid is the conventional drilling mud in which water is the continuous phase and the suspending medium for solids, whether or not oil is present. An oil based drilling fluids has diesel oil, mineral oil, or some other oil as its continuous phase with water as the dispersed phase.

26. ''End of well Sample'' means the sample taken after the final log run is completed and prior to bulk discharge.

27. ''Environmental Protection Agency'' (EPA) means the U.S. Environmental Protection Agency.

28. ''Excess Cement Slurry'' means the excess mixed cement, including additives and wastes from equipment washdown, after a cementing operation.

29. ''Exploratory Facility'' means any fixed or mobile structure that is engaged in the drilling of wells to determine the nature of potential hydrocarbon reservoirs.

30. ''Fecal Coliform Bacteria Sample'' consists of one effluent grab portion collected during a 24-hour period at peak loads.

31. ''Grab sample'' means an individual sample collected in less than 15 minutes.

32. ''Garbage'' means all kinds of food waste, wastes generated in living areas on the facility, and operational waste, excluding fresh fish and parts thereof, generated during the normal operation of the facility and liable to be disposed of continuously or periodically, except dishwater, graywater, and those substances that are defined or listed in other Annexes to MARPOL 73/78

33. ''Graywater'' means drainage from dishwater, shower, laundry, bath, and washbasin drains and does not include drainage from toilets, urinals, hospitals, and cargo spaces.

34. ''Inverse Emulsion Drilling Fluids'' means an oil-based drilling fluid which also contains a large amount of water.

35. ''Live bottom areas'' means those areas which contain biological assemblages consisting of such sessile invertebrates as seas fans, sea whips, hydroids, anemones, ascideians sponges, bryozoans, seagrasses, or corals living upon and attached to naturally occurring hard or rocky formations with fishes and other fauna.

36. ''Maintenance waste'' means materials collected while maintaining and operating the facility, including, but not limited to, soot, machinery deposits, scraped paint, deck sweepings, wiping wastes, and rags.

37. ''Maximum Hourly Rate'' means the greatest number of barrels of drilling fluids discharged within one hour, expressed as barrels per hour.

38. ''Muds, Cuttings, and Cement at the Seafloor'' means discharges that occur at the seafloor prior to installation of the marine riser and during marine riser disconnect, well abandonment and plugging operations.

39. ''National Pollutant Discharge Elimination System'' (NPDES) means the national program for issuing, modifying, revoking, and reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under section 307, 318, 402, and 405 of the Act.

40. ''New Source'' means any facility or activity that meets the definition of ''new source'' under 40 CFR 122.2 and meets the criteria for determination of new sources under 40 CFR 122.29(b) applied consistently with all of the following definitions:

(a) The term ''water area'' as used in the term ''site'' in 40 CFR 122.29 and 122.2 shall mean the water area and ocean floor beneath any exploratory, development, or production facility where such facility is conducting its exploratory, development, or production activities.

(b) The term ''significant site preparation work'' as used in 40 CFR 122.29 shall mean the process of surveying, clearing, or preparing an area of the ocean floor for the purpose of constructing or placing a development or production facility on or over the site.

41. ''No Activity Zones'' means those areas identified by the Minerals Management Service (MMS) where no structures, drilling rigs, or pipelines will be allowed. Those zones are identified as lease stipulations in U.S. Department of Interior, MMS, August, 1990, Environmental Impact Statement for Sales 131, 135, and 137, Western, Central, and Eastern Gulf of Mexico. Additional no activity areas may be identified by MMS during the life of this permit.

42. ''Operational waste'' means all cargo associated waste, maintenance waste, cargo residues, and ashes and clinkers from incinerators and coal burning boilers.

43. ''Packer Fluid'' means low solids fluids between the packer, production string and well casing. They are considered to be workover fluids.

44. ''Priority Pollutants'' means those chemicals or elements identified by EPA, pursuant to section 307 of the Clean Water Act and 40 CFR 401.15.

45. ''Produced Sand'' means slurried particles used in hydraulic fracturing, the accumulated formation sands, and scale particles generated during production. Produced sand also includes desander

discharge from produced water waste stream and blowdown of water phase from the produced water treating system.

46. ''Produced Water'' means the water (brine) brought up from the hydrocarbon-bearing strata during the extraction of oil and gas, and can include formation water, injection water, and any chemicals added downhole or during the oil/water separation process.

47. ''Production Facility'' means any fixed or mobile structure that is either engaged in well completion or used for active recovery of hydrocarbons from producing formations.

48. ''Sanitary Waste'' means human body waste discharged from toilets and urinals.

49. ''Severe property damage'' means substantial physical damage to property, damage to the treatment facilities which cause them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

50. ''Sheen'' means a silvery or metallic sheen, gloss, or increased reflectivity, visual color or iridescence on the water surface.

51. ''Source Water and Sand'' means water from non-hydrocarbon bearing formations for the purpose of pressure maintenance or secondary recovery including the entrained solids.

52. ''Spotting'' means the process of adding a lubricant (spot) downhole to free stuck pipe.

53. ''Territorial Seas'' means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.

54. ''Trace Amounts'' means that if materials added downhole as well treatment, completion, or workover fluids do not contain priority pollutants then the discharge is assumed not to contain priority pollutants, except possibly in trace amounts.

55. ''Uncontaminated Ballast/Bilge Water'' means seawater added or removed to maintain proper draft.

56. ''Uncontaminated Freshwater'' means freshwater which is discharged without the addition of chemicals; included are (1) Discharges of excess freshwater that permit the continuous operation of fire control and utility lift pumps, (2) excess freshwater from pressure maintenance and secondary recovery projects, (3) water released during training and testing of personnel in fire protection, and (4) water used to pressure test new piping.

57. ''Uncontaminated Seawater'' means seawater which is returned to the sea without the addition of chemicals. Included are (1) Discharges of excess seawater which permit the continuous operation of fire control and utility lift pumps (2) excess seawater from pressure maintenance and secondary recovery projects (3) water released during the training and testing of personnel in fire protection (4) seawater used to pressure test piping, and (5) once through noncontact cooling water which has not been treated with biocides.

58. ''Upset'' means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

59. ''Well Treatment Fluids'' means any fluid used to restore or improve productivity by chemically or physically altering hydrocarbon-bearing strata after a well has been drilled. These fluids move into the formation and return to the surface as a slug with the produced water. Stimulation fluids include substances such as acids, solvents, and propping agents.

60. ''Workover Fluids'' means salt solutions, weighted brines, polymers, and other specialty additives used in a producing well to allow safe repair and maintenance or abandonment procedures. High solids drilling fluids used during workover operations are not considered workover fluids by definition and therefore must meet drilling fluid effluent limitations before discharge may occur. Packer fluids, low solids fluids between the packer, production string and well casing, are considered to be workover fluids and must meet only the effluent requirements imposed on workover fluids.

61. The term ''MGD'' shall mean million gallons per day.

62. The term ''mg/l'' shall mean milligrams per liter or parts per million (ppm).

63. The term ''µg/l'' shall mean micrograms per liter or parts per billion (ppb).

Appendix A

TABLE 1 (SHEET 1 OF 5).—PRODUCED WATER CRITICAL DILUTION (PERCENT EFFLUENT) DEPTH DIFFERENCE BETWEEN DISCHARGE PIPE AND SEAFLOOR 0 TO 4 METERS

Discharge rate (bbl/day)	Pipe diameter						
	> 0″ to 3″	> 3″ to 5″	> 5″ to 7″	> 7″ to 9″	> 9″ to 11″	> 11″ to 16″	> 16″
0 to 500	0.17	0.17	0.17	0.17	0.17	0.17	0.04
501 to 1,000	0.45	0.40	0.40	0.40	0.40	0.40	0.08
1,001 to 2,000	1.39	1.08	1.08	1.08	1.08	1.08	0.16
2,001 to 3,000	1.66	1.39	1.32	1.32	1.32	1.32	1.32
3,001 to 4,000	1.97	1.60	1.45	1.45	1.45	1.45	1.45
4,001 to 5,000	1.94	1.77	1.55	1.55	1.55	1.55	1.55
5,001 to 6,000	1.90	1.93	1.66	1.63	1.63	1.63	1.63
6,001 to 7,000	1.86	2.07	1.78	1.70	1.70	1.70	1.70
7,001 to 8,000	1.81	2.20	1.89	1.76	1.76	1.76	1.76
8,001 to 9,000	1.77	2.32	1.99	1.81	1.81	1.81	1.81
9,001 to 10,000	1.73	2.43	2.08	1.86	1.86	1.86	1.86
10,001 to 15,000	1.56	2.64	2.49	2.16	2.03	2.03	2.03
15,001 to 20,000	1.43	2.49	2.85	2.47	2.17	2.17	2.17
20,001 to 25,000	1.34	2.39	3.13	2.75	2.42	2.29	2.29

TABLE 1 (SHEET 2 OF 5).—PRODUCED WATER CRITICAL DILUTION (PERCENT EFFLUENT) DEPTH DIFFERENCE BETWEEN DISCHARGE PIPE AND SEAFLOOR GREATER THAN 4 METERS TO 6 METERS

Discharge rate (bbl/day)	Pipe diameter						
	> 0'' to 3''	> 3'' to 5''	> 5''to 7''	> 7'' to 9''	> 9'' to 11''	> 11'' to 16''	> 16''
0 to 500	0.04	0.04	0.04	0.04	0.04	0.04	0.04
501 to 1,000	0.16	0.15	0.15	0.15	0.15	0.15	0.05
1,001 to 2,000	0.42	0.37	0.37	0.37	0.37	0.37	0.10

TABLE 1 (SHEET 2 OF 5).—PRODUCED WATER CRITICAL DILUTION (PERCENT EFFLUENT) DEPTH DIFFERENCE BETWEEN DISCHARGE PIPE AND SEAFLOOR GREATER THAN 4 METERS TO 6 METERS—Continued

Discharge rate (bbl/day)	Pipe diameter						
	> 0'' to 3''	> 3'' to 5''	> 5''to 7''	> 7'' to 9''	> 9'' to 11''	> 11'' to 16''	> 16''
2,001 to 3,000	0.80	0.68	0.65	0.65	0.65	0.65	0.15
3,001 to 4,000	1.40	1.15	1.04	1.04	1.04	1.04	0.19
4,001 to 5,000	1.05	0.94	0.86	0.86	0.86	0.86	0.86
5,001 to 6,000	1.15	1.02	0.93	0.92	0.92	0.92	0.92
6,001 to 7,000	1.22	1.10	1.00	0.97	0.97	0.97	0.97
7,001 to 8,000	1.21	1.17	1.06	1.01	1.01	1.01	1.01
8,001 to 9,000	1.19	1.24	1.12	1.05	1.05	1.05	1.05
9,001 to 10,000	1.17	1.30	1.17	1.09	1.09	1.09	1.09
10,001 to 15,000	1.09	1.56	1.41	1.28	1.23	1.23	1.23
15,001 to 20,000	1.02	1.75	1.59	1.45	1.33	1.33	1.33
20,001 to 25,000	0.96	1.69	1.76	1.59	1.46	1.40	1.40

TABLE 1 (SHEET 3 OF 5).—PRODUCED WATER CRITICAL DILUTION (PERCENT EFFLUENT) DEPTH DIFFERENCE BETWEEN DISCHARGE PIPE AND SEAFLOOR GREATER THAN 6 METERS TO 8 METERS

Discharge rate (bbl/day)	Pipe diameter						
	> 0'' to 3''	> 3'' to 5''	> 5''to 7''	> 7'' to 9''	> 9'' to 11''	> 11'' to 16''	> 16''
0 to 500	0.04	0.04	0.04	0.04	0.04	0.04	0.04
501 to 1,000	0.07	0.07	0.07	0.07	0.07	0.07	0.07
1,001 to 2,000	0.20	0.18	0.18	0.18	0.18	0.18	0.07
2,001 to 3,000	0.35	0.32	0.31	0.31	0.31	0.31	0.10
3,001 to 4,000	0.56	0.50	0.46	0.46	0.46	0.46	0.13
4,001 to 5,000	0.85	0.74	0.67	0.67	0.67	0.67	0.17
5,001 to 6,000	1.26	1.08	0.95	0.94	0.94	0.94	0.20
6,001 to 7,000	0.78	0.71	0.66	0.65	0.65	0.65	0.65
7,001 to 8,000	0.83	0.76	0.70	0.68	0.68	0.68	0.68
8,001 to 9,000	0.89	0.80	0.74	0.71	0.71	0.71	0.71
9,001 to 10,000	0.89	0.84	0.78	0.74	0.74	0.74	0.74
10,001 to 15,000	0.84	1.01	0.94	0.87	0.85	0.85	0.85
15,001 to 20,000	0.80	1.15	1.07	0.99	0.93	0.93	0.93
20,001 to 25,000	0.76	1.32	1.18	1.09	1.02	0.99	0.99

TABLE 1 (SHEET 4 OF 5).—PRODUCED WATER CRITICAL DILUTION (PERCENT EFFLUENT) DEPTH DIFFERENCE BETWEEN DISCHARGE PIPE AND SEAFLOOR GREATER THAN 8 METERS TO 12 METERS

Discharge rate (bbl/day)	Pipe diameter						
	>0″ to 3″	>3″ to 5″	>5″ to 7″	>7″ to 9″	>9″ to 11″	>11″ to 16″	>16″
0 to 500	0.04	0.04	0.04	0.04	0.04	0.04	0.04
501 to 1,000	0.07	0.07	0.07	0.07	0.07	0.07	0.07
1,001 to 2,000	0.11	0.10	0.10	0.10	0.10	0.10	0.10
2,001 to 3,000	0.14	0.13	0.13	0.13	0.13	0.13	0.13
3,001 to 4,000	0.17	0.16	0.16	0.16	0.16	0.16	0.16
4,001 to 5,000	0.33	0.31	0.29	0.29	0.29	0.29	0.11
5,001 to 6,000	0.45	0.41	0.38	0.38	0.38	0.38	0.13
6,001 to 7,000	0.61	0.55	0.50	0.49	0.49	0.49	0.15
7,001 to 8,000	0.80	0.72	0.66	0.63	0.63	0.63	0.17
8,001 to 9,000	1.06	0.94	0.85	0.80	0.80	0.80	0.19
9,001 to 10,000	0.56	0.52	0.50	0.48	0.48	0.48	0.48
10,001 to 15,000	0.63	0.63	0.60	0.57	0.56	0.56	0.56
15,001 to 20,000	0.61	0.72	0.68	0.65	0.62	0.62	0.62
20,001 to 25,000	0.58	0.80	0.75	0.72	0.68	0.66	0.66

TABLE 1 (SHEET 5 OF 5).—PRODUCED WATER CRITICAL DILUTION (PERCENT EFFLUENT) DEPTH DIFFERENCE BETWEEN DISCHARGE PIPE AND SEAFLOOR GREATER THAN 8 METERS TO 12 METERS

Discharge rate (bbl/day)	Pipe diameter						
	>0″ to 3″	>3″ to 5″	>5″ to 7″	>7″ to 9″	>9″ to 11″	>11″ to 16″	>16″
0 to 500	0.04	0.04	0.04	0.04	0.04	0.04	0.04
501 to 1,000	0.07	0.07	0.07	0.07	0.07	0.07	0.07
1,001 to 2,000	0.11	0.10	0.10	0.10	0.10	0.10	0.10
2,001 to 3,000	0.14	0.13	0.13	0.13	0.13	0.13	0.13
3,001 to 4,000	0.17	0.16	0.16	0.16	0.16	0.16	0.16
4,001 to 5,000	0.21	0.20	0.19	0.19	0.19	0.19	0.19
5,001 to 6,000	0.24	0.23	0.22	0.22	0.22	0.22	0.22
6,001 to 7,000	0.28	0.26	0.25	0.25	0.25	0.25	0.25
7,001 to 8,000	0.32	0.30	0.29	0.28	0.28	0.28	0.28
8,001 to 9,000	0.36	0.34	0.32	0.31	0.31	0.31	0.31
9,001 to 10,000	0.41	0.38	0.36	0.35	0.35	0.35	0.35
10,001 to 15,000	0.28	0.84	0.83	0.81	0.80	0.80	0.80
15,001 to 20,000	0.31	1.01	0.99	0.97	0.67	0.67	0.67
20,001 to 25,000	1.07	1.15	1.13	1.11	1.09	1.08	1.08

TABLE 1A.—MINIMUM VERTICAL PORT SEPARATION DISTANCE TO AVOID INTERFERENCE

Port flow rate (bbl/day)	Minimum separation distance (m)
0–500	3.7
501–1000	4.5
1001–2000	5.4
2001–5000	6.4
5001–7000	6.6
7001–10000	6.6

TABLE 2.—EFFLUENT LIMITATIONS, PROHIBITIONS AND MONITORING REQUIREMENTS

Discharge	Regulated and monitored discharged parameter	Discharge limitation/Prohibition	Monitoring requirement		
			Measurement frequency	Sample type/ Method	Recorded value(s)
Drilling Fluid	Free Oil	No free oil	Once week [1]	Static sheen	Number of days sheen observed.
	Toxicity [2] 96-hr LC50	30,000 ppm daily minimum	Once/month	Grab	96-hr LC50.
			Once/end of well [3]	Grab	96-hr LC50.
		30,000 ppm monthly average minimum.	Once/month	Grab	96-hr LC50.
	Discharge Rate	1,000 barrels/hour (see Figure 1).	Once/hour [1]	Estimate	Max. hourly rate.
	Discharge Rate for controlled discharge rate areas [4]		Once/hour [1]	Measure	Max. hourly rate.
	Mercury and cadmium	No discharge of drilling fluids to which barite has been added, if such barite contains mercury in excess of 1.0 mg/kg or cadmium in excess of 3.0 mg/kg (dry weight).	Once prior to drilling each well [6]	Absorption Spectro-photometry	mg mercury/kg barite. mg cadmium/kg barite.
	Oil Based or Inverse Emulsion Drilling Fluids.	No discharge			
	Oil Contaminated Drilling Fluids.	No discharge			
	Diesel Oil	No discharge of drilling fluids to which diesel oil has been added			
	Mineral Oil	Mineral oil may be used only as a carrier fluid (transporter fluid), lubricity additive, or pill			
Drilling Cuttings	Free oil	No free oil	Once/week [1]	Static sheen	Number of days sheen observed.
	Toxicity [2] 96-hr LC50	30,000 ppm daily minimum	Once/month	Grab	96-hr LC50.
			Once/end of well [3]	Grab	96-hr LC50.
		30,000 ppm monthly average minimum.	Once/month	Grab	96-hr LC50.
Drill Cuttings (Continued)	Mercury and cadmium	No discharge of cuttings generated using drilling fluids to which barite has been added, if such barite contains mercury in excess of 1.0 mg/kg or cadmium in excess of 3.0 mg/kg (dry weight).	Once prior to drilling each well [6]	Absorption Spectro-photometry	mg mercury/kg barite. mg cadmium/kg barite.

TABLE 2.—EFFLUENT LIMITATIONS, PROHIBITIONS AND MONITORING REQUIREMENTS—Continued

Discharge	Regulated and monitored discharged parameter	Discharge limitation/Prohibition	Monitoring requirement		
			Measurement frequency	Sample type/ Method	Recorded value(s)
	Cuttings generated using Oil Based or Inverse Emulsion Drilling Fluids.	No discharge			
	Cuttings generated using Oil Contaminated Drilling Fluids.	No discharge			
	Cuttings generated using drilling fluids to which Diesel Oil has been added.	No discharge			
	Cuttings generated using drilling fluids to which Mineral Oil has been added.	Mineral oil may be used only as a carrier fluid (transporter fluid), lubricity additive, or pill			
Deck Drainage	Free Oil	No free oil	Once/day [7]	Visual sheen	Number of days sheen observed.
Produced Water	Oil and grease	42 mg/l daily max., 29 mg/l monthly average.	Once/month	Grab [8]	Daily max., monthly average.
	Toxicity	7-day average min. NOEC [9] and monthly average min. NOEC [9]	Rate Dependent [16]	Grab	Lowest NOEC for either of the two species.
	Radium 226 and 228	Monitor	Rate Dependent [16]	Grab	pCi/liter.
	Bioaccumulation [17]				
	Flow (MGD)	25,000 bbl/day [18]	Once/month	Estimate	Monthly Average.
Produced Sand	No Discharge				
Well treatment fluids, completion fluids, and workover fluids (includes packer fluids) [10].	Free oil	No free oil	Once/day [1]	Static sheen	Number of days sheen observed.
	Oil & Grease	42 mg/l daily max., 29 mg/l monthly avg	Once/month	Grab [8]	Daily max., monthly average.
Sanitary waste [12] continuously manned by 10 or more persons.	Residual chlorine [13]	1 mg/l (minimum)	Once/month	Grab	Concentration
	Solids	No Floating Solids	Once/day	Observation	Number of days solids observed.
Sanitary waste [12] continuously manned by 9 or fewer persons or intermittently by any number.	Solids	No floating solids	Once/day	Observation	Number of days solids observed.
Domestic waste [14]	Solids	No floating solids or foam	Once/day	Observation [15]	Number of days observed.
Miscellaneous discharges: Desalinization unit discharge; blowout preventer fluid; uncontaminated ballast water; uncontaminated bilge water; uncontaminated freshwater; mud, cuttings and cement at seafloor; uncontaminated seawater; boiler blowdown; source water and sand; diatomaceous earth filter media; excess cement slurry.	Free oil	No free oil	Once/week [11]	Visual sheen	Number of days sheen observed.

[1] When discharging.
[2] Suspended particulate phase (SPP) with *Mysidopsis bahia* following approved test method. The sample shall be taken beneath the shale shaker; or if there are no returns across the shaker then the sample must be taken from a location that is characteristic of the overall mud system to be discharged.
[3] Sample shall be taken after the final log run is completed and prior to bulk discharge.
[4] See Appendix A, Discharge Rate Graph.
[5] This information shall be recorded but not reported unless otherwise requested by EPA.
[6] Analyses shall be conducted on each new stock of barite used.
[7] When discharging and facility is manned. Monitoring shall be accomplished during times when observation of a visual sheen on the surface of the receiving water is possible in the vicinity of the discharge.
[8] May be based on the arithmetic average of four grab sample results in the 24 hr. period.
[9] See Table 1, Appendix A.
[10] No discharge of priority pollutants except in trace amounts. Information on the specific chemical composition shall be recorded but not reported unless requested by EPA.
[11] When discharging for muds, cuttings, and cement at the seafloor and blowout preventer fluid. All other miscellaneous discharges: when discharging, discharge is authorized only during times when visual sheen observation is possible, unless the static sheen method is used. Uncontaminated seawater uncontaminated freshwater, source water and source sand, uncontaminated bilge water, and uncontaminated ballast water from platforms on automatic purge systems may be discharged without monitoring from platforms which are not manned.
[12] Any facility which properly operates and maintains a marine sanitation device (MSD) that complies with pollution control standards and regulations under section 312 of the Act shall be deemed to be in compliance with permit limitations for sanitary waste. The MSD shall be tested yearly for proper operation, and test results maintained at the facility.
[13] Hach method CN–66 DPD approved. Minimum of 1 mg/l and maintained as close to this concentration as possible.
[14] The discharge of food waste is prohibited within 12 nautical miles from nearest land. Comminuted food waste able to pass through a 25 mm mesh screen (approximately 1 inch) may be discharged more than 12 nautical miles from nearest land.
[15] Monitoring shall be accomplished during daylight by visual observation of the surface of the receiving water in the vicinity of sanitary and domestic waste outfalls. Observations shall be made following either the morning or midday meals at a time of maximum estimated discharge.
[16] Once/year for discharges from 0 bbl/day to 499 bbl/day, once/quarter for discharges from 500 bbl/day to 4,599 bbl/day, and once/month for discharges of 4,600 bbl/day and greater.
[17] See Part I.B.4.(b) of this Permit.
[18] Unless vertically separated in accordance with CORMIX1 modeling.

[FR Doc. 96–20243 Filed 8–8–96; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 3:00 p.m. on Monday, August 5, 1996, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Mr. John Downey, acting in the place and stead of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Director Joseph H. Neely (Appointive), Chairman Ricki Helfer, and Director Eugene A. Ludwig (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public

observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii) and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii) and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

Dated: August 6, 1996.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 96–20452 Filed 8–7–96; 11:57 am]

BILLING CODE 6714–01–M

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, August 13, 1996, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Amendment to the Interagency Guidelines Establishing Standards for Safety and Soundness.

Memorandum and resolution re: Final Amendments to Part 310—Privacy Act Regulations.

Memorandum and resolution re: Final Amendments to Part 339—Flood Insurance.

Memorandum and resolution re: Rescission of Part 342—Applications for a Stay or Review of Actions of Bank Clearing Agencies; and Final Amendments to Part 308.

Memorandum re: Quarterly Report of Budget Reallocation.

Memorandum re: Quarterly Budget Variance Summary Report.

Memorandum and resolution re: Rescission of the Joint Policy Statement on Delayed Availability of Funds.

Memorandum and resolution re: Revision of the Joint Policy Statement Concerning Branch Closing Notices and Policies.

Discussion Agenda:

Memorandum and resolution re: Revision of the Statement of Policy on the Use of Offering Circulars in Connection with Public Distribution of Bank Securities.

Memorandum and resolution re: Proposed Amendments to Part 362—Activities and Investments of Insured State Banks.

Memorandum and resolution re: Final Rule on the Risk Based Capital Requirement for Market Risk.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Jerry L. Langley, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: August 6, 1996.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 96–20453 Filed 8–7–96; 11:56 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, effective on the corresponding revocation dates shown below:

License Number: 2372.
Name: Aero Marine Expediters, Inc.
Address: 147–20 181st Street, Jamaica, NY 11413.
Date Revoked: July 8, 1996.
Reason: Failed to maintain a valid surety bond.

License Number: 3682.
Name: A.J. Campbell, Inc.
Address: 33435 Dobbin Hufsmith, Magnolia, TX 77355.
Date Revoked: July 24, 1996.
Reason: Failed to maintain a valid surety bond.

License Number: 2692.
Name: A.R. Torrico & Sons (Shipping), Inc.
Address: 315 Woodview Rd., Barrington, IL 60010.
Date Revoked: June 27, 1996.
Reason: Failed to maintain a valid surety bond.

License Number: 1407.
Name: Aquarius Shipping Co., Inc.
Address: 1026 East 81 Street, Brooklyn, NY 11236.
Date Revoked: June 10, 1996.
Reason: Surrendered license voluntarily.

License Number: 3037.
Name: Betsy Mata d/b/a B.A.J. International.
Address: 30485 Shenandoah Ct., Temecula, CA 92591.
Date Revoked: June 13, 1996.
Reason: Failed to maintain a valid surety bond.

License Number: 1996.
Name: Ernest A. Fransz d/b/a Indonesia Nusantara Freight Forwarding Services.
Address: 11222 La Cienaga Blvd., Suite 620, Inglewood, CA 90304.
Date Revoked: July 4, 1996.
Reason: Failed to maintain a valid surety bond.

License Number: 508.
Name: Gerhard & Hey Co., Inc.
Address: P.O. Box 361, Staten Island, NY 10305.
Date Revoked: June 25, 1996.
Reason: Surrendered license voluntarily.

License Number: 407.
Name: John V. Carr & Son, Inc.
Address: 1600 West Lafayette, Detroit, MI 48216.
Date Revoked: June 4, 1996.
Reason: Surrendered license voluntarily.

License Number: 3768.
Name: Logistics Management, Inc. d/b/a TWI Ocean Logistics Services and LMI International Relocation Services.
Address: 3190 Clearview Way, San Mateo, CA 94402.
Date Revoked: June 12, 1996.
Reason: Failed to maintain a valid surety bond.

License Number: 3237.
Name: VAP International Freight Systems, Inc.
Address: 167–10 S. Conduit Ave., Suite 207, Jamaica, NY 11434.
Date Revoked: June 10, 1996.
Reason: Surrendered license voluntarily.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 96–20278 Filed 8–8–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

Agency Holding the Meeting: Board of Governors of the Federal Reserve System.

Time and Date: 10:00 a.m., Wednesday, August 14, 1996.

Place: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

Status: Closed.

Matters to Be Considered:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

Contact Person for More Information: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 7, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–20436 Filed 8–7–96; 10:51 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m. (EDT) August 19, 1996.

PLACE: 4th Floor, Conference Room, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the July 15, 1996, Board meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of investment policy.
4. Review of Arthur Andersen semiannual financial review.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

DATE: August 6, 1996.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 96–20451 Filed 8–7–96; 11:53 am]

BILLING CODE 6760–01–M

GENERAL SERVICES ADMINISTRATION

Record of Decision, U.S. Courthouse Annex, Savannah, Georgia

Action

This is the Record of Decision (ROD) for the construction of a Courthouse Annex (Annex) in Savannah, Georgia. The proposed Annex will contain between 165,000 and 180,000 occupiable square feet (osf) of space including office space, courtrooms, storage space, and special space. The project may also include 40 secured inside parking spaces. The proposed Annex is intended to meet 10-year requirements and the 30-year expansion needs of the U.S. Courts and related agencies in conjunction with the continued use of the existing Federal Building Courthouse (FB–CT).

Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, the Council on Environmental Quality Regulations (40 CFR Part 1500–1508), General Services Administration (GSA) Order PBS R 1095.4B, GSA conducted an Environmental Impact Statement (EIS) for this proposed action. The purpose of the EIS was to identify the potential impacts resulting from this project. The EIS examined the alternatives to the proposed action and the impacts of the alternatives considered. The EIS also addressed mitigation of the adverse impacts. GSA has made every effort to identify and take into account all of the concerns expressed about undertaking this proposed action.

The Draft EIS was released for 45 days of public comment February 28. The Final EIS was released for 30 days of public comment ending on May 28. In addition, notice was provided in the Federal Register, the Savannah News Press, and through direct mail. Approximately 150 copies of the Draft and the Final EIS were distributed for comment using a mailing list of interested parties accumulated through the two years this project has been in the planning stage.

Public participation was accomplished through notices in the Savannah News Press, the Federal Register, direct mail, public meetings, and through regular meetings with stakeholders beginning in April 1994. GSA recognized early the potential for negative impacts from this project, and maintaining an ongoing dialogue with the local community to take their concerns into account.

In April 1994, GSA began the preparation of an EIS and a Cultural Resource Assessment (CRA). At the same time, as required by Section 106 of the National Historic Preservation Act (NHPA), GSA initiated consultation with the Advisory Council on Historic Preservation (ACHP), the State Historic Preservation Officer (SHPO) as well as local preservation interests.

GSA implemented the Section 106 Review process for the proposed Annex concurrently with the implementation of NEPA. In order to determine how this proposed action could affect historic properties, the CRA documented potentially impacted cultural resources. The CRA provided an in-depth evaluation of seven potential sites under initial consideration for the Annex. An architectural history survey was completed for each of the potential sites. A larger Area of Potential Effect (APE) surrounding each of the sites was also examined. An archeological assessment was accomplished through compilation and review of existing archaeological historic documentation and previously conducted fieldwork and reports on Savannah.

The CRA reviewed the documentation for each of the seven sites and identified preservation concerns. This document provided a comprehensive review of historic resources located on and around each site. This became the basis for analysis of impacts to historic resources in the EIS.

GSA solicited comments at five public meetings conducted from August 1994 through March 1996. In addition, eleven meetings were held with local organizations and stakeholders to solicit comments and address concerns. These participating organizations included the City of Savannah, Historic Savannah Foundation, the Savannah Development and Renewal Authority, the SHPO, the Georgia Trust for Historic Preservation, the National Trust for Historic Preservation, and the ACHP.

The Delineated Area (DA) for the Annex was located within the Central Business Area (CBA) and defined as the area surrounded by Bay Street on the North, Liberty Street on the South, Martin Luther King Boulevard on the West, and East Broad on the East.

From April through November 1994, GSA actively solicited alternate sites through a series of advertisements in the Savannah News Press, meetings with local stakeholders, and an ''open house'' to receive site offers on June 28, 1994. No sites were offered. GSA also conducted a windshield survey and identified additional sites for consideration that appeared feasible. At a public meeting on December 6, 1994, GSA identified a total of nine sites within the DA for initial consideration as potential locations for the Annex. Five of the sites were adjacent to the existing FB–CT and four were non-adjacent sites.

In developing a site selection criteria for ranking prospective sites, GSA developed technical and operational criteria. The courts expressed strong preference for an adjacent site for security and operational reasons, but this did not preclude the consideration of non-adjacent sites. This criteria was developed at the beginning of the site selection process in April 1994 and used throughout the process to rank and screen potential sites.

Utilizing this site selection criteria, two of the four non-adjacent sites were screened from consideration for technical reasons on October 25, 1994 and February 16, 1995, respectively.

On August 8, 1994, GSA announced in the Commerce Business Daily a solicitation for an architect-engineer to provide professional services to GSA in support of site selection for the proposed Annex. On March 1, 1995, GSA selected Robert Stern as the lead project architect. The team of design consultants included the project architect, a courts consultant, a cost consultant, the principal architect-engineer, and a local Savannah architect.

The initial scope of work tasked the design consultants to focus its analysis on the seven sites that had been identified by GSA: Five sites adjacent to the FB–CT and two non-adjacent sites. The consultants were also tasked to analyze the technical and operational feasibility of each site and provide recommendations to GSA to assist with site selection.

The Scope of Work was accomplished by the Design Consultants beginning in July and concluding November 8, 1995. The task consisted of four phases:

Phase 1 Data Collection: The Design Consultants collected and reviewed existing information, local guidelines, regulations, and standards. Information developed by GSA's EIS and CRA was provided along with transcripts from the public meetings and all correspondence received during the scoping process. A public meeting to solicit input was conducted on July 12, 1995 by the architect.

Phase 2: Program Verification and Site Analysis: This analyzed each remaining alternative site based on the 10-year needs and 30-year expansion requirements of the Courts. Tenant agencies were interviewed to verify requirements. Sites were analyzed based on the site selection criteria. Analysis of the feasibility of the reuse of the existing Juliette Gordon Low (JGL) Federal Buildings was completed.

Phase 3: Programmatic Master Planning: The Consultants tabulated the program elements and allocated functions between the FB–CT and the Annex. The program fit and space requirements were identified. Required adjacencies and duplications of functions were outlined for each potential site

Phase 4 Conceptual Pre-design Analysis: The pre-design analysis examined and development options for all of the remaining sites. Volumetric analysis was conducted for each site based on interior layouts and interior ceiling height requirements. Block and stack concepts were developed showing mass, scale and contextual fit. Three successive stages of analysis were performed and 29 initial concepts were screened to 13 and finally to six concepts. On November 8, 1996, the relative merits of each of the six concepts, along with final recommendations, were presented to GSA by the design consultants.

On November 20, 1995, based on analyses provided by the Design Consultants, GSA's site selection team ranked and screened the remaining concepts. Four concepts and three siting options were identified as most feasible options for further study. These four concepts became the alternatives considered for full analysis in the EIS.

Alternatives Considered

GSA received authorization to begin the site selection process on March 15, 1994. At that time the GSA preferred alternative site was the City block surrounded by Bull, Broughton, State and Whitaker Streets, also known as site 1A. GSA met with local representatives on April 5, 1994. Local concerns were expressed about the GSA preferred site because it would adversely impact historic buildings, the City plan designed by General James Oglethorpe in 1733, and Savannah's nomination as a World Heritage Site.

From the initial nine potential sites within the DA that were identified from April through December 1994, two were screened for technical reasons. The remaining seven sites were analyzed by the Design Consultants. After the siting feasibility study was completed, GSA screened the two non-adjacent sites for technical and operational reasons. This left three sites and four concept options remaining as the Alternatives considered in the EIS.

In addition to these, the No Action Alternative was also analyzed in the EIS.

No-Action: Under this alternative, agencies slated for relocation into the Annex would remain in their current locations and additional space requirements would be satisfied by leasing action. No construction would occur to address the Courts' expansion requirements. Additional courtrooms would be provided in nearby leased buildings and the judiciary would accomplish its expansion needs through a series of ad hoc lease acquisitions. The courts and related agencies would become fragmented and over time, and they would face serious problems with efficiency and security.

Alternative 1—Site 1E—Construction of One Building (GSA Preferred Alternative): Under this siting alternative, GSA would construct a single building of 165,000 osf, on the two trust lots currently occupied by the JGL Buildings A & B. The existing buildings would be demolished and the Annex footprint would cover both of the trust lots and President Street between Buildings A & B. The mass and scale of this Annex would be of similar proportions to the existing FB–CT, and a tunnel connection between the Annex and the FB–CT would be constructed under Whitaker Street. Forty secure parking spaces would be provided either in the basement, or in JGL Building C with a tunnel connection under York Street.

Alternative 2—Site 1E—Construction of Two Buildings: Under this option, two larger and less efficient buildings approximately of 180,000 osf would be constructed on the trust two lots. President Street would be retained for pedestrian traffic. Because of the required duplication and inefficiency of constructing two buildings, each building would be approximately 60 feet taller than the existing FB–CT. Secured parking would be provided either in the basement, or in JGL Building C with a tunnel connection under York Street.

Alternative 3—Site 1D—Construction of One Building: Under this option, GSA would construct a single building on the site of the JGL Building C currently housing the Corps of Engineers. This alternative would require the demolition of the existing JGL Building C with the exception of the underground parking, part of existing structural support, and the elevator core. This alternative would provide 173,000 osf on three floors reaching 58 feet high, or ten feet higher than the existing FB–CT.

Alternative 4—Site 1A—Construction of One Building: Under this alternative the Annex would be constructed on the City block surrounded by Broughton, Bull, State and Whitaker Streets. The building would have 166,000 osf above grade and connect with the existing FB–CT through a tunnel constructed under State Street with secure parking below grade. It would require the demolition of 14 buildings that contribute to the NHLD. The two historic buildings facing Bull Street would be retained. Broughton Lane would be closed retaining only that portion between the two historic buildings remaining on Bull Street. The building would be four stories tall facing Broughton Street and six stories tall facing State Street.

Issues of Concern: The concerns expressed about this project were the potential adverse effects to Savannah's

National Historic Landmark District (NHLD). Savannah's NHLD is currently listed as Endangered Priority 2 by the National Park Service. This Endangered status has been caused by the cumulative addition of incompatible buildings, the cumulative demolition of historic buildings, and cumulative alterations to the Oglethorpe Plan. Concerns were also expressed about the potential impact to Savannah's nomination as a World Heritage Site.

Specific requests were also expressed that GSA should: not demolish any historic or contributing buildings, should not alter the Oglethorpe Plan, and the Annex should be compatible with the surrounding neighborhood in terms of mass, scale, materials, context, fit, and design. Concerns were expressed that the Annex could create a ''dead zone'' around Telfair Square during non-business hours. Additional concerns were the project's negative impact on the current parking shortages downtown, the potential relocation of the U.S. Post Office outside downtown, the potential loss of Federal employees downtown displaced by this project, and potential negative impacts to the City's efforts to revitalize the Broughton Street retail corridor.

The NHLD is a critical designation for the City of Savannah and contributes to both the tourist economy of the City, and to the quality of life within the City itself. Concerns focused on the potential negative impact that this proposed action could have on the sensitive and fragile nature of the NHLD and neighborhoods if local concerns are not taken into account during the planning and design of the Annex.

Environmental Consequences and Mitigation

No Action Alternative: While the No Action alternative would have no impact on the natural environment, it would result in the continued inefficient housing of Federal Courts and would have long-term impacts as the Courts outgrow their current space. Security and efficiency would be compromised as the Courts 10-year requirements and 30-year expansion needs would not be met in a single facility. As the Courts requirements for space increases over time, housing the Court's functions in non-adjacent buildings would occur in the vicinity of the FB–CT. This leasing of space could ultimately impact other historic buildings as leasehold alterations are made to accommodate Court needs. The No Action Alternative could ultimately cause the U.S. Courts to look outside the CBA for their space needs. The loss of the Federal Courts downtown would have a negative impact to Savannah's NHLD.

Summary of Construction Alternatives: Considering the four alternatives that involve the construction of an Annex, all of the alternatives would have little or no long-term impact on the natural environment. There would be minimal or no impact to the following categories: Housing, Open Space and Recreation Facilities, Utilities and City Services, Subsurface and Geological Conditions, Vegetation and Wildlife, Natural Hazards, Ambient Air Quality, Ambient Noise, Natural or Depletable Resources, and Hazardous Substances or Contamination. All of the construction alternatives are in substantial compliance with City zoning requirements. Potential archaeological disturbance is not likely except for Site 1–A, and all appropriate regulations and procedures would be followed if archaeological resources are found during construction. Sites 1–C and 1–D have been previously disturbed.

All of the construction alternatives will produce temporary negative impacts during construction. These impacts would be short term and would include disruptions due to increased noise levels, increased dust and emissions, disruptions due to temporary street closures, construction related traffic, and temporary loss of utility services. These impacts would be minimized through proper construction mitigation techniques and with good advance planning. By working closely with the City, unavoidable disruptions during the two year construction phase could be minimized but not totally avoided.

Alternative 1—Site 1E—Construction of One Building (GSA Preferred Alternative): This alternative would involve the demolition of the JGL Buildings A & B and constructing an Annex of 165,000 osf on the entire site including President Street. This would remove that portion of President Street which is part of the Oglethorpe Plan. This loss would be unavoidable and only partially mitigated through design considerations. This alternative replaces two smaller buildings which are in proportion with surrounding buildings, with a larger Annex of similar mass to the current FB–CT. This additional mass and the loss of that section of President Street will cause some negative visual impacts. These cumulative impacts could affect the status of the NHLD. This alternative would demolish two 27,000 osf government-owned buildings that would have remaining economic life. This alternative would also require the relocation of 145 employees currently housed in buildings A and B.

Alternative 2—Site 1E—Construction of Two Buildings: Under this alternative an Annex of 180,000 osf would be constructed on two trust lots leaving President Street open to pedestrian traffic. These buildings would be substantially taller than the current FB–CT and would be out of context on that site in terms of the mass and scale. This alternative would demolish two government-owned buildings that have remaining economic life. This would have the same negative impacts as Alternative 1 and potentially affect the status of the NHLD. This alternative would also require the relocation of 145 employees currently housed in buildings A and B.

Alternative 3—Site 1D—Construction of One Building: Under this alternative, GSA would demolish all of the JGL Building C except the elevator core, the basement parking, and part of the structural support. No historic buildings would be demolished and no alterations to the Oglethorpe Plan would occur. This alternative would demolish a 145,000 osf government-owned building that has remaining economic life. This alternative may have positive impacts on the NHLD if the new Annex is more visually compatible with the surrounding neighborhood than the current JGL Building C.

This alternative would require the relocation of 714 Corps of Engineer employees. This action itself would cause additional impacts. If these employees were relocated within the NHLD, adverse impacts are likely depending on the location selected and whether leasing or new construction was the selected acquisition. If this action caused these employees to relocate outside Savannah's NHLD, or to relocate outside Savannah altogether, adverse economic impacts to the NHLD would occur due to the loss of employment within the City. These future potential impacts cannot be accurately measured until alternative courses of action are identified and considered.

Alternative 4—Site 1A—Construction of One Building: Under this alternative, a single building Annex would be constructed on Broughton Street. Broughton Lane would be permanently lost and 14 contributing buildings would be demolished. The Broughton Street Revitalization program would be severely impacted by removing a block of commercial buildings creating a retail ''dead zone''. Two historic buildings would be preserved on Bull Street between Broughton Street and State Street, and that portion of Broughton

Lane between the buildings would be retained. This alternative would cause adverse effects to Savannah's historic resources and could have negative impacts to the status of the NHLD.

Mitigation of Cultural and Historic Resources. In order to mitigate and minimize the impacts that have been identified, GSA will continue to consult with the local community, the SHPO, the ACHP, the NPS, as well as other preservation groups that have been identified. This consultation will lead to the development and ultimate signing of a Memorandum of Agreement (MOA) between GSA and the consulted parties including the SHPO, the ACHP, the NPS, pursuant to 36 CFR 800.5(e) and 800.10, which are the implementing regulations of the National Historic Preservation Act. The stipulations of the MOA will identify elements of the mitigation plan which GSA will implement.

The mitigation plan will identify the elements that GSA will implement to mitigate impacts to historic resources. It will address the stages of design review and will identify elements of new construction that are compatible with the historic and architectural qualities of the NHLD. It will address the issues of scale, massing, and materials, and will be responsive to the Secretary of Interior's *Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.* GSA recognizes that concerns have been expressed by the NPS and others about the mass and scale of the proposed Annex. GSA is committed to reduce the mass above grade of the Annex to the greatest extent practical.

The City of Savannah has established a committee to work closely with GSA to identify issues and maintain a climate of cooperation throughout this project. GSA has committed to work with this committee and to participate in regular meetings to address issues and to keep the lines of communication open.

The City has identified three additional issues of concern about this project: exacerbation of parking shortages, the potential loss of the U.S. Post Office downtown, and the potential loss of federal employment downtown due to relocation caused by this proposed Annex.

As mitigation, GSA has committed to cooperate with the City's effort to development of a perimeter parking and shuttle system. GSA committed to assist the City in their efforts to find a suitable downtown location for the U.S. Post Office. GSA has committed to keep federal agencies that are relocated as a result of this project within the CBA of Savannah.

Rationale for Decision

The proposed project will meet the 10-year requirements and 30-year expansion needs of the U.S Courts in Savannah, Georgia. The proposed construction will result in a one-time consumption of non-renewable resources including land, energy and materials. Certain negative environmental impacts will occur regardless of the alternative selected.

The technically and operationally preferred alternative, which is also the GSA preferred alternative, is the construction of a single building on site 1–E. This technically preferred alternative best meets the projects objectives and criteria as recommended by the design consultants.

The alternative with the greatest adverse impact to the NHLD is Alternative 5, site 1–A, because it would demolish 14 historic buildings and permanently close Broughton Lane. It would also impact the City's efforts to revitalize the Broughton Street retail corridor. The alternative with the least environmental impact would be Alternative 4; a single building on site 1–D. This alternative would require no loss of historic resources, however it would cause a major agency relocation within the NHLD as 714 U.S. Army Corps of Engineer employees would be displaced. Additionally, JGL Building C, with 145,000 osf of government-owned space, would be mostly demolished with useful economic life remaining.

Therefore, giving consideration to all of the factors discovered during the two year environmental process, it is the decision to proceed with the GSA preferred alternative, which is the demolition of JGL Buildings A & B, and the construction of a single Courthouse Annex of 165,000 osf on site 1–E, adjacent to the FB–CT in Savannah, Georgia.

Approved: July 16, 1996.

Carole Dortch,

Regional Administrator (4A).

Dated: July 24, 1996.

Phil Youngberg,

Regional Environmental Officer (4PT).

[FR Doc. 96–20176 Filed 8–8–96; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–96–21]

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 on (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. Studies of Immunotoxicity in Occupational Groups—(0920–0333)—Extension—A number of chemicals to which U.S. workers are potentially exposed, including metals such as lead and beryllium and solvents such as carbon tetrachloride, have been found to be immunotoxic in experimental animals. There is little data on immunosuppression, hypersensitivity or autoimmune disease in workers exposed to chemicals that are immunotoxic in experimental animals. NIOSH has undertaken a coordinated series of studies to focus on immune-system effects related to specific chemical exposures in the workplace. In the previous three years, NIOSH conducted studies of lead and egg protein exposed workers.

In this extension of the program, it is anticipated that up to five additional research studies will be conducted

under this program. Examples of chemicals for which studies are being considered are latex, silica and solvents. In most of these studies, the immune function of a group of workers exposed to the chemical of interest, and not exposed to any other known or potential immunotoxins, will be compared to the immune function in a group of individuals with no occupational exposure to known or suspected immunotoxins. In some studies, the immune function in a group of individuals will be compared before and after they have exposure to the potential immunotoxin. The primary information collected will be data on the level of exposure to the potential immunotoxin (as measured in the air in the breathing zone of the respondent, and/or in the respondent's blood or urine) and data on specific markers of the status of the immune system from blood or saliva samples provided by the subjects. The questionnaire data will be directed at demographic, lifestyle, and medical factors (other than the exposure or condition of interest) which may influence the function of the immune system. In selected studies, the questionnaire will be used to assess the presence of respiratory symptoms, dermatologic conditions and/or reproductive effects, if the literature indicates a potential relationship to these health problems. Study populations will be identified through telephone contact and follow-up site visits (if needed) with workplace facilities that use the chemical of interest. The total cost to respondents is estimated at $7,500.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hours)	Total burden (in hours)
Workers	300	1	1	300
Companies	10	1	1	10
Total				310

2. Feasibility Study of a State and Local Area Integrated Telephone Survey—New—This is a request to conduct a feasibility study in three States of an integrated survey to collect broad State-based health and health-related data using two existing and ongoing data collection systems, the National Immunization Survey (NIS) and the National Health Interview Survey (NHIS) (0920–0214). The purpose of this project is to demonstrate the potential for using random-digit-dialing (RDD) methods to sample households for Computer Assisted Telephone Interviews (CATI) to produce quick turnaround State-level estimates on issues such as health status, access to care, health insurance coverage, and utilization of services for monitoring and tracking changes in the health care system. As health care markets respond to new incentives and States gain increasing responsibility for administering health and welfare programs, State level data are being recognized as increasingly important to the public health and health policy community. While considerable population-based data are available at the national level, there is a variable amount at the State level.

The proposed strategy of building on two established systems provides several advantages. It is less costly than establishing a new system; the proposed questions have been thoroughly tested; and implementation can occur rapidly. In the NIS, interviews are conducted on a random sample of telephone households to produce vaccination coverage estimates for children 19 to 35 months of age for all 50 states, the District of Columbia, and 27 urban areas. The NIS CATI system offers a mechanism for rapid data collection and for expansion to establish a more broad based system to monitor and track changes in health status, the health care system, and welfare reform at the State level. In addition, since the design for the NIS requires screening 20 households to identify a single household with an age eligible child, a potential cost effective opportunity exists to make use of the large probability sample of telephone numbers for other emerging health care issues. The NHIS is a continuous general purpose national health survey in which face-to-face interviews are conducted to measure health characteristics of the U.S. civilian noninstitutionalized population. Use of an abbreviated set of questions from the NHIS for the proposed integrated telephone survey will allow for standardization of the questionnaire across States and will allow comparisons with national data. In addition, the quality of the estimates developed from the telephone survey can be improved with adjustments for nontelephone households using information from the NHIS on telephone and nontelephone households.

The long term strategy is to build an integrated and coordinated data collection mechanism that can be both standardized for State and national comparisons and customized for State-specific needs. The total cost to respondents is estimated at $27,000.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hours)	Total burden (in hours)
Noninstitutionalized household population in 3 States	4,500	1	0.30	1,350
Total				1,350

Dated: August 5, 1996.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–20322 Filed 8–8–96; 8:45 am]

[BILLING CODE 4163–18–P]

Notice of Meeting

Office of the Director, Centers for Disease Control and Prevention (CDC), announces the following meeting.

Name: Guide to Community Preventive Services (GCPS) Task Force Meeting.

Times and Dates: 8:30 a.m.–5 p.m., August 26, 1996; 8:30 a.m.–5 p.m., August 27, 1996.

Place: CDC, Building 2, Classroom 1, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 60 people.

Purpose: The mission of the Task Force is to develop and publish a Guide to Community Preventive Services, which is based on the best available scientific evidence and current expertise regarding essential public health services and what works in the delivery of those services. The primary purpose of this first meeting is to develop a shared vision for the Guide, agree on the methods to be used in its development, and to select the first topics to be included in the Guide.

Matters to be Discussed: Agenda items include: key issues for the Guide to Community Preventive Services; defining the Target Audiences and Developing a Vision for the Anticipated Uses; Nature of the Content and Format of the Guide; Applicable lessons learned from the Guidelines Project of the Council on Linkages Between Academia and Public Health Practice; Methods and Approaches to Developing the Guide to Community Preventive Services; and Proposed Approach to the Development of the GCPS.

Agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: Marguerite Pappaioanou, the GCPS Project Director at CDC and Executive Secretary to the Task Force, Office of the Director, CDC, 1600 Clifton Road, NE, M/S D–27, Atlanta, Georgia 30333, telephone 404/639–7069.

Persons interested in reserving a space for this meeting should call 404/639–7100 by close of business on August 21, 1996.

Dated: August 5, 1996.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–20320 Filed 8–8–96; 8:45 am]

BILLING CODE 4163–18–M

National Vaccine Advisory Committee (NVAC) Subcommittee on Immunization Coverage: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee meeting.

Name: NVAC Subcommittee on Immunization Coverage.

Times and Dates: 1:30 p.m.–5:30 p.m., August 26, 1996; 8:30 a.m.–3:30 p.m., August 27, 1996.

Place: American Academy of Pediatrics, 141 Northwest Point Boulevard, Elk Grove Village, Illinois 60007.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: The Subcommittee will advise and make recommendations to the full Committee on matters related to the improvement of immunization coverage rates.

Matters to be Discussed: Agenda items include presentations from CDC researchers on immunization diagnostic projects; and from the state and city immunization programs on their program operations and challenges they face. The Subcommittee will host two panels of immunization providers discussing assessments they are performing in their practices and other innovative methods of increasing immunization coverage rates.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Alison B. Johnson, Program Analyst, National Immunization Program, CDC, 1600 Clifton Road, NE, M/S E52, Atlanta, Georgia 30333, telephone 404/639–8222.

Dated: August 5, 1996.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–20321 Filed 8–8–96; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 96N–0165]

Rhone Merieux, Inc.; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Rhone Merieux, Inc. The NADA provides for the use of Gallimycin® (erythromycin) Poultry Formula in poultry drinking water. The sponsor requested the withdrawal of approval because the animal drug product is no longer manufactured or marketed.

EFFECTIVE DATE: August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1623.

SUPPLEMENTARY INFORMATION: Rhone Merieux, Inc., P.O. Box 459, 2116 Eighth Avenue South, Fort Dodge, IA 50501, is the sponsor of NADA 102–656, which provides for the use of Gallimycin® (erythromycin) Poultry Formula in poultry drinking water. By letter of April 17, 1996, Rhone Merieux, Inc., requested withdrawal of approval of the NADA because the animal drug product is no longer manufactured or marketed.

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 102–656 and all supplements and amendments thereto is hereby withdrawn, effective August 19, 1996.

Dated: July 17, 1996.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 96–20341 Filed 8–8–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96E–0101]

Determination of Regulatory Review Period for Purposes of Patent Extension; CEDAX®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for CEDAX® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

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

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent

Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product CEDAX® (ceftibuten dihydrate). CEDAX® is indicated for the treatment of individuals with mild-to-moderate infections caused by susceptible strains of the designated microorganisms in the specific conditions: Acute Bacterial Exacerbations of Chronic Bronchitis due to *Haemophilus influenzae* (including B-lactamase-producing strains), *Moraxella catarrhalis* (including B-lactamase producing strains) or *Streptoccocus pneumoniae* (penicillin-susceptible strains only), Acute Bacterial Otitis Media due to *Haemophilis influenzae* (including B-lactamase producing strains), *Moraxella catarrhalis* (including B-lactamase producing strains) or *Streptococcus pyogenes*, or Pharyngitis and Tonsillitus due to *Streptococcus pyogenes*. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for CEDAX® (U.S. Patent No. 4,812,561) from Schering-Plough Corp. and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 10, 1996, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of CEDAX® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for CEDAX® is 2,641 days. Of this time, 1,179 days occurred during the testing phase of the regulatory review period, while 1,462 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: September 28, 1988. The applicant claims September 29, 1988, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was September 28, 1988, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357)*: December 20, 1991. FDA has verified the applicant's claim that the new drug application (NDA) for CEDAX® (NDA 50–686) was initially submitted on December 20, 1991.

3. *The date the application was approved*: December 20, 1995. FDA has verified the applicant's claim that NDA 50–686 was approved on December 20, 1995.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 902 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 8, 1996, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before February 6, 1997, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 26, 1996.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 96–20339 Filed 8–8–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96E–0154]

Determination of Regulatory Review Period for Purposes of Patent Extension; DYNABAC®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for DYNABAC® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

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

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and

an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product DYNABAC® (dirithromycin). DYNABAC® is indicated for the treatment of individuals age 12 years and older with mild-to-moderate infections caused by susceptible strains of designated microorganisms in the specific conditions: (1) Acute Bacterial Exacerbations of Chronic Bronchitis due to *Moraxella catarrhalis* or *Streptococcus pneumoniae*; (2) Secondary Bacterial Infection of Acute Bronchitis due to *M. catarrhalis* or *S. pneumoniae*; (3) Community-Acquired Pneumonia due to *Legionella pneumophila*, *Mycoplasma pneumoniae*, or *S. pneumoniae*; (4) Pharyngitis/Tonsiletis due to *S. pyogenes*; or (5) Uncomplicated Skin and Skin Structure Infections due to *Staphylococcus aureus* (methicillin-resistant strains). Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for DYNABAC® (U.S. Patent No. 4,048,306) from Boehringer Ingelheim GmbH, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 28, 1996, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of DYNABAC® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for DYNABAC® is 2,469 days. Of this time, 1,687 days occurred during the testing phase of the regulatory review period, while 782 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: September 16, 1988. The applicant claims February 28, 1988, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was September 16, 1988, the date the IND was removed from clinical hold via telephone conversation.

2. *The date the application was initially submitted with respect to the human drug product under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357)*: April 29, 1993. The applicant claims April 27, 1993, as the date the new drug application (NDA) for DYNABAC® (NDA 50–678) was initially submitted. However, FDA records indicate that NDA 50–678 was submitted on April 29, 1993, the date the resubmission for NDA 50–678 was received by FDA following a refusal to file letter.

3. *The date the application was approved*: June 19, 1995. FDA has verified the applicant's claim that NDA 50–678 was approved on June 19, 1995.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,726 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 8, 1996, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before February 6, 1997, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 26, 1996.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 96–20340 Filed 8–8–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96E–0114]

Determination of Regulatory Review Period for Purposes of Patent Extension; CORVERT

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for CORVERT and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

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

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug

product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product CORVERT (ibutilide fumarate). CORVERT is indicated for the rapid conversion of atrial fibrillation or atrial flutter of recent onset to sinus rhythm. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for CORVERT (U.S. Patent No. 5,155,268) from the Upjohn Co. and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 13, 1996, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of CORVERT represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for CORVERT is 2,292 days. Of this time, 1,865 days occurred during the testing phase of the regulatory review period, while 427 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective: September 20, 1989. FDA has verified the applicant's claim that the date the investigational new drug application (IND) became effective was on September 20, 1989.

2. The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act: October 28, 1994. FDA has verified the applicant's claim that the new drug application (NDA) for CORVERT (NDA 20–491) was initially submitted on October 28, 1994.

3. The date the application was approved: December 28, 1995. The applicant claims December 29, 1995, as the date NDA 20–491 was approved. However, FDA records indicate that NDA 20–491 was approved on December 28, 1995.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this application seeks 73 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 8, 1996, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before Februar 6, 1997, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 26, 1996.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 96–20342 Filed 8–8–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96E–0112]

Determination of Regulatory Review Period for Purposes of Patent Extension; MAXIPIME®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for MAXIPIME® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

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

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product MAXIPIME® (cefepime hydrochloride). MAXIPIME® is indicated for the treatment of the following infections when caused by susceptible strains of the designated microorganisms: Uncomplicated and complicated urinary tract infections, including pyelonephritis, uncomplicated skin and skin structure infections, and pneumonia. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for MAXIPIME®

(U.S. Patent No. 4,406,899) from Bristol-Myers Squibb Co. and the Patent and Trademark Office requested FDA's assistance in determining this patent's term restoration. In a letter dated May 13, 1996, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of MAXIPIME® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for MAXIPIME® is 3,741 days. Of this time, 2,444 days occurred during the testing phase of the regulatory review period, while 1,297 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective: October 23, 1985. The applicant claims November 22, 1985, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND's effective date was October 23, 1985, which was 30 days after FDA receipt of the IND.

2. The date the application was initially submitted with respect to the human drug product under section 507 of the Federal Food, Drug, and Cosmetic Act: July 1, 1992. The applicant claims June 30, 1992, as the date the new drug application (NDA) for MAXIPIME® (NDA 50–679) was initially submitted. However, FDA records indicate that NDA 50–679 was submitted on July 1, 1992.

3. The date the human drug was approved: January 18, 1996. FDA has verified the applicant's claim that NDA 50–679 was approved on January 18, 1996.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, the applicant seeks 1,825 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 8, 1996, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before February 6, 1997, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 26, 1996.

Stuart L. Nightingale,

Associate Commisioner for Health Affairs.

[FR Doc. 96–20343 Filed 8–8–96; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of September 1996.

Name: National Advisory Council on the National Health Service Corps.

Date and Time: September 5–8, 1996

Place: Marriott Residence Inn, 7335 Wisconsin Avenue, Bethesda, Maryland.

The meeting is open to the public.

Agenda: Agenda items include updates on the National Health Service Corps program, policies, and budget; meetings of the Council workgroups on new environment strategies, health system linkages, and mission coalition building; and site visits to community health centers in the area.

The opening meeting will be held on Thursday, September 5 from 6:00 p.m. to 8:30 p.m. On Friday, site visits will begin at 9:00 a.m. and will be followed by a business meeting which will conclude about 7:00 p.m. Saturday's meeting will begin at 9:00 a.m. and includes meetings of the Council workgroups. On Sunday, the meeting will begin at 9:00 a.m. and will adjourn around noon.

The meeting is open to the public; however, no transportation will be provided for the site visits. Anyone requiring information regarding the subject Council should contact Ms. Jewel Davis, National Advisory Council on the National Health Service Corps, Health Resources and Services Administration, 8th floor, 4350 East West Highway, Rockville, Maryland 20857, Telephone (301) 594–4144.

* * * * *

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: September 10–11, 9:00 am–5:00 pm.

Place: Parklawn Building, Conference Rooms G & H, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.

The first day of the meeting, will consist of meetings of one of the Commission's workgroups and Subcommittees.

Name: Workgroup on Intent, Provisions and Process.

Date and Time: September 10, 1996; 9:00 a.m.–12:00 Noon.

Place: Parklawn Building, Potomac Room.

Agenda: Agenda items will include, but not be limited to, discussion of the following issues: Program and policy issues related to the operation of the Vaccine Injury Compensation Program.

Name: Joint ACCV/National Vaccine Advisory Committee (NVAC) Subcommittee on Vaccine Safety.

Time: September 10, 1996; 1:00 p.m.–5:00 p.m.

Place: Parklawn Building, Conference Rooms G & H.

Agenda: Agenda items will include, but not be limited to: discussion of the inclusion of adult vaccines under the National Vaccine Injury Compensation Program; and discussion of the Task Force on Safer Childhood Vaccines, Final Report and Recommendations.

The full Commission will meet on Wednesday, September 11 from 9:00 a.m. to 5:00 p.m. Agenda items will include, but not be limited to: a report on the Vaccine Safety Subcommittee; a report from the Workgroup on Intent, Provision and Process; and update on the Proposed Polio Immunization Schedule Changes; and an update on the Current Status of Licensure of Acellular Pertussis Vaccines and routine Program reports.

Public comment will be permitted before the Workgroup and Subcommittee meetings adjourn on September 10; and before noon and at the end of the Commission meeting on September 11. Oral presentations will be limited to 5 minutes per public speaker.

Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to Ms. Mellissa Palmer, Principal Staff Liaison, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–35, 5600 Fishers Lane, Rockville, MD 20852; Telephone (301) 443–6593. Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation, but desire to make an oral statement, may sign up in Conference Room G and H on

September 10–11. These persons will be allocated time as time permits.

Anyone requiring information regarding the Commission should contact Ms. Palmer.

* * * * *

Name: National Advisory Committee on Rural Health.

Dates and Time: September 15, 1996—3:00 p.m.

Place: The Historic Inns of Annapolis, 16 Church Circle, Annapolis, MD 21401, Phone: (410) 263–2641, FAX: (410) 268–3813.

The meeting is open to the public.

Agenda: The meeting will begin at 3 p.m. on Sunday, September 15, with an orientation. A reception is planned following the orientation.

The plenary session on Monday, September 16, will convene at 8:30 a.m. with a legislative update and an overview of the Office of Rural Health Policy activities. Committee members will review the American Public Health Association's resolution, ''Rural Health Goals: Guaranteeing a Future.'' The remainder of the day and Tuesday, September 17, will be devoted to formulating Committee recommendations to the Secretary of Health and Human Services. Committee members will meet in their workgroups—Education and Health Services and Health Care Financing—to draft these recommendations. The meeting will convene at 8:30 a.m. on Wednesday, September 18. Adjournment is anticipated by 12:30 p.m.

Anyone requiring information regarding the subject Committee should contact Dena S. Puskin, Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Services Administration, Room 9–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0835, FAX (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Ms. Arlene Granderson or Lisa Shelton, Office of Rural Health Policy, Health Resources and Services Administration, Telephone (301) 443–0835.

Agenda Items are subject to change as priorities dictate.

Dated: August 5, 1996.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 96–20269 Filed 8–8–96; 8:45 am]

BILLING CODE 4160–15–P

Request for Comments on Legal Issues Related to Telemedicine

AGENCY: Health Resources and Services Administration (HRSA), Health and Human Services (HHS).

ACTION: Request for comments.

SUMMARY: In the Telecommunications Act of 1996 (Pub.L. 104–104), Congress directs the Secretary of Commerce, in consultation with the Secretary of Health and Human Services, to submit a report highlighting the activities of the Joint Working Group on Telemedicine (JWGT) and other Federal activities to promote the cost-effective use of telemedicine (Section 709). The JWGT is a Federal interagency working group that examines issues and makes recommendations regarding national policy on telemedicine. The Office of Rural Health Policy, Health Resources and Services Administration, provides staff support to the JWGT. Telemedicine is defined as the use of modern telecommunications and information technologies for the provision of clinical care to individuals at a distance.

In this notice, we seek comments identifying the legal barriers to the cost-effective use of telemedicine and specific suggestions for overcoming these barriers. In particular, we seek suggestions for easing licensure barriers to physicians and other health professionals providing telemedicine services across state lines, and comments on specific alternatives, such as those recently proposed by the Federation of State Medical Boards and the Institute of Electrical and Electronics Engineers. Respondents are encouraged to explore the advantages and disadvantages of a wide range of options such as various types of limited state licensure, registration of out-of-state physicians as proposed in California, regional and national initiatives to expand reciprocity among states, national licensure in terms of their impact on access and quality of health care services, and feasibility and cost of implementation. In addition to addressing cross-state licensure issues, respondents are encouraged to provide comments and suggestions on other legal issues associated with telemedicine such as liability/malpractice. Finally, we are asking respondents to identify the particular challenges in assuring privacy, confidentiality, and security in the conduct of telemedicine and provide suggestions for addressing those challenges. Comments will be reviewed and considered for incorporation into the final report to Congress.

DATES: Comments should be filed on or before August 30, 1996.

ADDRESSES: Copies of comments should be sent to: Dena S. Puskin, Sc.D., Office of Rural Health Policy, Health Resources and Services Administration, Room 9–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Dena S. Puskin, Sc.D., 301–443–0835, dpuskin@hrsa.ssw.dhhs.gov.

Dated: August 8, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–20270 Filed 8–8–96; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–3778–N–97]

Office of the Assistant Secretary for Community Planning and Development; Federal Property Suitable as Facilities to Assist the Homeless

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

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: August 9, 1996.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless v. Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: August 2, 1996.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 96–20170 Filed 8–8–96; 8:45 am]

BILLING CODE 4210–29–M

[Docket No. FR–4103–N–01]

Office of the Assistant Secretary for Public and Indian Housing; Notice of Implementation of the Omnibus Consolidated Rescissions and Appropriations Act of 1996

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

ACTION: Notice of Implementation of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub.L. 104–134, approved April 26, 1996) (''OCRA'') relating to the Public and Indian Housing Program and the Section 8 Certificate, Voucher, and Moderate Rehabilitation Programs.

SUMMARY: The OCRA affects the public and Indian housing and Section 8 programs by providing certain funds and by amending the U.S. Housing Act of 1937 (the ''USHA''). This Notice advises the public of the Department's intentions regarding funding processes for affected programs. This Notice also advises the public of various changes to regulatory requirements and program policies, implementing the administrative provisions of the OCRA that amend the USHA for Federal Fiscal Year 1996 (''FY 1996'').

The Department will issue instructions concerning Section 202 of the OCRA, Conversion of Certain Public Housing to Tenant-based Section 8 Vouchers and Certificates, by separate notice.

This Notice does not modify or negate the policies contained in Notices PIH 96–6 and 7 (HA) dated February 13, 1996, which were issued to implement provisions of the January 26, 1996 Continuing Resolution. Those Notices concerned minimum tenant rents, public and Indian housing ceiling rents, the definition of ''adjusted income'' for public and Indian housing residents, suspension of Federal tenant selection preferences, repeal of provisions regarding income disregards, delay in reissuance of turnover certificates and vouchers, and FY 1996 Section 8 administrative fees.

This Notice also does not modify or negate the guidance issued in Notice PIH 96–12 (HA) on March 21, 1996, which concerned management of the minimum rent requirements.

In addition, this Notice does not modify or negate the guidance issued in Notice PIH 96–24 (HA) on May 3, 1996, which concerned Performance Funding System policy revisions to encourage public and Indian housing authorities to facilitate resident employment and undertake entrepreneurial initiatives.

Further, this Notice is not intended to supersede the Public/Private Partnership for Mixed-Finance Public Housing Development rule in 24 CFR part 941, subpart F (published May 2, 1996, 61 FR 19708). That rule remains in effect. This Notice is intended to provide implementation guidance on that subject in those limited areas where the language in the OCRA differs from that in the rule.

The provisions of this Notice apply both to Public Housing Agencies (''PHAs'') and to Indian Housing Authorities (''IHAs''), which are collectively referred to in this Notice as ''HAs'' unless otherwise noted.

Contents of this Notice

I. Annual Contributions Contracts and Commitment of Funds
II. Extension of Administrative Provisions from the Rescissions Act
III. Streamlining Section 8 Tenant-Based Assistance
IV. Public Housing/Section 8 Moving to Work Demonstration
V. Extension Period for Sharing Utility Cost Savings with HAs
VI. Repeal of Frost-Leland
VII. Minimum Rent Waiver Authority

FOR FURTHER INFORMATION CONTACT: Rod Solomon, Director, Special Actions, Public and Indian Housing, Room 4116, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–0713.

For IHAs, contact Dom Nessi, Deputy Assistant Secretary for Native American Programs, Room B–133, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 755–0032.

For hearing or speech impaired persons, these numbers may be accessed via TTY by contacting the Federal Information Relay Service at 1–800–877–8339. (Except for the ''800'' number, the telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Annual Contributions Contracts and Commitment of Funds

A. Indian Housing

1. Indian Housing Development Funding

A Notice of Funding Availability (''NOFA'') was published in the Federal Register on March 29, 1996 (61 FR 14218), which announced approximately $160 million in FY 1996 funding for the development of new Indian Housing units and provided the applicable criteria, processing requirements and action timetable.

2. Indian HOME Funding, Indian Community Development Block Grant Funding, and Indian Emergency Shelter Grant Funding

A NOFA was published in the Federal Register on March 27, 1996 (61 FR 13574) announcing the availability of up to $14 million in funding for FY 1996 for the HOME Program for Indian Tribes and providing selection criteria, information on how to apply, and an explanation of how selections would be made.

A NOFA was published in the Federal Register on May 9, 1996 (61 FR 21338), which announced the availability of $50,000,000 in funds for the Community Development Block Grant Program for Indian Tribes and Alaska Native Villages for Fiscal Year 1996.

A NOFA was published in the Federal Register on March 5, 1996 (61 FR 8824), which announced the availability of approximately $1,150,000 in funds for emergency shelter grants to be allocated to Indian tribes and Alaskan Native villages by competition for Fiscal Year 1996.

B. Section 8 Certificate, Voucher and Moderate Rehabilitation Funding

In a Federal Register notice published July 19, 1996 (61 FR 37758), HUD issued instructions concerning Section 8 certificate, voucher, and moderate rehabilitation funding.

C. Comprehensive Improvement Assistance Program (''CIAP'')

A NOFA was published in the Federal Register on April 18, 1996 (61 FR 17218), which announced the availability of up to $257 million for FY 1996 CIAP funding. The NOFA informed HAs that own or operate fewer than 250 public and Indian housing units (and, therefore, are eligible to apply and compete for CIAP funds) of the requirements and application deadline. The NOFA application deadline was June 17, 1996 and the Department is now processing applications.

D. Public Housing Demolition, Site Revitalization, and Replacement Housing (HOPE VI) Grants

Title II of the OCRA appropriates $480 million for public housing demolition, site revitalization, and replacement housing grants (referred to as the HOPE VI program). A NOFA was published on July 22, 1996 (61 FR 38024), which announced the availability of HOPE VI funding. The funds will be used for grants to PHAs to enable them to demolish obsolete projects or portions of them, or

revitalize, where appropriate, the sites (including remaining public housing units) on which the projects are located. Also, grants may be used for replacement housing that will avoid or lessen concentrations of very low-income families and for tenant-based Section 8 assistance to provide replacement housing or to assist tenants who will be displaced by demolition.

E. Public and Indian Housing Drug Elimination Program (''PHDEP'') and Technical Assistance (''TA'') Program

A NOFA was published in the Federal Register on April 8, 1996 (61 FR 15674) announcing approximately $250 million for PHDEP. A notice was published in the Federal Register on July 10, 1996 (61 FR 36472), which makes two amendments to the April 8, 1996 NOFA, and reopens the application period for a period of 30 days. The application deadline under the July 10, 1996 NOFA is August 9, 1996.

A NOFA was published in the Federal Register on June 25, 1996 ((61 FR 32902) announcing the availability of $1.5 million under the PHDEP TA program. OCRA set aside $10 million for ''grants, technical assistance, contracts and other assistance training, program assessment and execution for or on behalf of public housing agencies and resident organizations.'' This NOFA makes $1.5 million out of the $10 million available under the PHDEP TA program. The NOFA provides that applications may be submitted anytime up to August 16, 1996.

F. Economic Development and Supportive Services Program

The OCRA provided $53 million for supportive services under Community Development Block Grants. This funding will be used as follows:

1. *Section 202 Service Coordinators*: Five million dollars will be used to assist elderly residents to obtain the supportive services they need from community agencies in order to prevent premature or unnecessary institutionalization. The Office of Housing will award funds on a first come, first serve, basis pursuant to current procedures.

2. *Tenant-Based Section 8 Family Self-Sufficiency Service Coordinators (FSS)*: A NOFA was published on July 26, 1996 (61 FR 39262), announcing $9.2 million for this program. Under the FSS program, HAs are required to use Section 8 rental assistance together with public and private resources to provide supportive services to enable participating families to achieve economic independence and self-sufficiency. Effective delivery of supportive services is a critical element in a successful program. Funds are available under this NOFA to employ or otherwise retain the services of up to one FSS program coordinator for one year. A part-time FSS program coordinator may be retained where appropriate. The application deadline is September 9, 1996.

3. *Economic Development and Supportive Services*: The Department will publish a NOFA in the Federal Register announcing a total of up to $30.8 million in grant funds. This funding will allow HAs to (1) provide economic development opportunities or supportive services to assist residents of public and Indian housing to become economically self-sufficient and (2) provide supportive services to assist elderly and handicapped persons to live independently.

4. *Bridges to Work*: The Department has set-aside $8 million for a Bridges to Work Demonstration to assist central city low-income individuals and families, including public housing and Section 8 recipients, who are work ready, to become self-sufficient by linking them with suburban jobs. The linkage is to be achieved by coordinated programs of job search assistance, work preparation and job retention counseling, transportation and child care assistance, and other necessary supportive services. The six sites for the demonstration are: Baltimore, Chicago, Denver, Milwaukee, St. Louis, and Philadelphia.

G. Public and Indian Housing Youth Sports (YSP) Program

There will not be a NOFA this year for the Public and Indian Housing Youth Sports Program. A notice was published in the Federal Register on June 12, 1996 (61 FR 29884) that announced that HUD would not fund the Youth Sports Program for FY 1996.

H. Tenant Opportunities Program (''TOP'') Technical Assistance

A NOFA was published in the Federal Register on July 3, 1996 (61 FR 35022) announcing the availability of $15 million for this program. TOP provides assistance to Resident Councils, Resident Management Corporations, Resident Organizations, National Resident Organizations, Regional Resident Organizations, and Statewide Resident Organizations, 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 application deadline is August 9, 1996.

II. Extension of Administrative Provisions From the Rescissions Act

A. Expansion of Eligible Uses of Modernization and Development Assistance

1. General Provisions

Section 201(a) of the OCRA gives HAs significant new flexibility in using public and Indian housing modernization and development funds provided under authority of the United States Housing Act (the ''USHA''). This provision follows the expansion of the permitted uses of modernization funds that was made by Section 1001(a) of the 1995 Rescissions Act (Pub.L. 104–19, approved July 27, 1995). The OCRA amends Section 14(q) of the USHA (as defined above), which was added by the 1995 Rescissions Act, to further expand the eligible uses of modernization assistance and also to expand the eligible uses of public and Indian housing development assistance. These provisions apply to modernization and development funds appropriated in FY 1996 and in prior fiscal years.

With certain limitations, HAs may now use modernization assistance or development assistance for any eligible activity authorized (a) by the public and Indian housing modernization program (under Section 14 of the USHA, as amended by the OCRA), (b) by the public and Indian housing development program (under Section 5 of the USHA), or (c) by applicable appropriations acts for an HA. Eligible activities include the demolition, rehabilitation, revitalization, and replacement of existing units and developments. Eligible activities also include those authorized under the Urban Revitalization Demonstration program (also known as ''HOPE VI''), as set forth in the 1993 HUD, VA, and Independent Agencies Appropriations Act (Pub.L. 102–389, approved), which authorizes both physical revitalization activities and activities to promote resident self-sufficiency, such as community services, social services, training and education, and other activities designed to encourage and support work by public housing residents. Although IHAs have not been eligible for HOPE VI funding in the past, IHAs may now use modernization and development funds for eligible activities authorized under HOPE VI.

2. Assistance Previously Allocated for Priority Replacement Housing

The expansion of the eligible uses of modernization and development

assistance, as described above, does not apply to public and Indian housing development assistance that was allocated, as determined by the Department, for priority replacement housing. Such assistance may only be used for the specific activities for which it was allocated to the HA by the Department. In general, development assistance allocated for priority replacement housing is development assistance that was committed by the Department to an HA for an approved replacement housing plan, or development assistance (including assistance under a Major Reconstruction of Obsolete Projects (''MROP'') grant) which was not under an Annual Contributions Contract prior to July 27, 1995, and which HUD did not recapture. (Please note that the MROP program does not apply to IHAs.)

3. Section 5(j) Limitations on Public Housing Development

While the OCRA authorizes the use of modernization assistance for the development activities authorized by Section 5 of the USHA, it does not exempt HAs from compliance with other applicable requirements of Section 5. In particular, the development of public housing (though not Indian housing) remains subject to Section 5(j) of the USHA, which limits the circumstances under which HUD may provide assistance to an HA for development activity. More specifically, Section 5(j) permits the use of funds for public housing development only if at least one of the following five conditions is met:

(1) The Department determines that additional amounts are required to complete the development of units already under development;

(2) The HA certifies that 85 percent of its units—

(i) Are maintained in substantial compliance with Housing Quality Standards;

(ii) Will be so maintained upon completion of modernization for which funding has been awarded; or

(iii) Will be so maintained upon completion of modernization which is likely to be funded;

(3) The HA certifies that such development—

(i) Is for replacement housing; or

(ii) Is required to comply with court orders or directions of the Department;

(4) The HA certifies that it has demands for family housing not satisfied by tenant-based Section 8 assistance for which it plans developments of not more than 100 units; or

(5) In the case of elderly housing development, the HA certifies that the use of such assistance will expand housing opportunities for disabled persons.

4. Other Limitations on Incremental Public Housing Development

Section 201(a)(1) of the OCRA provides that housing units developed with modernization funds are eligible for operating subsidies unless the Department determines that such units do not meet other requirements of the USHA. The USHA contains other limitations on the use of modernization assistance for public housing development in addition to those imposed by Section 5(j).

Section 14 of the USHA (which authorizes the public and Indian housing modernization program), provides that the Department may disapprove an HA's 5-year comprehensive plan for modernization where the Department determines that the HA's action plan for performing modernization work is plainly inappropriate to meeting the needs identified in the comprehensive plan. HUD considers the use of modernization funds to be ''plainly inappropriate'' under Section 14 where an HA would use such funds for incremental development (i.e., for units other than replacement housing) while the HA has substantial backlog modernization needs, unfunded emergency work, or work required to comply with Federal laws (e.g., lead-based paint abatement or Section 504 compliance) or court-ordered settlements at existing developments. In such situations, an HA may not use modernization funds for incremental public housing development, although it may use such funds to meet replacement housing needs or to fulfill obligations under a court-ordered settlement.

Section 9(a)(2) of the USHA permits the Department to make operating assistance available only for public housing units that have been ''developed'' under an ACC authorized by Section 5 of the USHA. Section 5 authorizes the Department to make grants to HAs for the development of public housing. Under Section 201(a) of the OCRA, an HA may now also use Section 14 modernization funds for Section 5 development activities. Thus, under the USHA, the Department's contribution of operating assistance to an HA is predicated on the Department's contribution of funds for development, regardless of whether such funds were allocated to the HA under authority of Section 5 or Section 14.

By the same reasoning, an HA may not use a nominal amount of Federal capital assistance simply to trigger operating assistance eligibility for incremental (i.e., other than replacement) units. As outlined above, only units ''developed'' under Section 5 are eligible for operating assistance under Section 9. Therefore, it would subvert the intent of the statute and the structure of the program to commit public housing operating assistance in a manner that is essentially independent of public housing capital assistance, or for purposes other than expansion of low-income housing resources (e.g., to relieve State or local jurisdictions of responsibility for their low-income housing programs).

The Department does not intend, at this time, to set firm rules as to the level or nature of capital investment that an HA must make in order for housing units to be eligible for public housing operating assistance. Rather, the critical test for determining operating subsidy eligibility should be whether such units could have been developed but for the HA's investment of Federal capital funds. In general, the Department will consider this test to have been met, without further scrutiny, if the HA contributes Federal funds amounting to at least 50 percent of the HUD-computed total development cost of the units, including acquisition and rehabilitation costs. An HA may meet this test in all other cases (i.e., where it contributes less than 50 percent of the total development cost) only where it demonstrates to HUD's satisfaction that the HA's investment of Federal capital funds is necessary to leverage other, non-Federal capital funds essential to development, and will not be used merely to trigger eligibility for Federal operating assistance.

The Department is aware that these restrictions preclude an HA from receiving Federal public housing operating subsidies for incremental housing units that would be donated to the HA, or for which the HA would contribute a nominal amount of capital funds. However, HUD believes that this result is required by existing law and that a different outcome would require further Congressional action.

Finally, HAs should also be aware that public housing development activity under Section 5 of the USHA, including that funded with modernization assistance, is subject to the public housing development rule at 24 CFR part 941. The Department intends to issue a new, streamlined development rule in the near future. IHAs are subject to the development

regulations found in 24 CFR part 950, subpart C.

The Department is also issuing a separate notice that provides additional processing guidance, including accounting procedures, on using modernization funds for development activities and using development funds for modernization activities.

5. Operating Subsidy Eligibility

Subject to the limitations above, low-income and very low-income units assisted under Section 14(q)(1) of the USHA are eligible for operating subsidies, unless (as provided in the OCRA) the Department determines that such units or developments do not meet other requirements of the USHA.

6. Use of Modernization and Development Assistance for Operations

An HA may also use up to 10 percent of the modernization and development assistance it has received in FY 1996, or in any prior fiscal year, for operating expenses of projects included under Section 9 of the USHA. An HA may implement this provision by requisitioning funds from its modernization (or development) grant program and reflecting the funds for operations as a cost in its modernization (or development) plan. Any such funds may be used by an HA for any eligible expenditure included in an approved operating budget.

Except for modernization and development assistance used for operating subsidy purposes, modernization and development assistance for a fiscal year shall principally be used, states the OCRA, for the following activities: the physical improvement, replacement of public housing, other capital purposes, and for associated management improvements, and such other extraordinary purposes as may be approved by the Department. In general, the Department considers assistance to be used ''principally'' for the eligible activities described above in this paragraph as long as at least 90 percent of the assistance is used for such activities.

B. Assistance to Mixed-Income Developments

1. Eligible Entities and Forms of Assistance

The OCRA also amends Section 14(q)(2) of the USHA to permit HAs to provide assistance to developments that include units other than public housing units (''mixed-income developments''), in the form of a grant, loan, operating assistance, or other form of investment. An HA may provide such assistance to entities described in paragraphs (1) or (2), below.

(1) A partnership, a limited liability company, or other legal entity in which the HA or its affiliate is a general partner, managing member, or otherwise participates in the activities of such entity. For purposes of this paragraph, HUD will find that an HA ''otherwise participates'' in the activities of an entity if the HA and the entity have entered into a valid and enforceable regulatory or operating agreement, which, among other things, (a) states the number and characteristics of units in the development that will be made available for occupancy by low-income and very low-income families, as well as the duration and conditions of such availability, and (b) provides binding assurances that the operation of such units will be in accordance with public housing program requirements. The HA must perform monitoring and oversight duties, including but not limited to, periodic performance reviews, or provide for delivery of services and programs to low- and very low-income residents in mixed-income developments.

(2) Any entity which grants to the HA the option to purchase the development within 20 years after initial occupancy in accordance with certain rules under the Low-Income Housing Tax Credit program, as set forth in Section 42(i)(7) of the Internal Revenue Code of 1986, as amended.

2. Units for Low-Income and Very Low-Income Occupancy

Units in any such mixed-income development must be made available for periods of not less than 20 years, by master contract or by individual lease, for occupancy by low-income and very low-income families whom the HA refers (either directly, or through any other tenant selection and assignment system now permissible under public and Indian housing program rules) to the development. The period of availability may be extended by HUD, on a case-by-case basis, if the level of public benefit is not commensurate with the amount and kind of assistance provided. Except as otherwise approved by HUD, the number of units in such a development that must be made available must be in the same proportion to the total number of units in the development that the total financial commitment provided by the HA bears to the value of the total financial commitment in the development, provided that the number of units for occupancy by low-income and very low-income families must not be less than the number of units that could have been developed under the conventional public and Indian housing program with the assistance involved. In making this determination, the financial commitment provided by the HA to cover the cost of putting an existing public housing site in buildable condition, such as relocation, demolition, and site remediation, should not be included in the proportionality calculation.

3. Local Real Estate Taxes

A mixed-income development may elect to have all units subject only to the applicable local real estate taxes, notwithstanding that the low-income units assisted by public and Indian housing funds would otherwise be subject to Section 6(d) of the USHA, which relates to local real estate tax exemptions and payments in lieu of taxes for public housing units.

4. Deviations from the United States Housing Act

Section 201(a) of the OCRA adds a new Subsection 14(q)(4) to the USHA, which directs HUD to promulgate regulations providing guidelines and procedures under which an entity that owns or operates a mixed-income development may deviate from various requirements. In particular, the OCRA states that a contract between an HA and such an entity may provide that, in the event the HA is unable to fulfill its contractual obligations with respect to the public housing units in the development (as a result of a reduction in operating subsidy appropriations, or any other change in applicable law), then that entity may deviate, under procedures and requirements to be developed through regulations by HUD, from otherwise applicable restrictions under the USHA regarding rents, income eligibility, and other areas of public housing management. Such deviations may be made with respect to a portion or all of the public housing units in the development, to the extent necessary to preserve the viability of those units while maintaining the low-income character of the units, to the maximum extent practicable. HUD expects to provide regulations in the near future.

C. Suspension of One-For-One Replacement Housing Requirement

Section 201(b) of the OCRA extends, up to September 30, 1996, the suspension of the one-for-one replacement housing requirement that was made in the Fiscal Year 1995 Rescissions Act. Therefore, except as provided below with respect to priority replacement housing, there is no

replacement housing requirement for public housing demolition, disposition, or homeownership conversion applications that are approved by the Secretary, or for other consolidation and relocation activities of HAs undertaken before September 30, 1996. In such cases, HAs are no longer required to provide replacement housing, and HUD is not obligated to commit the funds necessary to carry out the replacement housing plan.

The OCRA also amends Section 18(f) of the USHA, which was added by the 1995 Rescissions Act, and which describes the circumstances under which replacement housing units for public housing units demolished may be built on the original public housing site or in the same neighborhood. The OCRA amendment provides that ''no one may rely on [Section 18(f)] as the basis for reconsidering a final order of a court issued, or a settlement approved, by a court.''

III. Streamlining Section 8 Tenant-Based Assistance

The Department issued Notice PIH 26–23 (HA) on May 1, 1996 providing detailed instructions to HAs on implementing the Section 8 administrative provisions. While the scope of this Notice is described briefly below, HAs should review the Notice in its entirety.

A. ''Take-One, Take-All'' Suspension

Section 203(a) of the OCRA suspends Section 8(t) of the USHA for FY 1996. Section 8(t) required that an owner who entered into a Section 8 HAP contract on behalf of any tenant in a multifamily housing project could not refuse to lease certain units in all multifamily projects of the owner, if the proximate cause of the refusal was that the family was a certificate or voucher holder.

B. Suspension of Owner Termination Notices to HUD

Section 203(b) of the OCRA amends Section 8(c)(9) of the USHA so that the owner termination notice provisions do not apply to HAP contracts under the certificate and voucher program for FY 1996.

C. ''Endless Lease'' Elimination

Section 203(c) of the OCRA amends Sections 8(d)(1)(B)(ii) and (iii) of the USHA for FY 1996. Section 8(d)(1)(B)(ii) provides that the owner may not terminate a Section 8 tenancy except for serious or repeated lease violations, for violation of applicable Federal, State, or local law, or for other good cause. Section 8(d)(1)(B)(iii) provides that certain criminal activity is grounds for the tenancy termination. The OCRA amends the law to confirm that the above cited statutory requirements for termination of tenancy only apply to a termination that occurs ''during the term of the lease.''

IV. Public Housing/Section 8 Moving to Work Demonstration

Section 204 of the OCRA creates the Public Housing/Moving to Work Demonstration (''MTW'') in order to give HAs and HUD the flexibility to design and test various approaches for providing and administering housing assistance that: reduce cost and achieve greater cost effectiveness in Federal expenditures; give incentives to families with children when the head of household is working, seeking work, or is preparing for work by participating in job training, educational programs, or programs that assist people to obtain employment and become economically self-sufficient; and increase housing choices for low-income families.

HUD will implement MTW in two phases. The first, entitled Jobs-Plus, will be a collaborative effort of HUD, the Manpower Demonstration Research Corporation, and the Rockefeller Foundation. Jobs-Plus will target six to ten public housing developments for families with a goal of substantially raising employment levels by providing saturation-level services to residents. The impact of Jobs-Plus will be closely monitored in order to develop replicable models for increasing employment levels among public housing residents. HUD will use the $5 million in technical assistance funds appropriated in the OCRA to leverage additional funding from private foundations. Requests for expressions of interest in Jobs-Plus were mailed to certain HAs deemed to be the most promising for this aspect of the demonstration on June 14, 1996.

The second phase of MTW will be implemented by selecting approximately 20 to 25 high-performing HAs to design innovative programs for providing housing assistance and related services to low-income families. Selected HAs may combine public housing operating and modernization funds and Section 8 assistance into a single pool of resources. They may also seek HUD waivers from most provisions of the United States Housing Act, permitting unprecedented flexibility in program design and implementation.

The Department will issue an invitation to apply for this phase of MTW in the near future.

V. Extension Period for Sharing Public Housing Utility Cost Savings With HAs

Section 218 of the OCRA removes the limitation on the period during which HUD may share utility cost savings with HAs. The Act amends Section 9(a)(3)(B)(i) of the USHA by deleting the words ''for a period not to exceed six years''.

Consequently, HAs that take actions to reduce the rate paid for utilities (including water, fuel oil, electricity and gas) now will be able to retain half of the savings for as long as the savings last. Examples of such actions are the well-head purchase of natural gas, administrative appeals, or legal action (beyond routine public participation in general ratemaking proceedings leading to broadly applicable rate adjustments). Under these circumstances, HAs that have reached the end of the six year period previously permitted for the sharing of the resulting rate savings may now continue to share such savings on a fifty/fifty basis. There is no longer a specified time limitation on the sharing of rate saving arrangements.

HAs which had reached the six year time limit as of September 30, 1995 may reinstate the fifty/fifty rate savings with HUD for the fiscal years ending September 30, 1996 and thereafter. Other HAs contemplating entering into such arrangements may do so with the knowledge that the sharing of the savings will continue without the specific six year time limit.

This change is being made not only for public housing but also for Indian housing.

VI. Repeal of Frost-Leland

Section 220 of the OCRA repeals section 415 of the fiscal year 1988 appropriations act (often referred to as ''Frost-Leland''), which prohibited the use of any funds appropriated under any act for any fiscal year for demolishing George Loving Place, Edgar Ward Place or Elmer Scott Place in Dallas, Texas, or Allen Parkway Village in Houston, Texas.

VII. Minimum Rent Waiver Authority

Section 230 of the OCRA permits HUD or HAs to waive the minimum rent requirement to provide a transition period for affected families. The term of the waiver approved may be retroactive, but may not apply for more than three months with respect to any family. The Department issued further guidance on this provision by Notice PIH 96–42 (HA) on June 20, 1996.

Dated: August 5, 1996.

Kevin Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 96–20361 Filed 8–8–96; 8:45 am]

BILLING CODE 4210–33–P

[Docket No. FR–4066–N–02]

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; Amendment

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

ACTION: Amendment of notice of funding availability.

SUMMARY: This notice amends a NOFA that was published in the Federal Register on July 3, 1996 (61 FR 35022), to: (1) decrease the amount of funds made available for basic and additional grants for resident organizations; (2) correspondingly increase the amount of funds made available for the provision of technical assistance by national, regional, or statewide resident organizations (NROs/RROs/SROs); and (3) extend the eligibility and the deadline for NROs/RROs/SROs to apply for funding under the other requirements and criteria set out in the July 3 NOFA. NRO/RRO/SRO applicants that have already submitted an application in accordance with the instructions of the July 3 NOFA may amend their applications before the extended deadline date of September 9, 1996.

DATES: The deadline for applications from NROs/RROs/SROs is 3:00 p.m., local time, on September 9, 1996. NRO/RRO/SRO applicants that have already submitted an application in accordance with the instructions of the July 3 NOFA also may amend their applications before this date. The deadline for applications for basic and additional grants remains 3:00 p.m., local time, on August 9, 1996. The application deadlines are firm as to date and time.

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.

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, S.W., 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, S.W., 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: The changes made in this document to the NOFA for FY 1996 for the Public and Indian Housing Tenant Opportunities Program (TOP) Technical Assistance, published on July 3, 1996 (61 FR 35022), reflect the Department's recognition that the statutory limitation on technical assistance funding under TOP is applicable to any ''public housing project'' (see 42 U.S.C. 1437r(f)(2)). Thus, for purposes of this NOFA the Department is adopting a policy that this limitation, although still applicable, does not necessarily limit to $100,000 the total funding available in all years to an intermediary applicant, which may agree to provide technical assistance and training to multiple eligible resident groups.

In addition to the changes to the NOFA that are set out in this amendment document, NROs/RROs/SROs are advised that nonprofit documents (i.e., certification of nonprofit status, by-laws, and other organizational documents) and a listing of RCs/RMCs/ROs that an applicant organization proposes to train or provide technical assistance to will be considered documentation necessary to HUD's assessment of the merits of an application. Therefore, under Section V, Corrections to Deficient Applications, in the NOFA, an application that does not include this documentation will be considered ineligible.

Accordingly, FR Doc. 96–17007, NOFA for FY 1996 for the Public and Indian Housing Tenant Opportunities Program Technical Assistance, published at 61 FR 35022 (July 3, 1996), is amended as follows:

1. On page 35022, column 1, the first paragraph following the heading ''Dates'' is revised to read as follows:

The deadline for applications from NROs/RROs/SROs is 3:00 p.m., local time, on September 9, 1996. The deadline for applications for basic and additional grants is 3:00 p.m., local time, on August 9, 1996. The application deadlines are firm as to date and time.

2. On page 35023, column 1, the second paragraph is revised by removing the amount ''$500,000'' and adding in its place the amount ''$1 million''.

3. On page 35024, column 1, item 7 under the heading ''D. New Features of this NOFA'' is amended by revising the last sentence to read as follows:

(7) * * * The NROs/RROs/SROs cannot list RCs/RMCs/ROs that have previously received the maximum of $100,000 or that were previously trained by the NRO/RRO/SRO.

* * * * *

4. On page 35024, column 1, item 10 under the heading ''D. New Features of this NOFA'' is revised to read as follows:

(10) RCs/RMCs/ROs and city-wide/jurisdiction-wide organizations that previously were funded the maximum of $100,000 under the TOP cannot reapply for funding under this NOFA. This restriction is in accordance with section 20(f)(2) of the 1937 Act (42 U.S.C. 1437r(f)(2)), which states ''the financial assistance provided under this subsection with respect to any public housing project may not exceed $100,000.'' A NRO/RRO/SRO that previously was funded under the TOP may reapply for a maximum of $100,000 in funding under this NOFA, without regard to amounts awarded to that NRO/RRO/SRO under previous NOFAs, but its application may not include any RC/RMC/RO that either: (1) was previously trained by the NRO/RRO/SRO; or (2) was previously funded the maximum total of $100,000 under the TOP.

5. On page 35024, column 3, under the heading ''F. Funding'', the second paragraph is revised by removing the amount ''$500,000'' and adding in its place the amount ''$1 million'', and the third paragraph is revised by removing the amount ''$14,475,000'' and adding in its place the amount ''$13,975,000''.

6. On page 35025, column 1, the second paragraph under the heading ''NROs/RROs/SROs Grants'' is amended by revising the last sentence to read as follows:

* * * A NRO/RRO/SRO cannot list RCs/RMCs/ROs that have already received the maximum of $100,000 or

that the NRO/RRO/SRO had trained previously.''

7. On page 35026, column 3, item (9) under the heading ''J. Eligibility'' is amended by revising the second sentence to read as follows:

* * * A NRO/RRO/SRO that previously was funded under the TOP may reapply for funding under this NOFA, but its application may not include any RC/RMC/RO that was previously trained by the NRO/RRO/SRO or was previously funded the maximum total of $100,000 under the TOP.

* * * * *

8. On page 35033, column 2, the second and third sentences in the second paragraph in item (1) under the heading ''B. Application Submission and Development'' are revised to read as follows:

* * * The Appendix lists addresses of HUD Field Offices and Offices of Native American Programs that will accept completed applications. The deadline for applications for basic and additional grants is 3:00 p.m., local time, on August 9, 1996; the deadline for applications from NROs/RROs/SROs is 3:00 p.m., local time, on September 9, 1996. All NROs/RROs/SROs must submit by the deadline date completed applications or amendments to previously submitted applications to the local HUD Field Offices and Office of Native American Programs. After applications are screened by the Field Offices, all applications will be forwarded to HUD Headquarters for review and scoring.

Authority: 42 U.S.C. 1437r; 42 U.S.C. 3535(d).

Dated: August 6, 1996.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 96–20385 Filed 8–8–96; 8:45 am]

BILLING CODE 4210–33–P

[Docket No. FR–4052–N–02]

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Notice of Extension of Application Due Date for the Notice of Funding Availability (NOFA) for Supportive Housing for the Elderly

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of extension of application due date for funding for Fiscal Year (FY) 1996.

SUMMARY: This notice extends to September 6, 1996 the application due date for the FY 1996 Notice of Funding Availability for Supportive Housing for the Elderly, published on July 8, 1996.

APPLICATION PACKAGE: The Application Package can be obtained from the Multifamily Housing Clearinghouse, P.O. Box 6424, Rockville, MD 20850, telephone 1–800–685–8470 (the TTY number is 1–800–483–2209); and from the appropriate HUD Office identified in appendix A to the NOFA published on July 8, 1996 (61 FR 35866). The Application Package includes a checklist of exhibits and steps involved in the application process.

DATES: The deadline for receipt of applications is extended to 4:00 p.m. local time on *September 6, 1996.* The application deadline is firm as to *date* and *hour.* In the interest of fairness to all applicants, HUD will not consider any application that is received after the deadline. Sponsors should take this into account and submit applications as early as possible to avoid the risk of unanticipated delays or delivery-related problems. In particular, Sponsors intending to mail applications must provide sufficient time to permit delivery on or before the deadline date. Acceptance by the Post Office or private mailer does not constitute delivery. Facsimile (FAX), COD, and postage due applications will not be accepted.

ADDRESSES: Applications must be delivered to the Director of the Multifamily Housing Division in the HUD Office for your jurisdiction. A listing of HUD offices, their addresses, and telephone numbers was attached as appendix A to the NOFA published on July 8, 1996 (61 FR 35866). HUD will date and time stamp incoming applications to evidence timely receipt, and, upon request, will provide the applicant with an acknowledgement of receipt.

FOR FURTHER INFORMATION CONTACT: The HUD Office for your jurisdiction, as listed in appendix A to the NOFA published in the Federal Register on July 8, 1996 (61 FR 35866).

SUPPLEMENTARY INFORMATION: On July 8, 1996 (61 FR 35866), HUD published a notice announcing the availability of fiscal year 1996 funding for Supportive Housing for the Elderly. The application due date given in that publication is August 19, 1996. In order to provide more time for the preparation of applications under the NOFA, this notice extends the application due date to September 6, 1996.

Dated: August 5, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 96–20279 Filed 8–8–96; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. FR–4053–N–02]

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Notice of Extension of Application Due Date for the Notice of Funding Availability (NOFA) for Supportive Housing for Persons with Disabilities

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of extension of application due date for funding for Fiscal Year (FY) 1996.

SUMMARY: This notice extends to September 6, 1996 the application due date for the FY 1996 Notice of Funding Availability for Supportive Housing for Persons with Disabilities, published on July 8, 1996.

APPLICATION PACKAGE: The Application Package can be obtained from the Multifamily Housing Clearinghouse, P.O. Box 6424, Rockville, MD 20850, telephone 1–800–685–8470 (the TTY number is 1–800–483–2209); and from the appropriate HUD Office identified in appendix A to the NOFA published on July 8, 1996 (61 FR 35878). The Application Package includes a checklist of exhibits and steps involved in the application process.

DATES: The deadline for receipt of applications is extended to 4:00 p.m. local time on *September 6, 1996.* The application deadline is firm as to *date* and *hour.* In the interest of fairness to all applicants, HUD will not consider any application that is received after the deadline. Sponsors should take this into account and submit applications as early as possible to avoid the risk of unanticipated delays or delivery-related problems. In particular, Sponsors intending to mail applications must provide sufficient time to permit delivery on or before the deadline date. Acceptance by a Post Office or private mailer does not constitute delivery. Facsimile (FAX), COD, and postage due applications will not be accepted.

ADDRESSES: Applications must be delivered to the Director of the Multifamily Housing Division in the HUD Office for your jurisdiction. A listing of HUD Offices, their addresses, and telephone numbers was attached as appendix A to the NOFA published on

July 8, 1996. HUD will date and time stamp incoming applications to evidence timely receipt, and, upon request, will provide the applicant with an acknowledgment of receipt.

FOR FURTHER INFORMATION CONTACT: The HUD office for your jurisdiction, as listed in appendix A to the NOFA published in the Federal Register on July 8, 1996 (61 FR 35878).

SUPPLEMENTARY INFORMATION: On July 8, 1996 (61 FR 35878), HUD published a notice announcing the availability of FY 1996 funding for Supportive Housing for Persons with Disabilities. The application due date given in that publication is August 19, 1996. In order to provide more time for the preparation of applications under the NOFA, this notice extends the application due date to September 6, 1996.

Dated: August 5, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 96–20280 Filed 8–8–96; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Steven Anderson, Germantown, TN, PRT–817666.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Erie Zoological Gardens, Erie, PA, PRT–817087.

The applicant requests a permit to import one male captive-born Amur leopard (*Panthera pardus orientalis*) from Tierpark, Berlin, Germany for the purpose of enhancement of the species through captive propagation.

Applicant: Siegfried and Roy Enterprises, Inc., Las Vegas, NV, PRT–817836.

The applicant requests a permit to import two tigers (*Panthera tigris*) from Seene-GroBwild, Safariland Gmbh & Co. KG, Stukenbrock, Germany for the purpose of enhancement of the species through conservation education and caprive breeding.

Applicant: Thomas Vail, Pepper Pike, OH, PRT–817878.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Rodney Honeycutt, Texas A&M University, College Station, TX, PRT–817877.

The applicant requests a permit to import blood and tissue samples from ocelots (*Leopardalus pardalis*) collected in the wild in Mexico, incidental to other research activities, to enhance the survival of the species through scientific research.

Applicant: National Zoological Park, Washington, D.C., PRT–817498.

The applicant requests a permit to export up to eight golden lion tamarin (*Leontopithecus rosalia rosalia*) to the Brazilian Institute for the Environment and Renewable Resources (IBAMA), Rio de Janeiro, Brazil, for reintroduction into the wild to enhance the survival of the species.

Applicant: Dan Wintersteen, Crystal Lake, IL, PRT–817780.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygarcus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: African Lion Safari & Game Farm, Ontario Canada, PRT–817217.

The applicant requests a permit to reexport and reimport four captive born Asian elephants (*Elephas maximus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

Applicant: African Lion Safari & Game Farm, Ontario Canada, PRT–817258.

The applicant requests a permit to reexport and reimport four captive born Asian elephant (*Elephants maximus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

Applicant: Felix G. Widlacki, Orland Park, IL, PRT–811572.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygarcus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Have Trunk Will Travel, Perris, CA, PRT–817421.

The applicant request a permit to import three Asian elephants (*Elephus maximus*) that were previously exported to African Game Farm, LTD, Ontario, Canada from Have Trunk Will Travel for the purpose of enhancement of the survival of the species through propagation.

Applicant: The Hawthorn Corporation, Grayslake, IL, PRT–816941.

The applicant requests a permit to export and import one Asian elephants born in captivity (*Elephas maximus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

Applicant: Miller Equipment Co., Inc., Hugo, OK, PRT–817416.

The applicant requests a permit to purchase in interstate commerce four Asian elephants (*Elephas maximus*) from Bucky R. Steele, Jefferson, TX for the purpose of enhancement of the survival of the species through propagation.

Applicant: Robert F. Kennedy, Jr., White Plains, NY, PRT–817419.

The applicant requests a permit to import the skull, not including the tusks, of an African elephant (*Loxodonta africana*) and the skull of a Nile crocodile (*Crocodylus niloticus*) from Zimbabwe for the purpose of enhancement of the survival of the species through conservation education.

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 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application(s) for permits to conduct certain activities with marine mammals. The application(s) was/were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Applicant: California Dept. of Fish and Game, Sacramento, CA, PRT–782423.

Type of Permit: Take for Scientific Research.

Name and Number of Animals: southern sea otter, *Enhydra lutris nereis*, 30.

Summary of Activity to be Authorized: The applicant has requested a permit to take up to 30 sea otters. Dependent animals, animals weighing less than 20 lbs. and obviously pregnant animals will be flipper tagged, implant subdermally with a transponder chip, and immediately released. Animals weighing more than 20 pounds, and not obvioulsy pregnant will be transported via kennel carrier to a clinic where they will be tranquilized, flipper tagged, implanted subdermally with a transponder chip, swabbed for fur pelt residue, have 60 ml of blood withdrawn, and released within 4 hours of capture. This permit is a renewal request for activities authorized by permit PRT–782423.

Source of Marine Mammals for Research/Public Display: Monterey Bay, CA.

Period of Activity: Up to five years from issuance of a permit, if issued.

Concurrent with the publication of this notice in the Federal Register, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 430, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice at the above address.

Dated: August 6, 1996.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 96–20356 Filed 8–8–96; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[AK–962–1410–00–P]

Alaska; Notice for Publication; AA–9106–G; AA–9106–O; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that decisions to issue conveyance under the provisions of Sec. 14(h)(3) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(3), will be issued to the Natives of Kodiak, Inc. The lands involved are in the vicinity of Kodiak, Alaska and are described as:

Lot 1, U.S. Survey No. 1675, Alaska, containing 14.27 acres.

Lot 1, U.S. Survey No. 5669, Alaska, containing 47.28 acres.

Lot 2, U.S. Survey No. 10004, Alaska, containing 90.59 acres.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Kodiak Daily Mirror. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until September 9, 1996 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Chris Sitbon,

Land Law Examiner, ANCSA Adjudication Team, Branch of 962 Adjudication.

[FR Doc. 96–20323 Filed 8–8–96; 8:45 am]

BILLING CODE 4310–JA–M

[NM–060–06–1020–00; 604]

Change of Mailing Address

AGENCY: Bureau of Land Management, Interior.

SUMMARY: This notice sets forth the new mailing address of the Bureau of Land Management, Roswell District Office and Roswell Resource Area Office, Roswell, New Mexico.

DATES: September 15, 1996.

FOR FURTHER INFORMATION CONTACT: Howard Parman, Public Affairs Officer, Bureau of Land Management, 1717 West 2nd Street, Roswell, NM 88201 (505) 627–0212.

SUPPLEMENTARY INFORMATION: Effective September 15, 1996, the Department of Interior's Bureau of Land Management, New Mexico State Office, Roswell District Office and Roswell Resource Area Office, Roswell, New Mexico, will be located at 2909 W. 2nd Street, Roswell, New Mexico 88201.

Dated: August 2, 1996.

Leslie M. Cone,

District Manager.

[FR Doc. 96–20289 Filed 8–8–96; 8:45 am]

BILLING CODE 4310–FB–M

[NM–017–1430–01; NMNM 87007]

Albuquerque District, New Mexico; Notice of Realty Action: Corrected Notice for a Recreation and Public Purpose Lease/Conveyance

AGENCY: Bureau of Land Management, Interior.

ACTION: Corrected Recreation and Public Purpose Lease/conveyance notice.

SUPPLEMENTARY INFORMATION: The notice of realty action published June 23, 1995, page 32706 (Volume 60, Number 121) identifies public lands requested by Sandoval County, New Mexico for the purpose of expanding their cemetery R&PP lease. This notice will correct the R&PP expansion of the lease to be used for recreation. The applicant proposes to use the land for a recreational park. The subject land has been examined and found suitable for classification for lease/conveyance. The BLM will follow proper administrative procedures related to the suitability of the recreation use. No additional comment period is required.

FOR FURTHER INFORMATION CONTACT: Joe Jaramillo, Realty Specialist, Rio Puerco Resources Area, 435 Montano Rd. NE., Albuquerque, New Mexico 87107, 505 761–8779.

Dated: August 1, 1996.

Sue Richardson,

Associate District Manager.

[FR Doc. 96–20288 Filed 8–8–96; 8:45 am]

BILLING CODE 4310–FB–M

[MT–063–06–1310–01]

Montana; Notice of Intent To Prepare a Supplemental Environmental Impact Statement for the Judith-Valley-Phillips Resource Management Plan

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of intent to prepare a supplemental environmental impact statement (EIS).

SUMMARY: In accordance with Section 202 of the Federal Land Policy and Management Act of 1976 and Section 102(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management will prepare a supplement to the Judith-Valley-Phillips Resource Management Plan (RMP) and EIS for oil and gas leasing and development. The supplemental EIS will address an alternative that would avoid oil and gas leasing in areas with valuable wildlife habitat in response to a protest received on the final RMP/EIS.

DATES: Comments and recommendations on this notice should be received by September 30, 1996.

ADDRESSES: Written comments should be addressed to Jerry Majerus, Team Lead, Bureau of Land Management, Lewistown District Office, P.O. Box 1160, Lewistown, Montana 59457–1160.

FOR FURTHER INFORMATION CONTACT: Jerry Majerus, Team Lead, Bureau of Land Management, Lewistown District Office, P.O. Box 1160, Lewistown, Montana 59457–1160 (406–538–7461).

SUPPLEMENTARY INFORMATION: In September 1994, the BLM issued the Record of Decision (ROD) for the approval of portions of the Judith-Valley-Phillips Resource Management Plan and EIS. The RMP/EIS addressed management of public lands and minerals in north central Montana including Fergus, Petroleum, Judith Basin, Phillips and Valley Counties and the southern half of Chouteau County. The ROD approved the BLM's decisions for managing 2.8 million surface acres and 3.4 million acres of mineral estate with the exception of decisions relating to oil and gas leasing and development. As indicated in the ROD, the BLM will prepare a supplement to the RMP/EIS for oil and gas leasing and development. The supplemental EIS will address an alternative that would avoid oil and gas leasing in areas with valuable wildlife habitat in response to a protest received on the final RMP/EIS. The supplemental EIS and final RMP/EIS will be the basis for a ROD to lease with appropriate stipulations to protect resources, or not to lease because of sensitive resources which cannot be protected with stipulations. In the spring of 1997, the BLM anticipates requesting public comments on the draft supplemental EIS.

Dated: July 29, 1996.

David L. Mari,

District Manager.

[FR Doc. 96–20287 Filed 8–8–96; 8:45 am]

BILLING CODE 4310–DN–P

National Park Service

Notice of the Intention To Extend an Existing Concession Contract—Olympic National Park

SUMMARY: Pursuant to the Act of October 9, 1965, (79 Stat. 969; 16 U.S.C. 20 *et esq.*), notice is hereby given that the National Park Service intends to extend the following concession contracts at Olympic National Park for a period of three years. The concessioners are:

Crescent West, Inc., dba Fairholm General Store

ARAMARK Leisure Services, Inc. dba Kalaoch Lodge

Langsen LLC, dba Sol Duc Hot Springs Resort

These extensions are necessary to allow the continuation of public services during the completion of the planning documents at three locations in the park. The current three concessioners have performed their obligations to the satisfaction of the Secretary and retain their right of preference in renewal pursuant to the provisions of Section 5 of the Act of October 9, 1965, (79 Stat. 969; 16 U.S.C. 20 *et esq.*) and 36 CFR 51.5, under this administrative action to extend the existing contracts.

SUPPLEMENTARY INFORMATION: The concession contracts at Olympic National Park will expire on December 31, 1996, unless extended. The National Park Service will not renew these contracts for an extended period until the Development Concept Plan and Site Plans can be completed to determine the future direction for concession services at all three locations within Olympic National Park. The necessary planning process will have a direct effect on the future concession activities. The planning process deals with complex issues associated with both cultural and natural resources and may take as long as three years to complete. Until that planning process is completed, it will not be in the best interest of Olympic National Park to enter into a long term concession contract. For these reasons, it is the intention of the National Park Service to extend the current contracts for a period of three years beginning January 1, 1997.

Information regarding this notice can be sought from: Chief, Division of Concession Management, Olympic National Park, 600 E. Park Avenue, Port Angeles, Washington 98362, or call: (360) 452–4501 Ext. 211, Attention: Mr. James D. Schultz.

Dated: July 30, 1996.

Stephen G. Crabtree,

Acting Field Director, Pacific West Area.

[FR Doc. 96–20351 Filed 8–8–96; 8:45 am]

BILLING CODE 4310–70–P

Proposal Award Concession Permits; Correction; Public Notice

AGENCY: National Park Service, Interior.

ACTION: Correction to public notice, proposal to award concession permits, Ozark National Scenic Riverways.

SUMMARY: This notice contains a correction to the public notice that was published Monday, June 17, 1996 (61 FR 30637). That notice advertised the National Park Service's proposal to award 20 concession permits authorizing continued operation of canoe, inner tube and johnboat rentals, merchandise stores, woodlots, hot showers and related services for the public at Ozark National Scenic Riverways.

EFFECTIVE DATE: August 9, 1996.

FOR FURTHER INFORMATION CONTACT: Superintendent, Ozark National Scenic Riverways, P.O. Box 490, Van Buren, Missouri 63965.

SUPPLEMENTARY INFORMATION:

Need for Correction

The Summary section of the notice published on Monday, June 17, 1996 (61 FR 30637) incorrectly stated that the term of the proposed new permits will be for ''a period of five (5) years and will expire December 31, 2000.''

Correction of Notice

The proposed new permits will have a term of five (5) years and will expire December 31, 2001.

Dated: August 5, 1996.

Wendelin M. Mann,

Acting Chief, Concessions Division.

[FR Doc. 96–20352 Filed 8–8–96; 8:45 am]

BILLING CODE 4310–70–M

Delaware and Lehigh Navigation Canal National Heritage Corridor Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE AND TIME: Wednesday, August 21, 1996; 1:30 p.m. until 4:30 p.m.

ADDRESSES: Mauch Chunk Historical Museum and Cultural Center, Inc. 41 West Broadway, Jim Thorpe, PA 18229.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh Canal National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

FOR FURTHER INFORMATION CONTACT: Deputy Director, Delaware and Lehigh Navigation Canal, National Heritage Corridor Commission, 10 E. Church Street, Room P–208, Bethlehem, PA 18018 (610) 861–9345.

SUPPLEMENTARY INFORMATION: The Delaware and Lehigh Navigation Canal National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988.

Dated: August 1, 1996.

David B. Witwer,

Deputy Director, Delaware and Lehigh Navigation Canal NHC Commission.

[FR Doc. 96–20282 Filed 8–8–96; 8:45 am]

BILLING CODE 6820–PE–M

Maine Acadian Culture Preservation Commission; Notice of Change of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463) that the Maine Acadian Culture Preservation Commission meeting scheduled for Thursday, August 15, 1996, has been changed to Friday, August 23, 1995. The meeting will convene at 7:00 PM at the Acadian Village, U.S. Route 1, Van Buren, Aroostook County, Maine.

The Maine Acadian Culture Preservation Commission was appointed by the Secretary of the Interior pursuant to the Maine Acadian Culture Preservation Act (Pub. L. 101–543). The purpose of the Commission is to advise the National Park Service with respect to:

- the development and implementation of an interpretive program of Acadian culture in the state of Maine; and
- the selection of sites for interpretation and preservation by means of cooperative agreements.

The Agenda for this meeting is as follows:

1. Review and approval of the summary report of the meeting held June 28, 1996.
2. Review of the history of the Acadian Village, Van Buren, Maine.
3. Report of Maine Acadian Culture Preservation Commission Heritage Council Working Group.
4. Report of the National Park Service project staff.
5. Opportunity for public comment.
6. Proposed agenda, place, and date of the next Commission meeting.

The meeting is open to the public. Further information concerning Commission meetings may be obtained from the Superintendent, Acadia National Park. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made at least seven days prior to the meeting to: Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, ME 04609–0177; telephone (207) 288–5472.

Dated: August 5, 1996.

Paul F. Haertel,

Superintendent, Acadia National Park.

[FR Doc. 96–20350 Filed 8–8–96; 8:45 am]

BILLING CODE 4310–70–P

Office of Surface Mining Reclamation and Enforcement

[OSM–PE–12– and OSM–EIS–30]

Availability of Final Petition Evaluation Document/Environmental Impact Statement on Fern Lake Watershed in Tennessee

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

ACTION: Availability of Final Petition Evaluation Document/Environmental Impact Statement.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is making available a final petition evaluation document/environmental impact statement (PED/EIS) on the Fern Lake watershed in Tennessee. The PED/EIS has been prepared to assist the Secretary of the Interior in making a decision on the petition to designate certain lands as unsuitable for surface coal mining operations in the Fern Lake watershed in Tennessee.

ADDRESS: Copies of the final PED/EIS may be obtained form Willis L. Gainer, Supervisor, Technical Group, Office of Surface Mining Reclamation and Enforcement, 530 Gay Street, S.W., Suite 500, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Willis L. Gainer, Office of Surface Mining Reclamation and Enforcement, 530 Gay Street, S.W., Suite 500, Knoxville, Tennessee 37902; telephone (423) 545–4074.

SUPPLEMENTARY INFORMATION: On February 14, 1994, the City of Middlesborough, Kentucky and the National Parks and Conservation Association filed a petition with OSM to designate certain lands in the Little Yellow Creek watershed (Fern Lake), Clairborne County, Tennessee, as unsuitable for surface coal mining operations under the Federal Program for Tennessee (30 CFR 942.700). OSM began to process the petition on March 15, 1994, and on January 26, 1996, OSM made available the draft PED/EIS for a 60-day public review and comment period.

The final PED/EIS was prepared by OSM as directed by section 522(d) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and in accordance with Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA). OSM has analyzed seven alternatives which range from designation of the entire petition area while allowing underground mining from mine entries located outside the petition area, to not designating any of the petition area as unsuitable for surface coal mining operations.

In preparing the final PED/EIS, OSM has revised the draft PED/EIS in response to comments received during the public comment period. These comments and OSM's responses to them are included in the final PED/EIS.

No decision will be made on the petition by the Secretary of the Interior until at least 30 days from the time the PED/EIS is made available to the public. Notice of such decision by the Secretary of the Interior will be made available to the public at that time.

Dated: August 1, 1996.

Mary Josie Blanchard,

Assistant Director, Program Support.

[FR Doc. 96–20330 Filed 8–8–96; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation

Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the Federal Register notifying the public that the Agency is preparing an information collection request for OMB review and approval and to request public review and comment on the submission. Comments are being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received October 8, 1996.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer

Lena Paulsen, Manager, Information Center, Overseas Private Investment Corporation, 1100 New York Avenue, N.W., Washington, D.C. 20527; 202/336–8565.

Summary of Form Under Review

Type of Request: Revised form.

Title: Self Monitoring Questionnaire.

Form Number: OPIC–162.

Frequency of Use: Annually.

Type of Respondents: Business or other individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies assisted by OPIC.

Reporting Hours: 2 hours per form.

Number of Responses: 180 annually.

Federal Cost: $2,700 annually.

Authority for Information Collection: Section 231(k)2, of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The questionnaire is completed by OPIC-assisted investors annually. The questionnaire allows OPIC's assessment of effects of OPIC-assisted projects on the U.S. economy and employment, as well as on the environment and economic development abroad.

Dated: August 5, 1996.

Marc Monheimer,

Senior Commercial Counsel, Department of Legal Affairs.

[FR Doc. 96–20276 Filed 8–8–96; 8:45 am]

BILLING CODE 3210–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–383]

Notice of Commission Decision Not To Modify or Vacate an Initial Determination Granting Temporary Relief, and Issuance of a Temporary Limited Exclusion Order and a Temporary Cease and Desist Order, Subject to Posting of Bond by Complainant

In the Matter of Certain Hardware Logic Emulation Systems and Components Thereof.

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined not to modify or vacate the presiding administrative law judge's (ALJ) initial determination (ID) granting temporary relief in the above-referenced investigation, and has issued a temporary limited exclusion order and a temporary cease and desist order, subject to posting of a bond by complainant.

FOR FURTHER INFORMATION CONTACT: Jay H. Reiziss, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3116.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission rule 210.66, 19 CFR 210.66.

On March 4, 1996, Quickturn Design Systems Incorporated (''Quickturn'' or ''complainant'') filed a complaint under section 337 alleging unfair acts in the importation, the sale for importation, and the sale within the United States after importation of certain hardware logic emulation systems and components thereof by two proposed respondents: Mentor Graphics Corporation (''Mentor'') of Wilsonville, Oregon and Meta Systems (''Meta'') of Saclay, France (collectively ''respondents''). Quickturn also simultaneously filed a motion for temporary relief.

In the motion for temporary relief, complainant alleged infringement of claims 1, 2, 3, and 15 of U.S. Letters Patent 5,448,496 and claim 8 of U.S. Letters Patent 5,036,473, both owned by Quickturn. On March 8, 1996, the Commission voted to institute an investigation of the complaint and to accept provisionally the motion for temporary relief, and published a notice of investigation in the Federal Register. 61 FR 9486 (March 8, 1996). The temporary relief phase of this investigation was designated ''more complicated'' by the presiding ALJ on April 14, 1996 (Order No. 14). The ALJ held an evidentiary hearing on temporary relief from April 23, 1996, through May 4, 1996. Complainant, respondents, and the Commission investigative attorney (IA) participated in the hearing. Thereafter, oral argument was held before the ALJ on June 5, 1996. The Commission received submissions on the issues of remedy, the public interest, and bonding from all parties on June 23, 1996, in accordance with Commission rule 210.67(b).

On July 8, 1996, the ALJ issued his ID (Order No. 34) granting Quickturn's motion for temporary relief. On July 18, 1996, respondents and the IA filed written comments on the temporary relief ID, as provided for in rule 210.66(c). Complainant and the IA filed replies to respondents' comments, and respondents filed a reply to the IA's comments on July 22, 1996, as provided for in rule 210.66(e).

The Commission, having considered the ID, the comments and responses to comments of the parties, and the record in this investigation, determined that there were no clearly erroneous findings of fact, no errors of law, or policy reasons to vacate or modify the ID. Consequently, pursuant to Commission rule 210.66(f), the ID became the Commission's determination on the issue of whether there is reason to believe a violation of section 337 has occurred.

The Commission having determined that there is reason to believe that a violation of section 337 has occurred in the importation, sale for importation, or sale in the United States of the accused hardware logic emulators, subassemblies thereof, or component parts thereof, and having determined that temporary relief is warranted, considered the issues of the appropriate

form of such relief, whether the public interest precludes issuance of such relief, complainant's bond, and respondents' bond during the period such relief is in effect.

The Commission determined that a temporary limited exclusion order and a temporary cease and desist order directed to respondent Mentor are the appropriate form of temporary relief. The Commission further determined that the statutory public interest factors do not preclude the issuance of such relief, and that respondents' bond under the temporary limited exclusion order and the temporary cease and desist orders shall be in the amount of forty-three (43) percent of the entered value of the imported articles.

Commission rule 210.68 requires that all bonds posted by a complainant must be approved by the Commission Secretary before the temporary relief which the bond will secure will be issued. Consequently, the issuance of temporary relief described in the preceding paragraph is subject to the posting and approval of complainant's bond in the amount of $200,000. Complainant is to file its bond with the Commission Secretary within seven (7) business days of publication of this notice in the Federal Register.

Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: August 5, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–20338 Filed 8–8–96; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Donald E. Stoops, D.O.; Revocation of Registration

On January 31, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Donald E. Stoops, D.O., (Respondent) of Truth or Consequences, New Mexico, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AS3251814, under 21 U.S.C. 824(a), and deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f), for the reason that, on or about November 19, 1994, the New Mexico Board of Osteopathic Medical Examiners had ordered the revocation of his state license to practice osteopathic medicine. The order also notified the Respondent that, should no request for a hearing be filed within 30 days, the hearing right would be deemed waived. The order was mailed by certified mail, and a signed return receipt dated February 7, 1996, was received by the DEA. However, no request for a hearing or any other reply was received by the DEA from the Respondent or anyone purporting to represent him in this matter. Subsequently, on March 28, 1996, the investigative file was transmitted to the Deputy Administrator for final agency action.

Therefore, the Deputy Administrator, finding that (1) more than thirty days have passed since the issuance of the Order to Show Cause, and (2) no request for a hearing has been received, concludes that the Respondent is deemed to have waived his hearing right. After considering relevant material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.54(e) and 1301.57.

The Deputy Administrator finds that on November 19, 1994, the Board of Osteopathic Medical Examiners ordered the revocation of the Respondent's license to practice osteopathic medicine in the State of New Mexico, Further, on December 14, 1995, the New Mexico Board of Pharmacy notified the DEA that the Respondent did not have a controlled substance registration number. The Respondent has not submitted a statement or any evidence to dispute this information.

The Drug Enforcement Administration cannot register or maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conduct his business. *See* 21 U.S.C. 823(f) (authorizing the Attorney General to register a practitioner to dispense controlled substances only if the applicant is authorized to dispense controlled substances under the laws of the state in which he or she practices); 802(21) (defining ''practitioner'' as one authorized by the United States or the state in which he or she practices to handle controlled substances in the course of professional practice or research); and 21 U.S.C. 824(a)(3) (authorizing the Attorney General to revoke a registration upon a finding that the registrant ''has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in . . . dispensing of controlled substances. . .''). This prerequisite has been consistently upheld. *See Dominick A. Ricci, M.D.,* 58 FR 51,104 (1993); *James H. Nickens, M.D.,* 57 FR 59,847 (1992); *Roy E. Hardman, M.D.,* 57 FR 49,195 (1992); *Myong S. Yi, M.D.,* 54 FR 30,618 (1989); *Bobby Watts, M.D.,* 53 FR 11,919 (1988).

Here, it is clear and undisputed that the Respondent currently is not authorized to handle controlled substances in New Mexico, Likewise, since the Respondent lacks state authority to handle controlled substances, DEA lacks authority to continue his registration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 C.F.R. 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AS3251814, previously issued to Donald E. Stoops, D.O., be, and it hereby is, revoked, and any pending application for renewal of such registration is hereby denied. This order is effective September 9, 1996.

Dated: August 2, 1996.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 96–20360 Filed 8–8–96; 8:45 am]

BILLING CODE 4410–09–M

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of information collection under review; petition for nonimmigrant worker.

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: *Extension of a currently approved collection.*

(2) Title of the Form/Collection: Petition for Nonimmigrant Worker.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–129. Adjudications Division, 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, Business or other for-profit, Not-for-profit institutions, and Farms.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 281,580 respondents at 1 hour and 55 minutes (1.91) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 537,818 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: August 5, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–20281 Filed 8–8–96; 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; petition for alien fiance(e).

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: *Extension of a currently approved collection.*

(2) Title of the Form/Collection: Petition for Alien Fiance(e).

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–129F. Adjudications Division, 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. Through the filing of this form a United States citizen may facilitate the entry of his/her fiance(e) into the United States so that a marriage may be concluded within 90 days of entry between the U.S. citizen and the beneficiary of the petition.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 20,000 respondents at 30 minutes (.500) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 10,000 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: August 5, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–20283 Filed 8–8–96; 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; petition for alien relative.

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: Extension of a currently approved collection.*

(2) *Title of the Form/Collection:* Petition for Alien Relative.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–130. Adjudications Division, 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 on this form will be used to determine eligibility for benefits sought for relatives of United States citizens and lawful permanent residents.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 918,750 respondents at 30 minutes (.500) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 459,375 annual burden hours.

If additional information is required contract: 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: August 5, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–20284 Filed 8–8–96; 8:45 am]

BILLING CODE 4410–18–M

Submission for OMB Emergency Review, Comment Request

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection 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. OMB approval has been requested by August 12, 1996. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Immigration and Naturalization Service, Director, Policy Directives and Instructions Branch, Richard Sloan (202–616–7600).

Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Officer for the Immigration and Naturalization Service, 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:

(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.

Overview of This Information Collection

(1) *Title of the Form/Collection:* Driver Application (North American Trade Automation Prototype).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–859. Inspections Division, 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, Business or other for profit. This prototype program will allow drivers of commercial trucks who meet certain requirements to immediately apply for participation in a prototype program that will facilitate access to the United States from Canada and Mexico, while still safeguarding U.S. borders.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 500 respondents at 70 minutes (1.166) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 583 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: August 5, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–20285 Filed 8–8–96; 8:45 am]

BILLING CODE 4410–18–M

Office of Juvenile Justice and Delinquency Prevention

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review: Formula Grants Program Under the Juvenile Justice and Delinquency Prevention Act—Fiscal Years 1997–1999—Application Kit.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 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.

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 Freida Thomas, Program Analyst, Office of Juvenile Justice and Delinquency Prevention (OJJDP), State Relations and Assistance Division (SRAD), at (202) 307–5924. To receive a copy of the proposed information collection instrument with instructions, or additional information, please contact Freida Thomas, 202–307–5924, OJJDP, SRAD, 633 Indiana Avenue, NW, Room 543, Washington, DC 20531. Additionally, comments may 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, or via facsimile to (202) 514–1534.

Overview of this information collection:

(1) Type of Information Collection: Continuation/Extension.

(2) Title of the Form/Collection: Formula Grants Program Under the Juvenile Justice and Delinquency Prevention Act—Fiscal Year 1997–1999—Application Kit.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Application for Federal Assistance (SF–424), Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements OJP Form (4061/6). Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State, Local or Tribal Government. Other: None. On August 7, 1974, the President signed into law the JJDP Act of 1974, as amended by the JJDP Amendments of 1992 (Public Law 102–586). The Act established Federal assistance for state and local programs by authorizing the OJJDP Administrator to make formula grant funds to states to assist in developing more effective juvenile delinquency programs and to improve the juvenile justice system. The Formula Grants Application Kit provides appropriate state agencies with the instructions and forms necessary to apply for formula grants under the JJDP Act. The Application Kit is provided to states as a technical assistance guide in responding to statutory requirements and Federal regulations.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 57 responses at 432 hours, per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 24,624 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: August 6, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–20329 Filed 8–8–96; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review; Comment Request

August 6, 1996.

The Department of Labor has submitted the following (see below) information collection 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 (P.L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by August 16, 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 Employment Standards Administration, 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;
- 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 submissions of responses.

Agency: Employment Standards Administration.

Title: Office of Federal Contract Compliance Programs Supply and Service Compliance Review Pilot Test Scheduling Letter and Itemized Listing.

OMB Number: 1215–0072.

Frequency: On occasion; as required.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 200 to 400.

Estimated Time Per Respondent: 40 to 80 hours.

Total Burden Cost Per Respondent (capital/startup): 0.

Total Burden Cost Per Respondent (operating/maintaining): $8.47.

Description: This information collection request seeks clearance of an alternative supply and service scheduling letter and itemized listing for use in a pilot test of revised, expedited compliance review procedures. The proposed scheduling letter and itemized listing are a modified and shortened version of the scheduling letter and listing currently used for comprehensive supply and

service reviews. The alternative letter and listing require the submission of readily available information, and less data than is required for traditional compliance reviews. The submission of the requested material is the initial step in the revised review process. OFCCP expects that the expedited review procedures will streamline compliance evaluations of the supply and service contractor, saving both the contractor and the Government time and money. It is anticipated that the pilot test will occur in a six-month period.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 96–20377 Filed 8–8–96; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Annual Plans for State Employment Service Activities

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 (PRA95) (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.

Section 8 of the amended Wagner-Peyser Act required that States desiring to receive the benefits of the Act submit to the Secretary of Labor detailed plans for carrying out the provisions of the Act. Currently, the Employment and Training Administration is soliciting comments concerning the extension of information collection for Annual Plans for State Employment Service Activities. 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 October 8, 1996. Written comments should 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.

ADDRESSES: Gene Tichenor, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N–4470, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202–219–5185 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 652.6 and 652.7 of the regulation, State Employment Security Agencies are required to develop and submit to the Secretary of Labor an annual plan for providing services and activities within the State as authorized by Section 7(a) of the Wagner-Peyser Act. These plans are used by the Department to determine if the annual State activities meet the requirements of the Law. The plan should include overall goals and objectives of the State agency, documentation of the State's plan for meeting the requirements of a basic labor exchange system, and a provision for the promotion and development of employment opportunities and job counseling.

II. Current Actions

This is a request to extend OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A) for the collection of information previously approved and assigned OMB Control No. 1205–0209.

Type of Review: Extension.

Agency: Employment and Training Administration.

Titles: Annual Plans for State Employment Service Activities.

OMB Number: 1205–0209.

Affected Public: Government/State, Local or Tribal Government.

Total Respondents: 54.

Frequency: Annually.

Total Responses: 54.

Average Time Per Response: 90 hours.

Estimated Burden Hours: 4,860.

Estimated Total Burden Cost: $22,000 to $65,000.

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: August 2, 1996.

John R. Beverly,

Director, U.S. Employment Service.

[FR Doc. 96–20376 Filed 8–8–96; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective

from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

New Jersey
NJ960003 (March 15, 1996)
NJ960004 (March 15, 1996)

Volume II

Maryland
MD960058 (March 15, 1996)
Virginia
VA960003 (March 15, 1996)
VA960005 (March 15, 1996)
VA960014 (March 15, 1996)
VA960018 (March 15, 1996)
VA960023 (March 15, 1996)
VA960025 (March 15, 1996)
VA960030 (March 15, 1996)
VA960031 (March 15, 1996)
VA960033 (March 15, 1996)
VA960036 (March 15, 1996)
VA960048 (March 15, 1996)
VA960052 (March 15, 1996)
VA960054 (March 15, 1996)
VA960055 (March 15, 1996)
VA960058 (March 15, 1996)
VA960059 (March 15, 1996)
VA960062 (March 15, 1996)
VA960065 (March 15, 1996)
VA960067 (March 15, 1996)
VA960078 (March 15, 1996)
VA960079 (March 15, 1996)
VA960085 (March 15, 1996)
VA960087 (March 15, 1996)
VA960088 (March 15, 1996)
VA960104 (March 15, 1996)
VA960105 (March 15, 1996)
VA960108 (April 12, 1996)

Volume III

Alabama
AL960003 (March 15, 1996)
AL960034 (March 15, 1996)
Kentucky
KY960002 (March 15, 1996)
KY960004 (March 15, 1996)
KY960007 (March 15, 1996)
KY960025 (March 15, 1996)
KY960026 (March 15, 1996)
KY960029 (March 15, 1996)
South Carolina
SC960033 (March 15, 1996)

Volume IV

Illinois
IL960001 (March 15, 1996)
IL960002 (March 15, 1996)
IL960003 (March 15, 1996)
IL960004 (March 15, 1996)
IL960005 (March 15, 1996)
IL960006 (March 15, 1996)
IL960007 (March 15, 1996)
IL960008 (March 15, 1996)
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IL960010 (March 15, 1996)
IL960011 (March 15, 1996)
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IL960013 (March 15, 1996)
IL960015 (March 15, 1996)
IL960018 (March 15, 1996)
IL960026 (March 15, 1996)
IL960049 (March 15, 1996)
Indiana
IN960001 (May 17, 1996)
Minnestoa
MN960007 (March 15, 1996)
MN960008 (March 15, 1996)
MN960058 (March 15, 1996)
MN960059 (March 15, 1996)
MN960061 (March 15, 1996)
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WI960035 (March 15, 1996)

Volume V

Arkansas
AR960008 (March 15, 1996)
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KS960009 (March 15, 1996)
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MO960070 (March 15, 1996)
MO960071 (March 15, 1996)
MO960072 (March 15, 1996)
MO960073 (March 15, 1996)

Texas
TX960005 (March 15, 1996)
TX960007 (March 15, 1996)
TX960018 (March 15, 1996)

Volume VI

Alaska
AK960001 (March 15, 1996)
AK960002 (March 15, 1996)
AK960003 (March 15, 1996)

Idaho
ID960001 (March 15, 1996)
ID960002 (March 15, 1996)
ID960003 (March 15, 1996)
ID960013 (March 15, 1996)
ID960014 (March 15, 1996)

Oregon
OR960001 (March 15, 1996)
OR960017 (March 15, 1996)

Washington
WA960001 (March 15, 1996)
WA960002 (March 15, 1996)
WA960003 (March 15, 1996)
WA960005 (March 15, 1996)
WA960007 (March 15, 1996)
WA960008 (March 15, 1996)
WA960011 (March 15, 1996)
WA960013 (March 15, 1996)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. This 2nd Day of August 1996.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 96–20100 Filed 8–8–96; 8:45 am]

BILLING CODE 4510–27–M

Occupational Safety and Health Administration

[Docket No. NRTL–1–89]

ETL Testing Laboratories, Inc.

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of Request for Expansion of Current Recognition as a Nationally Recognized Testing Laboratory.

SUMMARY: This notice announces the application of ETL Testing Laboratories, Inc. for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding.

DATES: The last date for interested parties to submit comments is October 8, 1996.

ADDRESSES: Send comments to: NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor—Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor—Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210.

SUPPLEMENTARY INFORMATION: Notice is hereby given that ETL Laboratories, Inc. (ETL), which previously made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR 1910.7, for recognition as a Nationally Recognized Testing Laboratory (see 54 FR 8411, 2/28/89), and was so recognized (see 54 FR 37845, 9/13/89); made application for expansion of its recognition (see 55 FR 43229, 10/26/90), and was so recognized (see 55 FR 51971, 12/18/90; see also correction, 56 FR 2953, 1/25/91); made application for expansion of its recognition (see 57 FR 54422, 11/18/92), and was so recognized (see 58 FR 37749, 7/13/93; see also correction, 58 FR 47001, 9/3/93); has made application for expansion of its recognition as a Nationally Recognized Testing Laboratory for the equipment or materials listed below.

The addresses of the concerned laboratories are:

3933 U.S. Route 11, P.O. Box 2040, Cortland, New York 13045
4317-A Park Drive, NW, Norcross, Georgia 30093
260 East Grand Avenue, #38, South San Francisco, California 94080

Expansion of Recognition

On January 22, 1993, ETL Laboratories, Inc. made application for expansion of its recognition as a Nationally Recognized Testing Laboratory. The application was amended to include additional test standards on July 13, 1993. Due to the circumstances noted in the May 28, 1996 report from the Lead Assessor for the NRTL Program, the application was not acted upon. It was again amended on March 11 and March 20, 1996. ETL requested expansion of its recognition for certifying products when tested for compliance with the following test standards, which are appropriate within the meaning of 29 CFR 1910.7(c):

ANSI/ISA S12.13—Performance Requirements for Combustible Gas Detectors
ASTM E152—Method of Fire Test of Door Assemblies
ASTM E163—Standard Methods of Fire Tests of Window Assemblies
ANSI/IEEE C37.13—Low Voltage AC Power Circuit Breakers Used in Enclosures
ANSI/IEEE—C37.14—Low Voltage DC Power Circuit Breakers Used in Enclosures
ANSI/UL 1—Flexible Metal Conduit
ANSI/UL 3—Flexible Nonmetallic Tubing for Electric Wiring
UL 6—Rigid Metal Conduit
UL 13—Power-Limited Circuit Cables
ANSI/UL 17—Vent or Chimney Connector Dampers for Oil-Fired Appliances
ANSI/UL 21—LP-Gas Hose
ANSI/UL 22—Amusement and Gaming Machines
ANSI/UL 25—Meters for Flammable and Combustible Liquids and LP Gas
ANSI/UL 65—Electric Wired Cabinets
ANSI/UL 69—Electric-Fence Controllers
ANSI/UL 79—Power-Operated Pumps for Petroleum Product Dispensing Systems
ANSI/UL 87—Power-Operated Dispensing Devices for Petroleum Products
UL 104—Elevator Door Locking Devices and Contracts
UL 136—Pressure Cookers
ANSI/UL 150—Antenna Rotators
ANSI/UL 154—Carbon-Dioxide Fire Extinguisher
ANSI/UL 183—Manufactured Wiring Systems

UL 201—Standard for Garage Equipment
ANSI/UL 209—Cellular Metal Floor Raceways and Fittings
ANSI/UL 224—Extruded Insulating Tubing
ANSI/UL 294—Access Control System Units
ANSI/UL 296A—Waste Oil-Burning Air-Heating Appliances
ANSI/UL 299—Dry Chemical Fire Extinguisher
ANSI/UL 307A—Liquid Fuel-Burning Heating Appliances for Manufactured Homes and Recreational Vehicles
UL 330—Hose and Hose Assemblies for Dispensing Gasoline
ANSI/UL 343—Pumps for Oil-Burning Appliances
ANSI/UL 355—Cord Reels
ANSI/UL 360—Liquid-Tight Flexible Steel Conduit
ANSI/UL 363—Knife Switches
ANSI/UL 365—Police Station Connected Burglar Alarm Units and Systems
UL 407—Manifolds for Compressed Gases
ANSI/UL 414—Meter Sockets
ANSI/UL 443—Steel Auxiliary Tanks for Oil-Burner Fuel
UL 444—Communications Cables
ANSI/UL 448—Pumps for Fire-Protection Service
ANSI/UL 486B—Wire Connectors for Use with Aluminum and/or Copper Conductors
ANSI/UL 486C—Splicing Wire Connectors
ANSI/UL 486E—Equipment Wiring Terminals for Use with Aluminum and/or Copper Conductors
ANSI/UL 493—Thermoplastic-Insulated Underground Feeder and Branch-Circuit Cables
UL 497—Protectors for Paired Conductor Communications Circuits
UL 497A—Secondary Protectors for Communication Circuits
ANSI/UL 497B—Protectors for Data Communication and Fire Alarm Circuits
UL 508C—Power Conversion Equipment
ANSI/UL 512—Fuseholders
ANSI/UL 525—Flame Arresters for Use on Vents of Storage Tanks for Petroleum Oil and Gasoline
ANSI/UL 543—Impregnated-Fiber Electrical Conduit
ANSI/UL 551—Transformer-Type Arc-Welding Machines
ANSI/UL 558—Industrial Trucks, Internal Combustion Engine-Powered
UL 567—Pipe Connectors for Flammable and Combustible Liquids and LP Gas
ANSI/UL 583—Electric-Battery-Powered Industrial Trucks
ANSI/UL 603—Power Supplies for Use with Burglar-Alarm Systems
ANSI/UL 606—Linings and Screens for Use with Burglar-Alarm Systems
ANSI/UL 626—2½ Gallon Stored-Pressure, Water-Type Fire Extinguisher
ANSI/UL 632—Electrically Actuated Transmitters
ANSI/UL 634—Connectors and Switches for Use with Burglar-Alarm Systems
ANSI/UL 641—Low-Temperature Venting Systems, Type L
ANSI/UL 644—Container Assemblies for LP-Gas
ANSI/UL 651A—Type EB and A Rigid PVC Conduit and HDPE Conduit
UL 664—Commercial Dry-Cleaning Machines (Type IV)
ANSI/UL 676—Underwater Lighting Fixtures
ANSI/UL 710—Grease Extractors for Exhaust Ducts
ANSI/UL 711—Rating and Fire Testing of Fire Extinguishers
ANSI/UL 729—Oil-Fired Floor Furnaces
ANSI/UL 730—Oil-Fired Wall Furnaces
UL 745–1—Portable Electric Tools
UL 745–2–1—Particular Requirements of Drills
UL 745–2–2—Particular Requirements for Screwdrivers and Impact Wrenches
UL 745–2–3—Particular Requirements for Grinders, Polishers, and Disk-Type Sanders
UL 745–2–4—Particular Requirements for Sanders
UL 745–2–5—Particular Requirements for Circular Saws and Circular Knives
UL 745–2–6—Particular Requirements for Hammers
UL 745–2–8—Particular Requirements for Shears and Nibblers
UL 745–2–9—Particular Requirements for Tappers
UL 745–2–11—Particular Requirements for Reciprocating Saws
UL 745–2–12—Particular Requirements for Concrete Vibrators
UL 745–2–14—Particular Requirements for Planers
UL 745–2–17—Particular Requirements for Routers and Trimmers
UL 745–2–30—Particular Requirements for Staplers
UL 745–2–31—Particular Requirements for Diamond Core Drills
UL 745–2–32—Particular Requirements for Magnetic Drill Presses
UL 745–2–33—Particular Requirements for Portable Bandsaws
UL 745–2–34—Particular Requirements for Strapping Tools
UL 745–2–35—Particular Requirements for Drain Cleaners
UL 745–2–36—Particular Requirements for Hand Motor Tools
UL 745–2–37—Particular Requirements for Plate Joiners
ANSI/UL 773—Plug-In, Locking Type Photocontrols for Use with Area Lighting
ANSI/UL 773A—Nonindustrial Photoelectric Switches for Lighting Control
ANSI/UL 797—Electrical Metallic Tubing
ANSI/UL 814—Gas-Tube-Sign and Ignition Cable
ANSI/UL 826—Household Electric Clocks
ANSI/UL 827—Central-Stations for Watchman, Fire-Alarm, and Supervisory Services
UL 842—Valves for Flammable Liquids
UL 858A—Safety-Related Solid-State Controls for Household Electric Ranges
ANSI/UL 864—Control Units for Fire-Protective Signaling Systems
ANSI/UL 875—Electric Dry Bath Heaters
ANSI/UL 879—Electrode Receptacles for Gas-Tube Signs
ANSI/UL 884—Underfloor Raceways and Fittings
ANSI/UL 964—Electrically Heated Bedding
ANSI/UL 977—Fused Power-Circuit Devices
ANSI/UL 983—Surveillance Camera Units
UL 991—Safety-Related Controls Employing Solid-State Devices
UL 1072—Medium Voltage Cables
UL 1075—Gas Fired Cooking Appliances for Recreational Vehicles
ANSI/UL 1076—Proprietary Burglar Alarm Units and Systems
ANSI/UL 1203—Explosion-Proof and Dust-Ignition-Proof Electrical Equipment for Use in Hazardous (Classified) Locations
UL 1206—Electrical Commercial Clothes-Washing Equipment
ANSI/UL 1207—Sewage Pumps for Use in Hazardous (Classified) Locations
ANSI/UL 1230—Amateur Movie Lights
ANSI/UL 1238—Control Equipment for Use with Flammable Liquid Dispensing Devices
ANSI/UL 1240—Electric Commercial Clothes-Drying Equipment
ANSI/UL 1278—Movable and Wall- or Ceiling-Hung Electric Room Heaters
ANSI/UL 1313—Nonmetallic Safety Cans for Petroleum Products
ANSI/UL 1316—Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products
UL 1323—Scaffold Hoists
ANSI/UL 1413—High-Voltage Components for Television-Type Appliances
ANSI/UL 1416—Overcurrent and Overtemperature Protectors for Radio- and Television-Type Appliances
ANSI/UL 1417—Special Fuses for Radio- and Television-Type Appliances
ANSI/UL 1418—Implosion-Protected Cathode-Ray Tubes for Television-Type Appliances
UL 1424—Cables for Power-Limited Fire-Protective-Signaling Circuits
UL 1437—Electrical Analog Instruments—Panel Board Types
ANSI/UL 1445—Electric Water Bed Heaters
ANSI/UL 1447—Electric Lawn Mowers
ANSI/UL 1448—Electric Hedge Trimmers
ANSI/UL 1480—Speakers for Fire Protective Signaling Systems
ANSI/UL 1481—Power Supplies for Fire Protective Signaling Systems
UL 1492—Audio-Video Products and Accessories
ANSI/UL 1555—Electric Coin-Operated Clothes-Washing Equipment
ANSI/UL 1556—Electric-Coin-Operated Clothes-Drying Equipment
UL 1558—Metal-Enclosed Low-Voltage Power Circuit Breaker Switchgear
UL 1565—Wire Positioning Devices
UL 1567—Receptacles and Switches for Use With Aluminum Wire
ANSI/UL 1569—Metal-Clad Cables
ANSI/UL 1577—Optical Isolators
ANSI/UL 1610—Central-Station Burglar-Alarm Units
ANSI/UL 1638—Visual Signaling Appliances
UL 1640—Portable Power Distribution Units
ANSI/UL 1662—Electric Chain Saws
UL 1664—Immersion-Detection Circuit-Interrupters
UL 1673—Electric Space Heating Cables
UL 1676—Discharge Path Resistors
UL 1690—Data-Processing Cables
ANSI/UL 1711—Amplifiers for Fire Protective Signaling Systems
UL 1738—Venting Systems for Gas-Burning Appliances, Categories, II, III, and IV

UL 1795—Hydromassage Bathtubs
ANSI/UL 1876—Isolating Signal and Feedback Transformers for Use in Electronic Equipment
UL 1993—Self-Ballasted Lamps and Lamp Adapters
UL 1994—Low-Level Path Marking and Lighting Systems
UL 1996—Duct Heaters
UL 2021—Fixed and Location-Dedicated Electric Room Heaters
UL 2044—Commercial Closed Circuit Television Equipment
UL 2601–1—Medical Electrical Equipment, Part 1: General Requirements for Safety
UL 3044—Surveillance Closed Circuit Television Equipment
UL 3101–1—Electrical Equipment for Laboratory Use; Part 1: General
UL 3111–1—Electrical Measuring and Test Equipment, Part 1: General

The NRTL Recognition Program staff made an in-depth study of the details of ETL's original recognition and previous expansion of its recognition, and the application, and determined that ETL had the staff capability and the necessary equipment to conduct testing of products using the proposed test standards. The NRTL staff determined that an additional on-site review was not necessary since: the proposed additional test standards were closely related to ETL's current areas of recognition; ETL had experience in testing to the specific product test standards; appropriate modifications had been made to the operating and control systems at the Cortland facility; the audits performed by NRTL staff members during the previous four years indicated ETL's competence to test and certify products to similar test standards.

Preliminary Finding

Based upon a review of the completed application file and the recommendation of the NRTL staff, the Assistant Secretary has made a preliminary finding that the ETL Laboratories, Inc's. facilities for which expansion of its recognition was requested can meet the requirements as prescribed by 29 CFR 1910.7.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the sufficiency of the applicant's having met the requirements for expansion of its recognition as a Nationally Recognized Testing Laboratory, as required by 29 CFR 1910.7 and Appendix A to 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than October 8, 1996, and must be addressed to the NRTL Recognition Program, Office of Variance Determination, Room N 3653, Occupational Safety and Health Administration, U.S. Department of Labor, 300 Constitution Avenue, NW, Washington, D.C. 20210. Copies of the ETL applications, the laboratory survey reports, and all submitted comments, as received, (Docket No. NRTL–1–89), are available for inspection and duplication at the Docket Office, Room N 2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

The Assistant Secretary's final decision on whether the applicant (ETL Testing Laboratories, Inc.) satisfies the requirements for expansion of its recognition as an NRTL will be made on the basis of the entire record including the public submissions and any further proceedings that the Assistant Secretary may consider appropriate in accordance with Appendix A to Section 1910.7.

Signed at Washington, D.C. this 5th day of August, 1996.

Joseph A. Dear,

Assistant Secretary.

[FR Doc. 96–20379 Filed 8–8–96; 8:45 am]

BILLING CODE 4510–26–M

[Docket No. NRTL–1–88]

MET Laboratories, Inc.

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of Requests for: (1) Renewal of Recognition as a Nationally Recognized Testing Laboratory; and (2) Expansion of Recognition as a Nationally Recognized Testing Laboratory, and Preliminary Finding.

SUMMARY: This notice announces the applications of MET Laboratories, Inc. for: (1) Renewal of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7; and (2) expansion as a NRTL under 29 CFR 1910.7, and presents the Agency's preliminary finding.

DATES: The last date for interested parties to submit comments is October 8, 1996.

ADDRESSES: Send comments to: NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor—Room N3653, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3653, Washington, D.C. 20210.

SUPPLEMENTARY INFORMATION:

Notice of Application

Notice is hereby given that MET Laboratories, Inc. (MET), which previously made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR 1910.7, for recognition as a Nationally Recognized Testing Laboratory (see 53 FR 49258 12/6/88), and was so recognized (see 54 FR 21136, 5/16/89), has made application for: (1) Renewal, and (2) expansion of its recognition as a Nationally Recognized Testing Laboratory for the programs and procedures and the equipment or materials listed below.

The address of the laboratory covered by this application is: MET Laboratories, Inc., 914 West Patapsco Avenue, Baltimore, Maryland 21230.

Background

This Federal Register notice is a compilation of four separate applications from MET Laboratories, Inc., as follows:

(1) Application for renewal of recognition as a Nationally Recognized Testing Laboratory, dated August 17, 1993;

(2) Application for expansion of recognition as a Nationally Recognized Testing Laboratory for additional standards, dated February 1, 1994, and amended May 31, 1994, and March 18, 1996;

(3) Application for expansion of recognition as a Nationally Recognized Testing Laboratory for additional standards, dated January 16, 1995; and,

(4) Application for expansion of recognition as a Nationally Recognized Testing Laboratory for additional programs and procedures, dated August 9, 1995, and amended October 17, 1995 and March 11, 1996.

In addition, applications (2) and (3) have also been combined for purposes of convenience. Therefore, the areas that will be discussed relate to the renewal of MET's recognition as a NRTL, and the expansion of MET's NRTL recognition for both the addition of test standards and programs and procedures.

A report prepared by the NRTL Program Lead Assessor, dated March 28, 1996, contains recommendations concerned with all of the areas of MET's request for renewal and expansion of its recognition as a Nationally Recognized Testing Laboratory.

Renewal of NRTL Recognition

Appendix A to 29 CFR 1910.7 stipulates that the initial period of recognition of a NRTL is five years and

that a NRTL may renew its recognition by applying not less than nine months, nor more than one year, before the expiration date of its current recognition. MET was recognized as a NRTL on May 16, 1989, and applied for a renewal of its recognition on August 17, 1993, within the time allotted, and retains its recognition pending OSHA's final decision in this renewal process.

Expansion of Recognition—Test Standards

MET Laboratories, Inc., desires recognition for testing and certification of products when tested for compliance with the following test standards, which are appropriate within the meaning of 29 CFR 1910.7(c):

UL 416—Refrigerated Medical Equipment
ANSI/UL 469—Musical Instruments and Accessories
ANSI/UL 751—Vending Machines
ANSI/UL 923—Microwave Cooking Appliances
UL 1492—Audio-Video Products and Accessories
UL 1604—Electrical Equipment for Use in Class I and II, Division 2, and Class III Hazardous (Classified) Locations
ANSI/UL 1638—Visual Signaling Appliances—Private Mode Emergency and General Utility Signaling
UL 1950—Safety of Information Technology Equipment, Including Electrical Business Equipment
UL 1995—Heating and Cooling Equipment
UL 2601–1—Medical Electrical Equipment, Part 1: General Requirements for Safety
UL 3101–1—Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1—Electrical Measuring and Test Equipment; Part 1: General Requirements

The NRTL Recognition program staff made an in-depth study of the details of MET's original application for recognition, as well as its requests for expansion, and the original and renewal onsite assessments and determined that MET had the staff capability and the necessary equipment to conduct testing of products using the proposed test standards. The NRTL staff determined that an additional on-site review was not necessary since the proposed additional test standards were closely related to MET's current areas of recognition.

Expansion of Recognition—Programs and Procedures

MET Laboratories, Inc., requested expansion of its recognition, based upon the conditions as detailed in the Federal Register document titled ''Nationally Recognized Testing Laboratories; Clarification of the Types of Programs and Procedures'', 60 FR 12980, 3/9/95, for the following programs and procedures:

1. Acceptance of testing data from independent organizations, other than NRTLs

MET states that it will retain control of and be responsible for all aspects of the product certification scheme. In addition, the applicant assure that all data in the test package is complete and that the organization is competent to conduct the tests of the product that it is accepting.

2. Acceptance of product evaluations from independent organizations, other than NRTLs

MET requests to be allowed to expand its scope to accept product evaluations from independent organizations after it has determined that such organizations are qualified to conduct the tests and perform the evaluations. The applicant states that it will maintain control of and be responsible for all aspects of the product certification scheme. MET will review the evaluations to assure that the requirements in the standard have been complied with prior to certifying the product.

3. Acceptance of witnessed testing data

The applicant requests authority to carry out test programs at locations other than its own facility when it cannot accommodate the test product or program. MET will require that the tests be performed in the presence of qualified MET representatives, trained and experienced in testing the product type and with the standard used to evaluate the product. The applicant also states that the organization performing the testing shall have been audited by MET and that MET will retain control of and be responsible for all aspects of the project.

4. Acceptance of testing data from non-independent organizations

The applicant requests that it be permitted to accept test data from non-independent organizations such as the manufacturer of the products to be certified. MET has stated that it will assess the facility for its ability to perform accurate and complete tests. MET also anticipates the need for a one-year confidence building time period during which time it will perform witness testing and follow-up inspections of the organization.

5. Acceptance of evaluation data from non-independent organizations (requiring NRTL review prior to marketing)

MET requests that it be allowed to accept evaluations from non-independent organizations after it has instituted very strict controls over such organizations. The applicant states that it will retain control of and be responsible for all aspects of the product certification scheme. MET will also institute very strict controls over the organization and will also assure that it has a quality program in place that has been registered by a recognized registrar. MET further states that it will develop a procedure to assure that no product can be released to the market until it has concurred with the evaluation.

6. Acceptance of continued certification following minor modifications by the client

The applicant asks that it be authorized to permit a manufacturer to make a minor modification to a product and self-declare conformity with the standard and continue to market the product. MET states that it will provide guidance to the manufacturer on what modifications may be permitted for a specific product. MET states further that it shall be kept informed of the modifications and shall at the next follow-up inspection (within 90 days) review them prior to granting its official approval.

7. Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC–CB) Scheme

MET states that in every case the National Certification Body must prove to a team of auditors that it is independent and free of conflict of interest. MET will retain control of and be responsible for all aspects of the products to be certified, as well as review and evaluate each test report to assure that the correct U.S. national standard and applicable deviations have been applied. The applicant further states that it will inspect the product and assure that all of its components have been certified by an agency that performs continuous surveillance of the component manufacturer.

8. Acceptance of services other than testing or evaluation performed by subcontractors or agents

MET requests that it be allowed to utilize the services of subcontractors or agents in its follow-up program. The applicant states that follow-up inspections, performed around the world on a quarterly basis, are done by MET direct employees or personnel who have been specifically trained by MET for this purpose, using its procedures and format. Follow-up inspectors are always either independent agents who work exclusively for MET or are

associated with another independent laboratory with knowledge of the products and product test standards. The applicant states further that all follow-up reports come directly to MET for review and analysis and that, under this procedure, it always maintains control of the certification program.

Preliminary Finding

Based upon a review of the completed application file and the recommendation of the staff, the Assistant Secretary has made a preliminary finding that the MET Laboratories, Inc. facility for which both renewal and expansion of its recognition was requested (Baltimore, Maryland) can meet the requirements as prescribed by 29 CFR 1910.7.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the sufficiency of the applicant's having met the requirements for renewal and expansion of its recognition as a Nationally Recognized Testing Laboratory, as required by 29 CFR 1910.7 and Appendix A to 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than October 8, 1996 and must be addressed to the NRTL Recognition Program, Office of Variance Determination, Room N 3653, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Copies of the MET application, the laboratory survey reports, and all submitted comments, as received, (Docket No. NRTL–1–88), are available for inspection and duplication at the Docket Office, Room N 2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

The Assistant Secretary's final decision on whether the applicant (MET Laboratories, Inc.) satisfies the requirements for renewal and expansion of its recognition as an NRTL will be made on the basis of the entire record including the public submissions and any further proceedings that the Assistant Secretary may consider appropriate in accordance with Appendix A to Section 1910.7.

Signed at Washington, DC. this 5th day of August, 1996.

Joseph A. Dear,

Assistant Secretary.

[FR Doc. 96–20378 Filed 8–8–96; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (96–091)]

NASA Advisory Council (NAC), Task Force on the Shuttle-Mir Rendezvous and Docking Missions; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NAC Task Force on the Shuttle-Mir Rendezvous and Docking Missions.

DATES: September 4, 1996, 3:00 p.m. to 5:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 7H46, 300 E Street, S.W., Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Gilbert Kirkham, Code MOC, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–1698.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review of the final Joint Report with the Russian Advisory Expert Council;
—Review the readiness of the STS–79 Shuttle-Mir Rendezvous and Docking Mission;
—Review of upcoming missions, including issues related to concerns of the Task Force and issues to track.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: August 5, 1996.

Leslie M. Nolan,

Advisory Committee Management Officer.

[FR Doc. 96–20275 Filed 8–8–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–092]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Astronomical Search for Origins and Planetary Systems (ORIGINS) Subcommittee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee, ORIGINS Subcommittee.

DATES: Monday, September 23, 1996, 8:30 a.m. to 5:00 p.m.; and Tuesday, September 24, 1996, 8:30 a.m. to 4:30 p.m.

ADDRESSES: Lunar and Planetary Institute, Hess Room, 3600 Bay Area Boulevard, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Dr. Edward J. Weiler, Code SA, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–2150.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—ORIGINS Program Status;
—ORIGINS Strategic Planning Discussions;
—Review of Ground-Based ORIGINS Program.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: August 5, 1996.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 96–20382 Filed 8–8–96; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–029–DCOM ASLBP No. 96–718–01–R]

Atomic Safety and Licensing Board; Notice of Hearing (Application to Approve Facility Decommissioning Plan)

Before Administrative Judges: G. Paul Bollwerk, III, Chairman, Dr. Jerry R. Kline, Dr. Thomas S. Elleman

In the Matter of Yankee Atomic Electric Company (Yankee Nuclear Power Station)

August 5, 1996.

On October 27, 1995, the Commission published in the Federal Register a notice indicating that it (1) was considering issuing an order approving the decommissioning plan submitted by licensee Yankee Atomic Electric Company (YAEC) for the Yankee Nuclear Power Station, located near Rowe, Massachusetts, and (2) was offering an opportunity for a hearing on

the proposed plan approval. (60 Fed. Reg. 55,069.) On November 30, 1995, the Citizens Awareness Network, Inc. (CAN), and the New England Coalition on Nuclear Pollution (NECNP) filed a timely petition to intervene. With their hearing request, the petitioners submitted five contentions challenging the proposed approval of YAEC's decommissioning plan based, among other things, on alleged noncompliance with (1) agency standards regarding maintaining radiation doses as low as reasonably achievable (ALARA), and (2) the requirements of the National Environmental Policy Act of 1968 (NEPA).

In a January 16, 1996 memorandum and order, the Commission referred the petitioners' hearing request to the Atomic Safety and Licensing Board Panel for the appointment of a presiding officer to conduct any necessary proceedings. (*See* CLI–96–1, 43 NRC 1 (1996).) On January 18, 1996, the Chief Administrative Judge of the Panel appointed this Atomic Safety and Licensing Board to act on the Commission's referral. (61 Fed. Reg. 1953.) The Board consists of Dr. Jerry R. Kline, Dr. Thomas S. Elleman, and G. Paul Bollwerk, III, who serves as Chairman of the Board.

After receiving additional filings from the participants on the issues of the petitioners' standing and the admissibility of their five contentions, on February 21, 1996, the Board held a prehearing conference during which the parties made further presentations addressing those matters. On March 1, 1996, the Board dismissed the petitioners' intervention request, ruling that although the petitioners had established their standing to intervene, they had failed to present a litigable contention. (*See* LBP–96–2, 43 NRC 61 (1996)).

The petitioners appealed the Board's decision. In CLI–96–7, 43 NRC ____ (June 18, 1996), the Commission affirmed the Board's determinations regarding the petitioners' standing and the admissibility of their contentions based on the information then before the Board. The Commission, however, remanded to the Board a so-called ''new dose argument'' that the petitioners submitted to the Commission shortly after the Board's dismissal ruling. In making that referral, the Commission directed the Board to determine if the ''new dose argument'' met the agency's procedural standards governing ''late filing'' and the admissibility of contentions so as to warrant consideration in an adjudicatory hearing.

After receiving additional party filings and conducting another prehearing conference on July 16, 1996, the Board issued an additional ruling on the petitioners' hearing request. In its July 31, 1996 decision, the Board held that (1) dismissal of the petitioners' ''new dose argument'' as untimely was not warranted under a balancing of the five factors governing ''late filing,'' and (2) elements of the ''new dose argument'' provided a sufficient basis for the admission of a contention concerning YAEC decommissioning plan compliance with ALARA principles and NEPA requirements. The Board thus granted the petitioners' hearing request.

Please take notice that a hearing will be conducted in this proceeding. This hearing will be governed by the formal hearing procedures set forth in 10 CFR Part 2, Subpart G (10 CFR §§ 2.700–.790).

During the course of the proceeding, the Board may conduct an oral argument, as provided in 10 CFR § 2.755, and may hold additional prehearing conferences pursuant to 10 CFR § 2.752. The public is invited to attend any oral argument, prehearing conference, or evidentiary hearing, which may be held pursuant to 10 CFR §§ 2.750–.751. In its July 31, 1996 decision, the Board established a schedule that provides for holding some such sessions. (*See* LBP–96–15, 44 NRC at ____(slip op. app. at 1–3).) Notices of those sessions will be published in the Federal Register and/or made available to the public at the NRC Public Document Rooms.

In accordance with 10 CFR § 2.715(a), any person not a party to the proceeding may submit a written limited appearance statement setting forth his or her position on the issues in this proceeding. These statements do not constitute evidence, but may assist the Board and/or parties in the definition of the issues being considered. Persons wishing to submit a written limited appearance statement should send it to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. A copy of the statement also should be served on the Chairman of the Atomic Safety and Licensing Board. The Board will decide at a later date whether to entertain oral limited appearance statements.

Documents relating to this proceeding are available for public inspection at the Commission's Public Document Room, the German Building, 2120 L Street, NW., Washington, DC 20555; and at the NRC Local Public Document Room at Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated: August 5, 1996.

For the Atomic Safety and Licensing Board.

G. Paul Bollwerk III, Chairman,

Administrative Judge.

[FR Doc. 96–20335 Filed 8–8–96; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request Review of an Expired Information Collection SF 15

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a proposed unchanged extension to a form which collects information from the public. Standard Form 15, Application for 10-Point Veteran Preference, is completed by individuals applying for Federal jobs and who wish to apply for an additional 10 points of examination credit based on his/her military service or that of a spouse or child. OPM examining offices and agency appointing officials use the information provided to adjudicate the individual's claim in accordance with the Veteran Preference Act of 1944, as amended. Approximately 23,700 respondents annually expend 5,017 burden hours to complete the SF–15. For copies of this proposal, contact Jim Farron on (202) 418–3208, or E–Mail to jmfarron@mail.opm.gov

DATES: Comments must be received on or before October 8, 1996.

ADDRESSES: Send or deliver written comments to Mary Lou Lindholm, Associate Director for Employment Service, Office of Personnel Management, Room 6F08, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Raleigh Neville or Karen Jacobs on (202) 606–0830, TDD (202) 606–0023, or FAX (202) 606–2329.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–20271 Filed 8–8–96; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 19b–1, SEC File No. 270–312, OMB Control No. 3235–0354

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted a request for approval of extension on Rule 19b–1 under the Investment Company Act of 1940 (''the Act'') [15 U.S.C. 80a–1 *et seq.*] to the Office of Management and Budget.

Rule 19b–1 prohibits investment companies from distributing long-term capital gains more than once every twelve months unless certain conditions are met. Rule 19b–1(c) permits unit investment trusts (''UITs'') engaged exclusively in the business of investing in certain eligible fixed-income securities to distribute long-term capital gains more than once every twelve months, provided that the capital gains distribution falls within one of the categories in rule 19b–1(c)(1) and provided further that the capital gains distribution is clearly described as such in the report to the unitholder that must accompany the distribution (the ''notice requirement'').

The time required to comply with the notice requirement is estimated to be one hour or less for each additional distribution of long-term capital gains. Since there are approximately 14,175 UIT portfolios that may be eligible to use the rule, the estimated total annual maximum reporting burden would be 14,175 hours.

Rule 19b–1(e) also permits a registered investment company to apply for permission to distribute long-term capital gains more than once a year provided that the investment company did not foresee the circumstances that created the need for the distribution. The time required to prepare an application under rule 19b–1(e) should be approximately four hours. The Commission, however, has not received an application under rule 19b–1(e) in the last five years. Therefore, it estimates no additional annual paperwork burden under this provision.

The estimates of burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 5, 1996.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–20345 Filed 8–8–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22115; File No. 812–10004]

AUSA Life Insurance Company, Inc., et al.

August 2, 1996.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: AUSA Life Insurance Company, Inc. (''AUSA'') and Diversified Investors Variable Funds (''Variable Account'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 26(b) of the 1940 Act approving a proposed substitution of securities.

SUMMARY OF APPLICATION: Applicants seek an order to permit the substitution (the ''Substitution'') of interests in the Diversified Investors Portfolios' International Equity Portfolio (''Diversified International Series'') for shares in the International Portfolio of the Scudder Variable Life Investment Fund (''Scudder International Series'').

FILING DATE: The application was filed on February 21, 1996, and amended on July 18, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application, or ask to be notified if a hearing is ordered, by writing to the Commission's Secretary and serving the Applicants with a copy of the request, either personally or by mail. Hearing requests must be received by the Commission by 5:30 pm., on August 27, 1996, and should be accompanied by proof of service on the Applicants, either by affidavit, or, for lawyers, by certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of the hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o David R. Woodward, Esq., LeBoeuf, Lamb, Greene & MacRae, L.L.P., 1875 Connecticut Avenue, N.W., Suite 1200, Washington, D.C. 20009.

FOR FURTHER INFORMATION CONTACT: Joyce Merrick Pickholz, Senior Counsel, or Patrice M. Pitts, Special Counsel, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. AUSA is a stock life insurance company organized under the laws of New York State. The Variable Account, a separate account established by AUSA, is registered with the Commission under the 1940 Act as a unit investment trust. The Variable Account serves as the funding vehicle for group variable annuity contracts (''Contracts'') that are issued and administered by AUSA and available for sale to various types of retirement plans. Diversified Investors Securities Corp. serves as principal underwriter of the Contracts.

2. The Variable Account is divided into a number of sub-accounts (''Sub-Accounts'') that correspond to the mutual funds in which each Sub-Account's assets are invested, including the Calvert Responsibly Invested Balanced Portfolio, the Scudder International Series, and eleven series of Diversified Investors Portfolios (''Trust'')—a New York business that is registered under the 1940 Act as an open-end management company.

3. The Sub-Accounts that invest in the Trust do so under a ''Hub & Spoke'' arrangement. Each Sub-Account which invests in a series of the Trust is a ''spoke'' or feeder fund. The corresponding series of the Trust is a ''hub'' or master fund. Interests in the Trust may also be sold to other types of collective investment vehicles or institutional investors. Variations in

sales commissions and other operating expenses permit these other investors to sell their shares at different public offering prices from the Sub-Accounts, and, consequently, to experience returns that differ from the returns of holders in Contracts in the Variable Account (''Holders'').

4. The investment objective of the Diversified International Series of the Trust is to provide a high level of long term capital appreciation through investment in a diversified portfolio of securities of foreign issuers. Under normal circumstances 65% of the assets of the Diversified International Series is invested in foreign equity securities and its assets are invested in a minimum of three countries outside of the United States. Diversified Investment Advisors, Inc. serves as advisor, and Capital Guardian Trust Company serves as sub-advisor, to the Diversified International Series. The annual fee for advisory services provided in connection with the Diversified International Series is .75% of the Series' average net assets; other expenses for the Diversified International Series were estimated to be .15% of average net assets. A Sub-Account of the Variable Account was organized in order to invest in interests of the Diversified International Series. To date, however, no investment has been made, and all of the interests in the Diversified International Series are held by other spoke/feeder funds.

5. Under Scudder International Equity Sub-Account of the Variable Account (''International Equity Sub-Account'') currently invests in the Scudder International Series of the Scudder Variable Life Investment Fund (''Scudder Fund''), a Massachusetts business trust registered under the 1940 Act as a diversified open-end investment company. The investment objective of the Scudder International Series is to achieve long term growth of capital primarily through diversified holdings of marketable foreign equity investments. The Scudder International Series invests in companies, wherever organized, that do business primarily outside the United States. The Scudder International Series intends to diversify investments among several countries and to have represented in its holdings business activities in not less than three different countries. Scudder, Stevens & Clark is the investment advisor of the Scudder International Series. The advisory fee for the Scudder Series is .875%; other expenses associated with the Scudder Series in 1995 were estimated to be .205% of average net assets.

6. Under the Contracts, AUSA reserves the right to effect a substitution; the prospectus through which the Contracts are offered discloses this substitution right. For the following reasons, AUSA on its own behalf and on behalf of the Variable Account proposes to substitute interests of the Diversified International Series for shares of the Scudder International Series currently held in the International Equity Sub-Account. Retirement plans that have entered into Contracts have done so because they wished to invest in the Trust, and to receive the benefits of investment management services provided to the Trust and the efficiencies available under the Trust's master-feeder structure. The two Sub-Accounts that do not invest in the Trust were established in 1993 to provide certain investment options for which no corresponding series was available under the Trust. An international equity option now is available under the Trust, and the best interests of Holders are served by providing that investment option under the Contracts. Because the Diversified International Series and the Scudder International Series have substantially similar investment objectives and policies, the Substitution is necessary to avoid the confusion and duplication that would result from having two Sub-Accounts that invest in different international equity funds.

7. The Substitution will be at net asset value of the respective shares, without the imposition of any transfer, sales, or similar charge. AUSA will pay all expenses and transaction costs of the Substitution, including any applicable brokerage commission.

8. AUSA will file a post-effective Amendment to the registration statement on Form N–4 for the Variable Account to reflect the Substitution in its prospectus, as well as information relating to the Diversified International Series and the elimination of the Scudder name from the Sub-Account.

9. Within five days after the Substitution, AUSA will send to the Holders a written notice (''Notice'') of the substitution that identifies the interests in the Diversified International Series that have been substituted. AUSA will include in such mailing an updated prospectus of the Variable Account that discloses the completion of the Substitution and that the International Equity Sub-Account will henceforth invest in the Diversified International Series. Holders will be advised in the Notice that for a period of sixty days from the mailing of the Notice, they may transfer all assets as substituted to any other available Sub-Account. No transfer charge is currently in effect, and none will be imposed prior to the expiration of the sixty day period. Following the substitution, Holders will be afforded the same contact rights, including surrender and other transfer rights with regard to amounts invested under the Contracts, as they currently have.

Applicants' Legal Analysis

1. Section 26(b) of the 1940 Act provides in pertinent part that ''[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution.'' Section 26(b) provides that the Commission will approve a substitution if it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. The purpose of Section 26(b) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate the shares of a particular issuer, and to prevent unscrutinized substitutions which might, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby incurring either a loss of the sales load deducted from initial proceeds, an additional sales load upon reinvestment of the redemption proceeds, or both. Section 26(b) affords protection to investors by preventing a depositor or trustee of a unit investment trust holding shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves that substitution.

2. Applicants submit that the purposes, terms and conditions of the proposed Substitution are consistent with the principles and purposes of Section 26(b). Applicants further submit that the Substitution will not result in the type of costly forced redemption that Section 26(b) was intended to guard against, and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act.

a. The objectives, policies and restrictions of the Diversified International Series are sufficiently similar to the objectives of the Scudder International Series so as to continue fulfilling the Holders' present objectives and risk expectations.

b. The Substitution will be at net asset value of the respective shares, without the imposition of any transfer, sales or similar charge.

c. AUSA has undertaken to assume the expenses and transaction costs relating to the Substitution, including, among others, legal and accounting fees and any brokerage commissions.

d. Within five days after the Substitution, AUSA will send to the Holders written notice of the Substitution, identifying the interests

in the Diversified International Series that were substituted, and disclosing that the International Equity Sub-Account will henceforth invest in the Diversified International Series.

e. For sixty days following the receipt of Notice of the Substitution, a Holder may transfer assets as substituted to any other Sub-Account available under the Contract. No transfer charge or limitation on the number of transfers currently is in effect, and none will be imposed before the expiration of sixty days from the date on which Notice of the Substitution is given.

f. After the Substitution, Holders may transfer among Sub-accounts in accordance with the terms of their Contracts. Currently, the Contracts neither limit allowable transfers nor do they currently impose a charge for transfers.

g. The Substitution will not alter the insurance benefits to Holders or the contractual obligations of AUSA.

h. AUSA has been advised by counsel that the Substitution will not give rise to any tax consequences to the Holders.

i. Currently, Holders may withdraw amounts credited to them following the Substitution without any Contract charge, subject to a penalty tax upon premature withdrawals, if applicable.

j. The Substitution will: (A) provide a more appropriate international equity investment option within the context of the overall investment program available under the Contracts; (B) avoid the confusion which would be caused by having two international equity investment options available through the Variable Account; and (C) provide economic benefits to Holders through lower investment advisory fees and other expenses.

Applicants' Conclusions

Applicants assert that, for the reasons and upon the facts set forth in the application, the requested order approving the proposed substitution meets the standards set forth in Section 26(b) of the 1940 Act and should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–20346 Filed 8–8–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26550]

Filings Under the Public Utility Holding Company Act of 1935, as amended (''Act'')

August 2, 1996.

Notice is hereby given that the following filing(s) summarized below. The application(s) and/or declaration(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 26, 1996, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Columbia Gas System, Inc. (70–8801)

The Columbia Gas System, Inc. (''Columbia''), 20 Montchanin Road, Wilmington, Delaware 19807, a registered public utility holding company, has filed an amendment to its application-declaration with this Commission under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 45 and 54 thereunder.[1]

Columbia proposes: (1) to acquire the common stock of one or more existing or new direct or indirect subsidiaries through December 31, 1997; (2) to engage, through such subsidiaries or one or more new joint ventures, in marketing and/or brokering of various energy commodities; (3) to provide guarantees, through August 31, 2001, to any such subsidiary or joint venture; and (4) that such subsidiaries utilize market hedging and certain other techniques in order to minimize their financial exposure and Columbia's exposure from its guarantees.

By orders of the Commission dated September 26, 1986 and April 22, 1993 (HCAR Nos. 24199 and 25802, respectively), Columbia was authorized to establish, respectively, TriStar Ventures Corporation and its subsidiaries (collectively, ''TriStar'') (to invest in and operate electric cogeneration facilities) and Columbia Energy Services Corporation (''CES'') to market natural gas products and services). Columbia now proposes to market and broker other forms of energy either through TriStar or CES, through one or more new direct or indirect subsidiaries of Columbia (any one an ''Energy Products Company'') or through a joint venture entity to be formed with a third party.[2]

The services provided by Energy Products Companies will include the marketing and/or brokering of electric energy at wholesale, and, to the extent permitted by state law, at retail. In addition, it is proposed that Energy Products Companies market any form of natural gas or manufactured gas, propane, natural gas liquids, oil, refined petroleum and petroleum products, coal, food products, compressed air, hot or chilled water, or steam. It is also requested that Energy Products company market emission allowances. Columbia states that authorization to market a broad array of energy products will enable Energy Products Companies to compete effectively with other energy suppliers.

Energy Products Companies will initially concentrate their efforts in those states currently served by the Columbia System's natural gas pipeline and local distribution companies (generally Kentucky, Maryland, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Virginia and West Virginia). Columbia states that an Energy Products Company's potential customer base may include individuals and entities located outside of this geographic area.

Columbia proposes to provide Energy Products Coompanies with up to $5 million in funding through December 31, 1997, through the purchase from time to time of shares of common stock of Energy Products Companies, $25 par value, at a purchase price at or above par value. In addition, Columbia proposes to provide guarantees, through August 31, 2001, to Energy Products Companies and/or to any joint venture in which an Energy Products Company is a participant, so long as such

[1] A notice of Columbia's original proposal, filed February 15, 1996 in this application-declaration was issued by the Commission on March 1, 1996 (HCAR No. 26480). On July 10, 1996, Columbia filed Amendment No. 1 to the application-declaration, substantially revising its proposal. This notice supersedes the March notice.

[2] Columbia requests authorization for Energy Products Companies to invest funds for the development of joint venture entities, subject to a reservation of jurisdiction over the acquisition by an Energy Products Company of any ownership interest in a joint venture entity. It is proposed that such a joint venture engage in the marketing or brokering of energy commodities in the same manner in which an Energy Products Company would be authorized.

guarantees in the aggregate do not exceed $100 million at any time outstanding.

To minimize financial exposure of Energy Products Companies and of Columbia resulting from its guarantees, it is proposed that Energy Products Companies utilize market hedging techniques (including the use of futures contracts, options of futures, and price swap agreements), the matching of obligations to market prices, contractual limitation of damages and volume limitations, and relatively short-term contracts. Energy Products Companies will use market hedging measures solely to minimize risk and will limit hedging activity to no more than the total amount of commodities of Energy Products Companies that are subject to market price fluctuation.

Columbia states that Energy Products Companies will not own or operate facilities used for the distribution of gas at retail or facilities used for the generation, transmission, or distribution of electric energy for sale. Furthermore, Energy Products Companies will limit their activities to ensure they do not come within the definitions of either ''electric utility company'' or ''gas utility company,'' as defined by sections 2(a)(3) and 2(a)(4) of the Act, respectively.

Northeast Utilities, et al. (70–8875)

Northeast Utilities (''NU''), 174 Brush Hill Avenue, West Springfield, Massachusetts 01809, a registered holding company, and its wholly owned subsidiary companies (''Subsidiaries''), Holyoke Water Power Company (''HWP''), Canal Street, Holyoke, Massachusetts 01040, Western Massachusetts Electric Company (''WMECO''), 174 Brush Hill Avenue, West Springfield, Massachusetts 01809, Public Service Company of New Hampshire (''PSHN'') and North Atlantic Energy Corporation (''NAEC''), both of 1000 Elm Street, Manchester, New Hampshire 03015 and The Connecticut Light & Power Company (''CL&P''), 107 Selden Street, Berlin, Connecticut 06037 (all companies collectively, ''Applicants''), have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 43, 45 and 54 thereunder.

By order dated December 28, 1994 (HCAR No. 26207) (''December 1994 Order''), the Commission authorized, through December 31, 1996: (1) NU to make open account advances to its subsidiary companies; (2) the continuation of the Northeast Utilities System Money Pool (''Money Pool''); (3) the issuance of short-term notes pursuant to lines of credit by NU, (4) the issuance and sale of commercial paper by NU, CL&P and WMECO, CL&P, PSNH and HWP; and WMECO. The funds from those short-term borrowings were to be utilized by NU's subsidiary companies for operational, maintenance and construction expenses and to meet certain cash needs. The December 1994 Order limited the aggregate amount of all short-term borrowing, whether through the issuance of short-term notes, commercial paper, open account advances, borrowing from the Money Pool, or through existing revolving credit agreements, to the following maximum amounts: NU, $150 million; WMECO, $60 million; CL&P, $325 million; PSNH, $175 million; NAEC, $50 million and HWP, $5 million.

The Applicants now propose: (1) to make short-term borrowings from time to time through December 31, 2000, evidenced (i) in the case of NU, CL&P, WMECO and PSNH by short-term notes (''Short-Term Notes'') issued to lending institutions through formal and informal credit lines, and (ii) in the case of NU, WMECO and CL&P, by commercial paper (''Commercial Paper''); (2) the continued use, through December 31, 2000, of the Money Pool to assist in meeting the short-term borrowing needs of the Applicants and certain other NU subsidiaries; (3) in the case of all Applicants by borrowing under the existing revolving credit agreements until those agreements are terminated; and (4) that NU make open account advances, through December 31, 2000, to PSNH, HWP, Northeast Nuclear Energy Company, NAEC, the Quinnehtuk Company, Rocky River Realty Company and HEC, Inc.

NU, CL&P and WMECO propose to enter into a revolving credit facility (''Facility'') permitting borrowings aggregating up to $450 million with certain lending institutions. The Facility will be used to repay outstanding borrowings and for working capital and other corporate purposes. The Facility will be unsecured unless, subject to some exceptions, an Applicant incurs any secured indebtedness or secures any outstanding indebtedness which is now unsecured in which event such Applicant must cause the Facility to be secured equally and ratably with such other indebtedness.

The Applicants state that one or more of the banks which lend to the Applicants and other NU subsidiaries under existing revolving credit agreements may want to continue their present lending arrangements rather than becoming lenders under the Facility. In that event, such bank would not be lenders under the Facility until their existing credit agreements are terminated.

The Applicants will pay interest on any borrowings under the Facility at a rate determined, at their election, by reference to the base rate of certain reference banks, the federal funds rate, or the London interbank offering rate (''LIBOR''), in each case plus a margin which will depend on the lower of the Standard & Poor's or Moody's rating of the borrowing Applicant's long-term senior debt. In no event will the margin exceed 1% above the base rate, 1½% above the federal fund rate, or 2% above LIBOR, unless the loan is in default. The Applciants will pay an annual facility fee based on each lender's pro-rata share of the commitment, whether used or unused. The amount of the fee will depend on the credit rating of the borrowing applicant but will not exceed .75%.

The aggregate amount of all short-term borrowings through December 31, 2000, whether through the issuance of Short-Term Notes, Commercial Paper or borrowings from the Money Pool or revolving credit facilities or pursuant to open account advances, will not exceed $200 million for NU, $375 million for CL&P, $150 million for WMECO, $225 million for PSNH, $5 million for HWP, and $50 million for NAEC.

Short-Term Notes will be issued by NU, CL&P, WMECO and PSNH both on a transactional basis (''Transactional Notes''), with a separate note evidencing each loan, and on a ''grid-note'' basis (''Grid Notes''). Each Transactional Note will be dated the date of issue, will have a maximum term of 270 days, and will bear interest at a fixed or floating rate, as described below. Transactional Notes will be issued no later than December 31, 2000, and will, with certain exceptions, be subject to prepayment at any time at the borrower's option.

Grid Notes will be issued to a particular lending institution at or prior to the first borrowing under the Grid Note from that lender. Each repayment and reborrowing subsequent to the first borrowing will be recorded on a schedule to the note without the necessity of issuing additional notes. Also recorded on a schedule to the Grid Note at the time of a borrowing will be the date of the borrowing, the maturity (which may not exceed 270 days from the date of the borrowing), the number of days the borrowing is outstanding, the interest rate or method of determining the interest rate, the amount of interest due, and the date of the payment. Except as described below, borrowings on a Grid Note basis will be subject to prepayment at any time at the borrower's option.

The interest rate on all Short-Term Notes will be determined on the basis of competitive quotations from several lending institutions, and will either be at a fixed interest rate or a floating interest rate determined with reference to an agreed-upon index (such as a lending institution's prime rate, LIBOR certificate of deposit rates, money market rates or commercial paper rates). The interest rate in any case will not exceed two percentage points above the Federal Funds Effective Rate. The Applicants will select the lending institution(s) from which to make a particular short-term borrowing and determine whether to borrow at a fixed or a floating rate on the basis of the lowest expected effective interest cost for borrowings of comparable sizes and maturities.

Borrowings bearing floating interest rates will generally be subject to prepayment at the borrower's option. In order to realize the benefits of fixed interest rates when a fixed-rate borrowing is evaluated to be the lowest cost borrowing available, the Applicants may from time to time agree with individual lenders that such borrowings may not be prepaid or may only be prepaid if the lender is made whole for its losses (including lost profits) as a result of the prepayment.

NU, CL&P, WMECO and PSNH propose to secure both formal and informal credit lines with a number of lending institutions. Formal credit lines may be subject to compensating balance and/or fee requirements and will therefore be used only when an Applicant determines that such a credit line offers advantages as compared with other available credit options. Compensating balance requirements will not exceed 5% of the committed credit line amount, and fees will not exceed 0.30% per annum. Each Applicant participating in a credit line would be able to draw funds to the exclusion of the other Applicants. The Applicants may change their credit lines and may obtain additional lines over time. The continued availability of such credit lines is subject to the continuing review of the lending institutions.

CL&P, WMECO and NU propose to sell Commercial Paper publicly. Such Commercial Paper will be issued through The Depository Trust Company in the form of book entry notes in denominations of not less than $50,000, of varying maturities, with no maturity more than 270 days after the date of issue. The Commercial Paper will not be repayable prior to maturity. The Commercial Paper will be sold through a placement agent or agents in a co-managed commercial paper program at either the discount rate per annum or the interest rate per annum prevailing at the date of issuance for commercial paper of comparable quality and of the particular maturity sold by public utility issuers thereof. No Commercial Paper will be issued unless the issuing Applicant believes that the effective interest cost to the Applicant will be equal to or less than the effective interest rate at which the Applicant could issue Short-Term Notes in an amount at least equal to the principal amount of such Commercial Paper. The placement agent or agents will receive a commission for the sale of the Commercial Paper of not more than ⅛ of 1% per annum on a discounted basis.

The Applicants also propose the continued use, through December 31, 2000, of the Money Pool, which is composed of available funds loaned by the NU and participating subsidiaries and borrowed by those subsidiaries to assist in meeting their respective short-term borrowing needs. Another potential component of the Money Pool is funds borrowed by NU through the issuance of Short-Term Notes, by selling Commercial Paper or by borrowing through the Facility (or existing revolving credit agreements if all are not terminated when the new Facility becomes effective) for the purpose of making open account advances through the Money Pool. NU requests that its authority for such borrowings be extended through December 31, 2000. The amounts to be borrowed by NU for the purpose of making open account advances and to be borrowed through the Money Pool by the recipients set forth above will also be subject to the short-term limits on aggregate amount outstanding for which approval is sought in this filing.

All borrowings from and contributions to the Money Pool, including the open account advances, will be documented and will be evidenced on the books of each Applicant that is borrowing from or contributing surplus funds to the Money Pool. Except for loans from the proceeds of external borrowings by NU, all loans made under the Money Pool will bear interest for both the borrower and lender, payable monthly, equal to the daily Federal Funds Effective Rate as quoted by the Federal Reserve Bank of New York. Loans from the proceeds of external borrowings by NU will bear interest at the same rate paid by NU on the borrowings, and no such loans may be prepaid (unless NU is made whole for any additional costs that may be incurred because of such prepayment). To the extent that there are any excess funds available in the Money Pool, such funds will be invested with the earnings allocated on a pro rata basis.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–20347 Filed 8–8–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37522; File No. SR–Amex–96–29]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc. Relating to Restrictions on the Available Exercise Prices for FLEX Equity Call Options and Elimination of the Requirement that Members Sign the Trade Sheet to Create a Binding FLEX Contract

August 2, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 29, 1996, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange 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 American Stock Exchange, Inc. proposes to amend Exchange Rule 906G to restrict the available exercise prices for FLEX equity call options and Rule 904G to eliminate the requirement that members sign the Trade Sheet when creating a binding FLEX contract.

The text of the proposed rule changes is available at the Office of the Secretary, the Amex 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 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 the Statutory Basis for, the Proposed Rule Change

(1) Purpose

Rule 903G Amendment

On June 19, 1996, the Exchange received approval to list and trade flexible options on individual stocks known as FLEX equity options.[1] Similar to the FLEX index options currently trading at the Exchange, investors will be able to set the specific terms of each FLEX equity option contract. Among the terms that can be specified are: (1) the expiration date of the option; (2) the exercise price of the option; and (3) the exercise style of the option (American or European). The Exchange, however, imposes some limitations on these flexible terms. For example, the Exchange does not permit the expiration date of a FLEX option to be any business day that falls on or within two business days of the expiration date for standardized non-FLEX equity options.

Although the Exchange has received approval to trade these products, it has not done so due to a concern that the flexible exercise price feature could result in an available call option that would impact the qualified covered call rules of Section 1092(c)(4) of the Internal Revenue Code, thus jeopardizing a modest tax benefit currently enjoyed by writers of standardized non-FLEX equity call options. Under the straddle rules of Section 1092, a loss on one position in a straddle is taken into account for tax purposes only to the extent that the amount of the loss exceeds unrecognized gain on the other position(s) in the straddle. In addition, if a taxpayer has held stock for less than the long-term holding period at the time the taxpayer acquires an offsetting position with respect to the stock, the taxpayer's holding period in the stock will be forfeited until disposing of the position offsetting the stock.

Although stock and an offsetting option (*e.g.,* a short call) constitute a straddle for purposes of Section 1092, a straddle consisting solely of stock and a qualified covered call (''QCC'') has been exempted from these rules provided, among other things, that the call option is not ''deep-in-the-money.'' Under certain conditions a ''deep-in-the-money'' call option is defined to mean an option having an exercise price lower than the highest available exercise price which is less than the previous day's closing price of the stock. For example, using standardized options, if stock XYZ closed yesterday at $54 and opened at that price today, the standardized exercise price of $50 for a call option would *not* be ''deep-in-the-money'' since $50 would be the highest available exercise price that is less than the applicable stock price. A standardized exercise price of $45, however, would be ''deep-in-the-money'' and would *not* be a QCC. Thus, if a FLEX equity call option were written with an exercise price of $53, the standardized exercise price of $50 might be considered ''deep-in-the-money'' since the FLEX equity call option with an exercise price of $53 could be considered the highest available exercise price and the only qualified covered call for that option. Another interpretation might consider any call option struck at or below $53¾ ''deep-in-the-money'' since FLEX Equity Call Option strikes of $53⅞ and $53¾ could be created.

While the Exchange hopes to petition the Treasury Department for relief from these latter interpretations of the straddle rules, in the interim, the Exchange proposes to go forward with the FLEX equity option program by prohibiting the writing of FLEX equity call options with exercise prices other than those exercise prices currently available for standardized or non-FLEX equity options.

Although this proposal will place limitations on a product designed to be flexible and free of such standardized terms, the Exchange believes that the proposed limitations appropriately balance the needs of investors with concerns that flexible exercise prices for FLEX equity call options could disrupt the existing framework for determining whether a standardized option is a qualified covered call. FLEX equity put options would have no restrictions placed on exercise prices since the exemption from the straddle rules is available only for call options. In addition, the Exchange anticipates that it will seek to eliminate the proposed restriction on the exercise prices of FLEX equity call options when it receives guidance and relief from the Treasury Department.

Rule 904 G

The Exchange proposes to eliminate the requirement that acceptance of the best bid or offer will take place only when each party to the FLEX transaction signs a trade sheet, thus creating a binding contract. Since the Exchange began trading Flex index options in 1993, the fully manual process for executing transactions has been automated. Currently, trade information is input into the Exchange's Intra-Day Comparison (IDC) System for FLEX index options after completion of a trade in a manner similar to that for non-FLEX options. IDC input results in the immediate comparison of FLEX option trades; thus, the requirement that trade sheets be signed is unnecessary and time consuming.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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

[1] *See* Securities Exchange Act Release No. 37336 (June 19, 1996) (order approving SR–Amex–95–57).

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 Amex.

All submissions should refer to File No. SR–Amex–96–29 and should be submitted by August 30, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[2]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–20311 Filed 8–8–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37519; File No. SR–CBOE–96–43]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Listing and Trading of Options on the Goldman Sachs Technology Composite Index

August 2, 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 July 2, 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.[1] 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 provide for the listing and trading on the Exchange of options on the Goldman Sachs Technology Composite Index (''GSTI Composite Index'' or ''Index''), a cash-settled, broad-based index designed to measure the performance of high capitalization technology stocks.[2]

The text of the proposed rule change is available at the Office of the Secretary, CBOE 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 CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style stock index options on the GSTI Composite Index. The GSTI Composite Index is a capitalization-weighted index of the universe of technology-related company stocks which meet certain objective criteria.

Index Design. The GSTI Composite Index has been designed to measure the performance of high capitalization technology stocks. The GSTI Composite Index is a capitalization-weighted index with each stock affecting the Index in proportion to its market capitalization.

As mentioned above, the GSTI Composite Index will consist of the universe of technology-related stocks that meet certain objective criteria. First, the company's stock must trade on the New York Stock Exchange, the American Stock Exchange, or through the facilities of the NASDAQ and be ''reported securities'' under Rule 11Aa3–1. Only outstanding common shares are eligible for inclusion; American Depositary Receipts are not eligible. Second, the total market capitalization of the company's stock must be equal to or greater than the capitalization ''cutoff'' value. The base period ''cutoff'' value will be $600 million, but this value will be adjusted on each semiannual rebalancing date (as described below) to reflect the price performance of the GSTI Composite Index since the base period and rounded up to the nearest $50 million. Index constituents with capitalization below 50% of the ''cutoff'' value on a semiannual rebalancing date shall be removed after the close on the effective date of the rebalancing. Third, company stocks with a public float below 20% of shares issued and outstanding are not eligible for inclusion in the GSTI Composite Index.[3] Fourth, the company stock must have annualized share turnover over 30% or more based on its average daily share volume for the six calendar months prior to inclusion in the Index. Finally, the components must be from a group of specified Standard Industrial Classification codes or Russell Industry codes.

As of April 30, 1995, the GSTI Composite Index was comprised of 177 stocks ranged in capitalization from $604 million to $67.3 billion. The largest stock accounted for 8.5% of the total weighting of the Index, while the smallest accounted for 0.08%. The median capitalization of the firms in the Index was $1.5 billion.

Calculation. The methodology used to calculate the value of the Index is similar to the methodology used to calculate the value of other well-known broad-based indices. The level of the Index reflects the total market value of all the component stocks relative to a particular based period. The GSTI Composite Index base date is April 30, 1996, when the Index value was set to 100. The daily calculation of the GSTI Composite Index is computed by dividing the total market value of the components in the Index by the Index Divisor. The divisor is adjusted as needed to ensure continuity in the Index whenever there are additions and deletions from the Index, share changes, or adjustments to a component's price to reflect offerings, spinoffs, or extraordinary cash dividends. The values of the Index will be calculated by CBOE or a designee of Goldman Sachs, and disseminated at 15-second intervals

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[2] 17 CFR 200.30–3(a)(12).

[1] Concurrent with this proposal, CBOE has filed for approval to list and trade options on six different sub-indexes, each of which is a narrow-based index, composed of components of the Goldman Sachs Technology Composite Index proposed in this filing. *See* SR–CBOE–96–44.

[2] A list of the securities comprising the GSTI Composite Index, as well as listed shares outstanding and prices as of April 30, 1996, was submitted by the Exchange as Exhibit B, and is available at the Office of the Secretary, CBOE and at the Commission.

[3] The public float is determined by dividing the number of shares which are owned by persons other than those required to report their stock holdings under Section 16(a) of the Act by the total number of shares outstanding. With respect to options on underlying individual components, CBOE Rule 5.3, Interpretations and Policies .01(a)(1) requires a minimum of 7,000,000 shares of the underlying security which are owned by persons other than those required to report their stock holdings under Section 16(a) of the Act. Telephone conversation with Eileen Smith, CBOE and Janice Mitnick, SEC, on July 30, 1996.

during regular CBOE trading hours to market information vendors via the Options Price Reporting Authority (''OPRA'').

Maintenance. The GSTI Composite Index will be maintained by the Exchange. Index maintenance includes monitoring and completing the adjustments for company additions and deletions, share changes, stock splits, stock dividends, and stock price adjustments due to such events as company restructuring or spinoffs.

Stocks may be added or deleted from the Index at a time other than at the rebalancing according to the ''Fast Add and Delete'' Rule. All Index constituent changes made in accordance with this rule will be announced by the Exchange at least five trading days prior to the effective date of the Fast Add or Delete whenever possible.

Any technology-related company whose shares start trading between semiannual rebalancings is eligible to be Fast Added to the Index if all the inclusion criteria described above are met and the stock ranks in the top quartile of market capitalization of the GSTI Composite Index on the previous month-end closing prices. No minimum share turnover ratio is required.

If two companies in the Index merge or if an Index constituent merges with a company not currently in the Index, the merged company shall remain in the Index if it meets all the Index inclusion criteria. If the target company is currently in the Index, it will be Fast Deleted after the close on the date the merger is completed.

If a GSTI Composite Index constituent is acquired by a non-Index company, the acquiring company may be added to the Index if it meets the inclusion criteria; otherwise, the target company will be Fast Deleted. Any such additions or deletions will be effective after the close on the date the acquisition is completed.

If a company in the Index spins off another company, the parent and the spinoff will remain in the Index provided that each meets the Index inclusion criteria. If either the parent of the spinoff fails to meet the inclusion criteria, it will be removed from the Index.

In the event that a company represented in the Index files for bankruptcy, its stock will be removed from the Index effective after the close on the date of filing. In the event that trading in an Index constituent is suspended for thirty (30) trading days, a decision will be made whether the stock will be removed from the Index. Any such removal will be preannounced and, for purposes of minimizing impact to the Index, the stock to be removed will be removed at the value at which it last traded.

The GSTI Index will be rebalanced for additions and deletions on a semiannual basis. Stocks will be added or deleted from the Index at the rebalancing based on the inclusion criteria described in the ''Index Design'' section above. Index share changes will be made to reflect the outstanding shares and closing prices of all Index constituents on the ''rebalancing'' date. The changes will be implemented after the close on the ''effective'' date. The effective dates shall be the third Friday of January and July. The rebalancing date shall be 7 business days inclusive prior to the effective date. The Exchange will screen the technology stocks for inclusion in the Index and will determine the components of the Index. Notice of the new component list will be disseminated by the Exchange to the public before trading begins on Monday. Therefore, Goldman Sachs will not learn of the new composition during regular U.S. trading hours.

Except for stocks which meet the criteria for Fast Add or Delete (as described above), stocks can only be added or deleted from the Index at the time of the semiannual rebalancing.

Index Option Trading. In addition to regular Index options, the Exchange may provide for the listing of long-term index option series (''LEAPS®'') and reduced-value LEAPS on the Index. For reduced-value LEAPS, the underlying value would be computed at one-tenth of the Index level. The current and closing Index value of any such reduced-value LEAP will, after such initial computation, be rounded to the nearest one-hundredth.

Strike prices will be set to bracket the Index in a minimum of 2½ point increments for strikes below 200 and in 5 point increments above 200. The minimum tick size for series trading below $3 will be 1/16th and for series trading above $3 the minimum tick will be 1/8th. The trading hours for options on the Index will be from 8:30 a.m. to 3:15 p.m. Chicago time.

Exercise and Settlement. The proposed options on the Index will expire on the Saturday following the third Friday of the expiration month. Trading in the expiring contract month will normally cease at 3:15 p.m. (Chicago time) on the business day preceding the last day of trading in the component securities of the Index (ordinarily the Thursday before expiration Saturday, unless there is an intervening holiday). The exercise settlement value of the Index at option expiration will be calculated based on the opening prices of the component securities on the business day prior to expiration. If a stock fails to open for trading, the last available price on the stock will be used in the calculation of the Index, as is done for currently listed indexes. When the trading day is moved because of Exchange holidays (such as when CBOE is closed on the Friday before expiration), the last trading day for expiring options will be Wednesday and the exercise settlement value of Index options at expiration will be determined at the opening of regular Thursday trading.

Surveillance. The Exchange will use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in Index options and Index LEAPS on the GSTI Composite Index.

Position Limits. The Exchange proposes to establish position limits for options on the Index at 100,000 contracts on either side of the market, with no more than 60,000 of such contract permitted to be in the series in the nearest expiration month. These limits are roughly equivalent, in dollar terms, to the limits applicable to options on other indices.

Exchange Rules Applicable. As modified herein, the Rules in Chapter XXIV will be applicable to GSTI Composite Index options.

CBOE has the necessary systems capacity to support new series that would result from the introduction of GSTI Composite Index options. CBOE has also been informed that the OPRA has the capacity to support such new series.[4]

CBOE believes the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it will permit trading in options based on the Index pursuant to rules designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and thereby will provide investors with the ability to invest in options based on an additional index.

2. Statutory Basis

CBOE believes the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it will permit trading in options based on the IPC pursuant to rules designed to prevent fradulent and

[4] *See* memo from Joe Corrigan, Executive Director, OPRA, to Eileen Smith, Director of Product Research, CBOE, dated June 26, 1996 (confirming that the traffic generated is within the OPRA's capacity).

manipulative acts and practices and to promote just and equitable principles of trade, and thereby will provide investors with the ability to invest in options based on an additional index.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such 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 the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, will written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-96-43 and should be submitted by August 30, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

[5] 17 C.F.R. 200.30–3(a)(12) (1994).

Jonathan G. Katz,

Secretary.

[FR Doc. 96–20310 Filed 8–8–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37520; File No. SR–NYSE–96–15]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Members' Compliance With Position and Exercise Limits for Non-NYSE Listed Options

August 2, 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 28, 1996, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization.[1] 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 NYSE proposes to amend NYSE Rules 704, ''Position Limits,'' and 705, ''Exercise Limits,'' to require NYSE members who trade non-NYSE-listed option contracts and who are not members of the exchange where the options are traded to comply with the option position and exercise limits set by the exchange where the transactions are effected.[2]

The text of the proposed rule change is available at the Office of the Secretary, NYSE, and at the Commission.

[1] The NYSE requested accelerated approval of the proposed rule change. *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Yvonne Fraticelli, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Commission, dated July 9, 1996 (''Amendment No. 1'').

[2] Position limits impose a ceiling on the number of option contracts in each class on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls) that can be held or written by an investor or group of investors acting in concert. Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days.

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

(a) Purpose

Currently, NYSE Rule 704 limits the size of options positions that opening transactions in NYSE-listed options may create. Exchange Rule 705 prohibits a member or member organization from exercising NYSE-listed option contracts in amounts that exceed the NYSE's position limits. The purpose of the proposal is to expand the scope of those position and exercise limits to include opening transactions and exercises that are not dealt in on the Exchange, but that are dealt in on other options exchanges. The proposal applies to both equity options and index options.

As a result, the NYSE will gain the authority to exercise jurisdiction over its members and member organizations for activity in options that are not dealt in on the NYSE. The NYSE could thereby discipline members and member organizations for violations of position and exercise limits in option contracts, regardless of the exchange on which the contracts trade.[3]

The Exchange will exercise this authority only when the NYSE member or member organization is not a member of the other option exchange. That is, the proposal is intended to provide authority to discipline violations where no such authority currently exists. That authority currently is absent because (1) the NYSE's rules currently do not grant that authority to the NYSE and (2) the NYSE member or member organization that is in violation of another options exchange's rules is not a member or member organization of the other options exchange and therefore is not subject to the rules of that exchange.

[3] The Commission notes that, generally, the options exchanges have adopted uniform options position and exercise limits.

In expanding the scope of the position and exercise limit authority, the proposal would apply the position and exercise limit rules of the options exchange on which the NYSE member or member organization effects the transaction or exercise, including the other exchange's relevant exemptions, including the other exchange's relevant exemptions, interpretations, and policies.

(b) Statutory Basis

The NYSE believes that the proposal is consistent with Section 6(b) of the Act, in general, and with Section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The NYSE has not solicited, and does not intend to solicit, comment on this proposed rule change. The NYSE has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NYSE has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.[4]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) thereunder[5] in that it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. Specifically, the NYSE has noted that Exchange rules do not currently prohibit NYSE members from exceeding the position and exercise limits set by another exchange for non-NYSE listed option contracts. Thus, if the NYSE member is not a member of the exchange which lists the options, then neither the NYSE nor the exchange that limits the options is able to enforce its position and exercise limits against the NYSE member. The proposal eliminates this loophole and strengthens the Exchange's rules by requiring an NYSE member who trades non-NYSE listed option contracts on another exchange, and who is not a member of that exchange, to comply with the options position and exercise limits set by the exchange where the transactions are effected.[6]

As the Commission has noted in the past,[7] options position and exercise limits are intended to prevent the establishment of large options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations[8] and for corners or squeezes of the underlying market. In addition, they serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes. The proposal extends the benefits of the position and exercise limit rules to include all options transactions entered into by NYSE members.

As noted above, the proposed amendments will extend NYSE Rules 704 and 705 to apply to option contracts dealt in on any exchange (rather than only to option contracts dealt in on the NYSE) by requiring an NYSE member who effects transactions in non-NYSE-listed option contracts on another exchange, of which he or she is not a member, to comply with the position and exercise limits set by the exchange on which the transaction is effected. Such violations will be subject to disciplinary action by the Exchange pursuant to the NYSE's rules.

The Commission finds good cause for approving the proposed rule change and Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register because the proposal is identical to approved proposals submitted by the Chicago Board Options Exchange, Inc. (''CBOE''), Philadelphia Stock Exchange, Inc. (''PHLX''), the Pacific Stock Exchange, Inc. (''PSE''), and the American Stock Exchange, Inc. (''Amex'').[9] The CBOE and PHLX proposals were subject to the full notice and comment period and the Commission received no comments on those proposals. Therefore, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve the NYSE's proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 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 number in the caption above and should be submitted August 30, 1996.

It is therefore ordered, pursuant to Section 19( )(2) of the Act,[10] that the proposed rule change (File No. SR–NYSE–96–15), as amended, is approved on an accelerated basis.

[4] *See* Amendment No. 1, *supra* note 1.

[5] 15 U.S.C. 78f(b)(5) (1982).

[6] In applying the position and exercise limits of another options exchange, the NYSE will also follow any applicable exemptions, interpretations, and policies of that exchange.

[7] *See, e.g.*, Securities Exchange Act Release No. 33283 (December 3, 1993), 58 FR 65204 (December 13, 1993) (order approving File No. SR–CBOE–93–43).

[8] Mini-manipulation is an attempt to influence, over a relatively small range, the price movement in a stock to benefit a previously established derivatives position.

[9] *See* Securities Exchange Act Release Nos. 36242 (September 18, 1995), 60 FR 49305 (September 22, 1995) (order approving File No. SR–CBOE–95–22); 36257 (September 20, 1995), 60 FR 50228 (September 28, 1995) (order approving File No. SR–PHLX–95–31); 36350 (October 6, 1995), 60 FR 53654 (October 16, 1995) (order approving File No. SR–PSE–95–17); and 36567 (December 8, 1995) 60 FR 64463 (December 15, 1995) (order partially approving File No. SR–Amex–95–35).

[10] 15 U.S.C. 78s(b)(2) (1982).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–20309 Filed 8–8–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37521; File No. SR–PSE–96–01]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2 and 3 Thereto by the Pacific Stock Exchange, Inc. Relating to its Options Firm Quote Rule

August 2, 1996.

On January 16, 1996, the Pacific Stock Exchange, Inc. (''PSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend its Options Firm Quote Rule (Rule 6.86, the ''Rule'') in order to codify some related floor policies and also to clarify certain provisions of the Rule. Notice of the proposed rule change was published for comment and appeared in the Federal Register on March 4, 1996.[3] No comment letters were received on the proposal. On May 17, 1996, the Exchange filed Amendment No. 1 to the proposal.[4] On June 27, 1996, the PSE filed Amendment No. 2 to the proposed rule change,[5] and on July 25, 1996, the Exchange filed Amendment No. 3 to the proposal.[6] This order approves the PSE proposal as amended.

I. Description of the Proposal

The Exchange is proposing to modify its Options Firm Quote Rule as follows:

Order Identification

Subsection (a) of the Rule currently provides that members and member organizations who enter orders for execution on the options floor must ascertain the account origin of such orders and provide a notation of the account origin on the order ticket. The Exchange is proposing to modify this provision to provide that such members and member organizations would be required to communicate such account information to the executing member organization. Accordingly, the member or member organization entering the order must indicate to the executing member organization whether the order is for the account of a customer, firm or market maker.

The proposal would also set forth the duty of executing floor brokers to inquire personally as to the account origin of each eligible order upon receipt thereof or prior to its execution and to note such information on the order ticket.

Finally, under the proposal, the executing member organization and the clearing member organization would bear greater responsibility with respect to the proper identification of orders that are executed on behalf of non-members of the Exchange.

Commentary .05

Proposed Commentary .05 sets forth certain types of orders that are subject to the Rule and the extent to which the Rule applies to such orders. The Rule specifically addresses the treatment of combination orders, spread orders, straddle orders and contingency orders. With respect to combination orders involving option contracts on one side of the market, market makers in a trading crowd would only be responsible for providing an aggregate of 20 contracts; however, if a combination order is for option contracts on both sides of the market, market makers must provide a depth of 20 contracts on both sides of the market.[7] Moreover, market makers would be required to provide a depth of 20 contracts on both sides of the market for spread and straddle orders. The proposed Commentary also enumerates the types of contingency orders that are subject to the Rule, *i.e.* ''minimum'' orders of 20 contracts or less, market not-held, limit not-held and delta orders that can be executed immediately, and all-or-none orders of twenty contracts or less.

The proposed Commentary also provides that in executing contingency orders pursuant to the Rule, the order ticket must be time stamped upon being taken into the trading crowd. Finally, the proposed Commentary states that such orders are entitled to 20 contracts on the market disseminated at that time.

Commentary .06

Proposed Commentary .06 provides that market makers must be afforded a reasonable opportunity to update their disseminated markets for the execution of consecutive eligible customer orders in options on the same underlying security. The Commentary further provides that such orders shall be executed on a time priority basis so that the order with the earliest time stamp will receive a guaranteed fill of 20 contracts.

Commentary .07

Proposed Commentary .07 provides that if a floor broker can immediately execute a limit order at the disseminated market price, but instead, the floor broker quotes a better price than the limit price stipulated on the order ticket, and the market then changes so that the order can no longer be executed at the disseminated market price, the floor broker shall be held liable to the customer for the execution of a minimum of 20 contracts at the original disseminated price.[8]

Commentary .08

Proposed Commentary .08 designates those market makers to whom the order book official may, pursuant to current

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[11] 17 CFR 200.30–3(a)(12) (1995).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4

[3] *See* Securities Exchange Act Release No. 36883 (February 23, 1996), 61 FR 8321 (March 4, 1996).

[4] *See* letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to James T. McHale, Attorney, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Commission, dated May 16, 1996 (''Amendment No. 1''). Amendment No. 3 supersedes and replaces Amendment No. 1.

[5] In Amendment No. 2 the Exchange revised proposed Commentary .05(a) to make clear that with respect to combination orders involving option contracts on one side of the market, market makers in a trading crowd would only be responsible for providing an aggregate of 20 contracts; however, if a combination order is for option contracts on both sides of the market, market makers must provide a depth of 20 contracts on both sides of the market. Additionally, the Exchange revised proposed Commentary .07 to clarify that a floor broker, who has the opportunity to execute a limit order at the disseminated market price, but instead quotes a better price than the limit price stipulated on the order ticket and the market then changes so that the order can no longer be executed at the original disseminated price, will be held liable for the execution of a minimum of 20 contracts at the original disseminated price. *See* letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PSE, to James T. McHale, Attorney, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Commission, dated June 26, 1996 (''Amendment No. 2'').

[6] In Amendment No. 3 the Exchange clarified a potential ambiguity in proposed Commentary .05(c) to Rule 6.86 by deleting a sentence which specified certain types of contingency orders to which Rule 6.86 did not apply. In addition, Amendment No. 3 deletes a sentence in proposed Commentary .05(c) which stated that the list of types of contingency orders to which the Rule applies would not be considered exhaustive. Finally, in Amendment No. 3 the PSE further clarifies proposed Commentary .07 to provide that the executing floor broker will be held liable *to his customer* for a minimum of 20 contracts at the original disseminated price, if the floor broker had the opportunity to execute the customer's limit order, but instead made a failed attempt to improve the execution. *See* letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to James T. McHale, Attorney, OMS, Division, Commission, dated May 16, 1996 (''Amendment No. 3'').

[7] *See* Amendment No. 2, *supra* note 5.

[8] *See* Amendment Nos. 2 and 3, *supra*, notes 5 and 6, respectively.

Subsection (d), allocate the balance of contracts necessary to provide an execution of 20 contracts when the response of the members present at the trading post is insufficient to provide a depth of 20 contracts. Specifically, such allocations may be made to market makers who: (1) are present at the trading post at the time of a call for a market; and either (2) hold an appointment in the option classes at the trading post or (3) regularly effect transactions in person for their trading accounts at that trading post.

In addition, this proposed Commentary provides that market markers who have logged on to the Exchange's Automatic Execution system (''Auto-Ex''),[9] but who are not present in the trading crowd will not be eligible for an allocation by the order book official pursuant to current Subsection (d).

II. Discussion

The Commission finds that the proposed rule change relating to the PSE's Options Firm Quote Rule is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5)[10] in that it is designed to facilitate transactions in securities, promote just and equitable principles of trade, and protect investors and the public interest. Specifically, with respect to ''order identification,'' the Commission believes that the rule change further clarifies the account origin responsibilities of the parties involved in a trade which is subject to the Rule. The rule change requires, among other things, that the executing floor broker verify whether the order is being executed for the account of a customer, firm or market maker. This clarification provides objective criteria against which the executing floor broker's actions can be measured and, thus, should make enforcement of the Rule more effective for the Exchange.

Moreover, the Commission believes that interpreting the Options Firm Quote Rule as set forth in new Commentary .05 is consistent with the Act and the intent of the Rule.[11] The Rule currently provides that all non-broker/dealer customer orders are entitled to execution at the bid or offer which is displayed as the disseminated market quote up to a depth of 20 contracts. With regard to combination orders, the Exchange has proposed clarifying that market makers are responsible for providing an aggregate of 20 contracts for combination orders on one side of the market, but 20 contracts on both sides of the market for combination orders on two sides of the market. The Commission believes this is reasonable since interpreting the Rule to require market makers to provide 20 contracts for combination orders involving options on the same side of the market would essentially create a ''40-up'' requirement, and potentially place undue burdens and capital risks on the PSE's options market makers.

With respect to new Commentary .06, the Commission believes that it is appropriate and consistent with the Act[12] for market makers to have a reasonable opportunity to update their market quotes for the execution of consecutive eligible customer orders in options on the same underlying security. Moreover, to provide that such orders shall be executed on a time priority basis so that the order with the earliest time stamp will receive a guaranteed fill of 20 contracts, is a fair interpretation of the Rule.

Commentary .07 provides that if a floor broker can immediately execute a limit order at the disseminated market price, but instead the floor broker quotes a better price than the limit price stipulated on the order ticket, and the market then changes so that the order can no longer be executed at the disseminated market price, the floor broker shall be held liable to the customer for the execution of a minimum of 20 contracts at the original disseminated price. The Commission believes that this should be an effective measure to protect investors by ensuring that a customer's executable limit order is filled at the limit price even if the floor broker makes a failed attempt at improving the execution. Finally, Commentary .08 provides an appropriate method to designate which market makers in the trading crowd are eligible to be allocated option contracts.

The Commission finds good cause for approving Amendment Nos. 2 and 3 to the proposal prior to the thirtieth day after the date of publication of the notice of filing thereof in the Federal Register. Specifically, in filing Amendment No. 2, the Exchange recognizes that some combination orders involve both sides of the market (*e.g.* ''*strangles*''[13]). Amendment No. 2 changes Commentary .05(a) to clarify that while a market maker's responsibility with respect to combination orders on one side of the market is to provide an aggregate of 20 contracts, the market maker must provide a depth of 20 contracts on both sides of the market for combination orders that involve an order for option contracts on both sides of the market. Amendment No. 2 also strengthens Commentary .07 by clarifying that a floor broker, who has the opportunity to execute a limit order at the disseminated market price, but instead quotes a better price than the limit price stipulated on the order ticket and the market then changes so that the order can no longer be executed at the original disseminated price, will be held liable for the execution of a minimum of 20 contracts at the original disseminated price.

Amendment No. 3 eliminates language in Commentary .05(c) that would have prohibited application of the Rule to certain types of contingency orders. The Exchange has determined that it is more appropriate to define those types of orders to which the Rule applies, rather than defining those orders to which the Rule does not apply. Additionally, in Amendment No. 3 the PSE has eliminated a sentence in Commentary .05(c) which stated that the list of types of contingency orders to which the Rule applies would not be considered exhaustive. The Commission believes that these changes strengthen the proposal by setting forth a clear and finite set of contingency order types to which the Rule applies. Finally, Amendment No. 3 further amends proposed Commentary .07 to provide that the executing floor broker will be held liable *to his customer* for a minimum of 20 contracts at the original disseminated price, if the floor broker had the opportunity to execute the customer's limit order, but instead made a failed attempt to improve the execution. The Commission believes

[9] The Auto-Ex system permits eligible market or marketable limit orders sent from member firms to be executed automatically at the displayed bid or offering price. Participating market makers are designated as the contra side to each Auto-Ex order and are assigned by Auto-Ex on a rotating basis, with the first market maker selected at random from the list of signed-on market makers. *See* Securities Exchange Act Release No. 34946 (November 7, 1994), 59 FR 59265 (November 16, 1996).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* Securities Exchange Act Release No. 28021 (May 16, 1990) 55 FR 21131 (May 22, 1990) (order approving PSE's original proposal requiring ten-up markets on a one-year pilot basis). The Exchange subsequently increased its minimum size guarantee for non-broker/dealer customer orders from 10 to 20 contracts, *See* Securities Exchange Act Release No. 34891 (October 25, 1994) 59 FR 54653 (November 1, 1994).

[12] *Cf.* 17 CFR 11Ac1–1(c). This firm quote rule, applicable to certain equity securities, generally allows market makers a reasonable period of time to update their quotations following an execution. *See* Securities Exchange Act Release No. 37502 (July 30, 1996).

[13] A strangle is a combination order involving the same underlying stock in which the put and the call have the same expiration date but different exercise prices.

that this portion of Amendment No. 3 clarifies a potential ambiguity in the interpretation of new Commentary .07, and, therefore, is not a substantive change to the proposal.

Based on the above, the Commission finds good cause for approving Amendment Nos. 2 and 3 to the proposed rule change on an accelerated basis and believes that the proposal, as amended, is consistent with Sections 6(b)(5) and 19(b)(2) of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 2 and 3. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to the File No. SR–PSE–96–01 and should be submitted by August 30, 1996.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–PSE–96–01) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–20308 Filed 8–8–96; 8:45 am]

BILLING CODE 8010–01–M

[14] 15 U.S.C. 78s(b)(2).

[15] CFR 200.30–3(a)(12).

[Release No. 34–37515; File No. SR–PTC–96–03]

Self-Regulatory Organizations; Participants Trust Company; Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Intraday Return of Participants' Prefunding Payments

August 2, 1996.

On June 3, 1996, Participants Trust Company (''PTC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–PTC–96–03) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] to permit the intraday return of prefunding payments to participants. Notice of the proposal was published in the Federal Register on July 7, 1996.[2] No comment letters were received. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Description

The rule change amends Article V, Rule 2, Section 5 of PTC's rules and establishes initial procedures to enable PTC to make intraday returns of participants' prefunding payments. Only prefunding payments which are received early in the day and which are no longer needed to support transaction processing at PTC will be eligible for intraday return. Previously, prefunding payments were applied to that day's settlement or withdrawn on the next business day or thereafter.[3] The rule change is to allow PTC to make these funds available to participants on the same day they are deposited with PTC in order that the depositing participants may use the funds to reduce daylight overdraft exposures or to ease liquidity pressures in other financial markets.

PTC will implement the intraday return of prefunding payments to participants with initial procedures to be incorporated into PTC's Participant's Operating Guide.[4] The initial procedures will provide that (i) all prefunding return transactions will be subject to PTC's standard credit controls (*i.e.*, a prefunding payment may be returned only if a participant will be within its NFE and net debit monitoring level requirements after such prefunding payment is returned); (ii) only prefunding payments received by PTC between 8:30 a.m. and 11:00 a.m. E.S.T. will be eligible for intraday return; (iii) during the initial stage of the pilot program, only eighty percent of qualifying prefunding payments will be eligible for intraday return;[5] (iv) participants will be allowed only one intraday return per day; (v) the minimum amount eligible for intraday return is $10 million; and (vi) all intraday returns are expected to be made by PTC between 11:00 a.m. and 12:00 p.m. E.S.T.

II. Discussion

Section 17A(b)(3)(F)[6] 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. For the reasons set forth below, the Commission believes that PTC's proposed rule change is consistent with PTC's obligations under the Act.

The return to participants of prefunding payments that are no longer needed to support transaction processing at PTC should enhance participants' liquidity during the day. Although the amounts returned to participants under the program could possibly be used to fund debits at PTC later in the day, the benefits derived from providing participants with increased intraday liquidity appear to outweigh PTC's interests in retaining the prefunding payments after situations necessitating such deposits have been remedied. PTC should be able to provide for the intraday return of prefunding payments while still assuring the safeguarding of securities and funds in its custody or control because PTC will not return any prefunding payments unless the requesting participant is in compliance with NFE and net debit monitoring level controls at the time the request is made.

PTC has requested that the Commission find good cause for

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 37402 (July 2, 1996), 61 FR 36601.

[3] ''Optional deposits,'' which include prefunding payments, are defined in PTC's rules as ''a participant's voluntary deposits to the participants fund with respect to any master account pursuant to Section 3 of Rule 2 of Article V.'' Article V, Rule 2, Section 3 states that participants may elect or be required to make optional deposits to the participants fund to (i) provide supplemental processing collateral to increase a participant's net free equity (''NFE''), (ii) prefund a debit balance in a participant's account, or (iii) permit free retransfers of securities from a transfer account.

[4] Upon implementation of the program, PTC plans to evaluate the initial procedures on a quarterly basis and will make changes to such procedures as necessary based upon PTC's experience with the program. PTC will be required to file with the Commission a proposed rule change prior to any change or modification of the initial procedures.

[5] This limitation is to minimize the risk that subsequent transactions will fail PTC's credit controls.

[6] 15 U.S.C. 78q–1(b)(3)(F) (1988).

approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change because accelerated approval will permit PTC participants to have the opportunity to obtain same-day value for prefunding payments no longer necessary to support transaction processing at PTC. This should be extremely beneficial in a same-day funds environment. Furthermore, the Commission has not received any comment letters and does not expect to receive any comment letters on the proposal.

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–PTC–96–03) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–20312 Filed 8–8–96; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(12) (1995).

SMALL BUSINESS ADMINISTRATION

Regent Capital Partners, L.P. (License No. 02/02–0567); Notice of Issuance of a Small Business Investment Company License

On December 19, 1994, an application was filed by Regent Capital Partners, L.P., 505 Park Avenue, Suite 1700, New York, New York, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 C.F.R. 107.102 (1996)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02–0567 on July 30, 1996, to Regent Capital Partners, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 1, 1996.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 96–20316 Filed 8–8–96; 8:45 am]

BILLING CODE 8025–01–M

Honolulu District Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Honolulu District Advisory Council will hold a public meeting on Thursday, August 29, 1996 at 10:00 a.m. at PJJK Federal Building, Room 4113 A, 300 Ala Moana, Honolulu, HI 96850 to discuss matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Andrew K. Poepoe, District Director, U.S. Small Business Administration, 300 Ala Moana Blvd., Room 2314, Honolulu, HI 96850, (808) 541–2965.

Dated: August 1, 1996.

Michael P. Novelli,

Director, Office of Advisory Council.

[FR Doc. 96–20314 Filed 8–8–96; 8:45 am]

BILLING CODE 8025–01–M

Notice of Cancellation; Clarksburg District Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Clarksburg District Advisory Council will hold a public meeting on Thursday, August 15, 1996 at 10:00 a.m. at Eat'N Park Restaurant, 100 Tolley Street, Bridgeport, West Virginia, to discuss matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

A new date for the meeting will be announced and the public will be notified of date, time and place of meeting and notice will be published in the Federal Register at least 30 days prior to the meeting in accordance with the regulations.

For further information, write or call Mr. Thomas Tolan, Acting District Director, U.S. Small Business Administration, 168 West Main Street, Clarksburg, West Virginia 26301, (304) 623–5631.

Dated: August 1, 1996.

Michael P. Novelli,

Director, Office of Advisory Council.

[FR Doc. 96–20315 Filed 8–8–96; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending August 2, 1996

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–96–1601.
Date filed: July 29, 1996.
Parties: Members of the International Air Transport Association.
Subject:
TC12 MV/P 0371
Mail Vote 812 US-Austria/Belgium/Germany/ Netherlands/Scandinavia/Switzerland Resos r–1–002n r–2–002v
Intended effective date: September 1, 1996.

Docket Number: OST–96–1602.
Date filed: July 29, 1996.
Parties: Members of the International Air Transport Association.
Subject:
TC1 Reso/C 0259 dated May 31, 1996
Revalidate TC1 Resolutions r–1
TC12 Reso/C 0931 dated May 31, 1996
Currency Adjustment from Yemen r–2
Intended effective date: October 1, 1996.

Docket Number: OST–96–1604.
Date filed: July 29, 1996.
Parties: Members of the International Air Transport Association.
Subject:
TC31 Reso/C 0251 dated May 31, 1996
TC31 Resolutions r1 thru r6
Tables—TC31 Rates 0188 dated July 9, 1996, TC31 Rates 0189 dated July 12, 1996
Intended effective date: October 1, 1996.

Docket Number: OST–96–1608.
Date filed: July 31, 1996.
Parties: Members of the International Air Transport Association.
Subject:
COMP Telex 033f
Local Currency Rate Changes—Hungary
Intended effective date: October 1, 1996.

Docket Number: OST–96–1609.
Date filed: July 31, 1996.
Parties: Members of the International Air Transport Association.
Subject:
TC2 Reso/P 1970 dated July 2, 1996
Europe—Middle East Resos r1–r32
Minutes—TC2 Meet/P 0370 dated July

26, 1996
Tables—TC2 Fares 1443 dated July 23, 1996
Correction—TC2 Reso/P 1971 dated July 5, 1996
Intended effective date: January 1, 1997.

Docket Number: OST–96–1612.
Date filed: August 1, 1996.
Parties: Members of the International Air Transport Association.
Subject:
r–1 TC3 Reso/C 0089 dated July 2, 1996
r2 TC12 Reso/C 0929—Reso 590 (North Atlantic-Africa) dated May 31, 1996
r3 TC12 Reso/C 0930 dated May 31, 1996, TC12 Reso/C 0933 dated June 14, 1996 (Correction)
r4 TC12 Reso/C 0934 dated July 2, 1996
r5 TC23 Reso/C 0224 dated July 2, 1996
r6 TC123 Reso/C 0038 dated May 31, 1996, TC123 Reso/C 0039 dated June 14, 1996 (Correction)
TC123 Rates 0026 dated July 2, 1996 (Rates tables)
r7 COMP Reso/C 0664—Reso 501 dated May 31, 1996
r8 COMP Reso/C 0668—Reso 518 dated June 7, 1996, Airline Economic Justifications
Intended effective date: October 1, 1996.

Docket Number: OST–96–1613.
Date filed: August 1, 1996.
Parties: Members of the International Air Transport Association.
Subject:
COMP Reso/P 1118 dated July 26, 1996 r1–5
COMP Reso/P 1119 dated July 26, 1996 r6
Composite Expedited Resolutions (Summaries attached.)
Intended effective date: October 1, 1996.

Paulette V. Twine,
Chief, Documentary Services Division.
[FR Doc. 96–20391 Filed 8–8–96; 8:45 am]
BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending August 2, 1996

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–96–1616.
Date filed: August 2, 1996.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 30, 1996.
Description: Application of Nordic East International Aircraft AB d/b/a Nordic East Airways AB, pursuant to 49 U.S.C. Section 41301 and Part 211 of the Department of Transportation's Economic Regulations and Subpart Q, applies for a foreign air carrier permit to engage in the foreign air transportation of persons, property and mail between any point or points in Sweden and any point or points in the United States; fifth freedom service between any point or points in the United States and any point or points not in Sweden or the United States; and any point or points in Sweden or the United States; and any other charter flights authorized pursuant to Part 212 of the Department's regulations.

Docket Number: OST–96–1538.
Date filed: July 29, 1996.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 12, 1996.
Description: Application of Trans World Airlines, Inc. pursuant to Order 96–7–19, applies for a frequency allocation of two daily flights to engage in foreign air transportation of persons, property and mail between St. Louis, on the one hand, and Toronto, Canada, on the other hand.

Docket Number: OST–96–1538.
Date filed: July 29, 1996.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 12, 1996.
Description: Application of Midway Airlines Corporation pursuant to 49 U.S.C. Sections 41102 and 41108, Order 96–7–19, and Subpart Q of the Department's Regulations, applies for a new or amended certificate of public convenience and necessity to provide scheduled foreign air transportation of persons, property and mail between Raleigh/Durham, North Carolina and Toronto, Ontario, Canada.

Docket Number: OST–96–1538.
Date filed: July 29, 1996.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 12, 1996.
Description: Application of Northwest Airlines, Inc. pursuant to 49 U.S.C. Sections 41101 and Subpart Q of the Department's Procedural Regulations and Order 96–7–19, applies for a certificate of public convenience and necessity to provide scheduled foreign air transportation of passengers, property and mail between Minneapolis/St. Paul, Minnesota and Toronto, Canada.

Docket Number: OST–96–1538.
Date filed: July 29, 1996.
Due Date for Answers. Conforming Applications, or Motion to Modify Scope: August 12, 1996.
Description: Application of Delta Air Lines, Inc. pursuant to Order 96–7–19, applies for an allocation of two additional frequencies and a designation under the Year-3 provisions of the U.S.-Canada Air Transport Agreement to permit Delta to increase its Atlanta-Toronto service from two to four daily nonstop roundtrip flights.

Paulette V. Twine,
Chief, Documentary Services Division.
[FR Doc. 96–20390 Filed 8–8–96; 8:45 am]
BILLING CODE 4910–62–P

Coast Guard

[CGD 96–038]

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 four Information Collection Requests (ICR) for renewals. These ICRs include: 1. Requirements for the Use of Liquefied Petroleum Gas and Compressed Natural Gas as Cooking Fuel on Passenger Vessels; 2. Identification of Lifesaving, Fire Protection and Emergency Equipment; 3. Periodic Gauging and Engineering Analyses; 4. Response Resources Inventory Data Collection. 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 October 8, 1996.

ADDRESSES: Comments may be mailed to Commandant (G–SSI–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 8:00 a.m. and 3:00 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:* Requirements for the Use of Liquefied Petroleum Gas and Compressed Natural Gas as Cooking Fuel on Passenger Vessels. OMB No. 2115–0549.

Summary: The collection of information requires passenger vessels to have posted two placards which contain safety and operating instructions on the use of cooking appliances that use liquefied gas or compressed natural gas.

Need: Under title 46 U.S.C. 3306(a)(5), the Coast Guard has the authority to allow passenger vessels to use liquefied propane gas and compressed natural gas cooking appliances provided that operating and safety instructions on the use of these appliances are posted on board the vessel.

Respondents: Passenger Vessel Owners and Operators.

Frequency: On occasion.

Burden Estimate: The estimated burden is 1,425 hours annually.

2. *Title:* Identification of Lifesaving, Fire Protection and Emergency Equipment. OMB No. 2115–0577.

Summary: The collection of information requires owners of merchant vessels to have identification markings on lifesaving equipment including the manufacturer name, model number, capacity, approval number and other information concerning performance.

Need: Under Title 46 U.S.C. 3306, the Coast Guard has the authority to prescribe regulations concerning the identification markings on lifesaving, fire protection and emergency equipment on board merchant vessels.

Respondent: Owners of Merchant Vessels.

Frequency: As needed.

Burden Estimate: The estimated burden is 4.012 hours annually.

3. *Title:* Periodic Gauging and Engineering Analyses. OMB No. 2115–0603.

Summary: The Collection of Information requires respondents to submit a gauging report which consists of survey data and associated engineering analysis which is needed by the Coast Guard to inspect tank vessels over 30 years old for recertification.

Need: Section 4109 of the Oil Pollution Act requires the Coast Guard to issue regulations relating to the structural integrity of older tank vessels, including periodic gauging of the plating thickness of the vessel, before a Certificate of Inspection is reissued.

Respondents: Owners and operators of tank vessels.

Frequency: Every 5 years.

Burden: The estimated burden is 23,664 hours annually.

4. *Title:* Response Resources Inventory Data Collection. OMB No. 2115–0606.

Summary: The collection of information requires oil spill response organizations to answer questions concerning the location and amount of equipment and personnel, as well as their availability to respond to a coastal oil spill.

Need: The Oil Pollution Act of 1990, requires the Coast Guard to centralize information concerning the amount and location of response equipment for oil spills.

Respondent: Oil spill response organizations.

Frequency: On occasion.

Burden Estimate: The estimated burden is 751 hours annually.

Dated: August 2, 1996.

E.J. Barrett,

Rear Admiral, U.S. Coast Guard, Chief of Systems.

[FR Doc. 96–20272 Filed 8–8–96; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

RTCA, Inc. Special Committee 162; Aviation Systems Design Guidelines for Open Systems Interconnection (OSI)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the Special Committee 162 meeting to be held August 27–29, 1996, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW, Suite 1020, Washington, DC 20036.

The agenda will be as follows: (1) Chairman's Introductory Remarks; (2) Approval of Proposed Meeting Agenda; (3) Approval of the Minutes of the Previous Meeting; (4) Reports of Related Activities Being Conducted by Other Organizations; (5) Review of ''ATN Avionics MOPS''; (6) Other Business; (7) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 5, 1996.

Janice L. Peters,

Designated Official.

[FR Doc. 96–20388 Filed 8–8–96; 8:45 am]

BILLING CODE 4810–13–M

Maritime Administration

[Docket No. M–019]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before October 8, 1996.

FOR FURTHER INFORMATION CONTACT: Robert J. Patton, Jr., Deputy Chief Counsel, Maritime Administration, MAR–220.1, Room 7232, 400 Seventh

Street, S.W., Washington, D.C. 20590. Telephone 202–366–5712 or fax 202–366–7485. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Procedures, Subpart B—Application for Designation of Vessels as ''American Great Lakes Vessels.''

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0521

Form Number: None.

Expiration Date of Approval: January 31, 1997.

Summary of Collection of Information: Public Law 101–624 directs the Secretary of Transportation to issue regulations that establish requirements for the submission of applications by owners of ocean vessels for designation of vessels as ''American Great Lakes Vessels.''

Need and Use of the Information: Application is mandated by statute to establish that a vessel meets statutory criteria for obtaining the benefit of eligibility to carry preference cargoes.

Description of Respondents: Shipowners of merchant vessels.

Annual Responses: 1.

Annual Burden: 1 hour.

Comments: Send all comments regarding this information collection to Joel C. Richard, Department of Transportation, Maritime Administration, MAR–120, Room 7210, 400 Seventh Street, S.W., Washington, D.C. 20590. Send comments regarding whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected.

Dated: August 6, 1996.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 96–20383 Filed 8–8–96; 8:45 am]

BILLING CODE 4910–81–P

National Highway Traffic Safety Administration

Safety Performance Standards, Research and Safety Assurance Programs Meetings

AGENCY: National Highway Traffic Safety Administration, Transportation.

ACTION: Notice of NHTSA industry meetings.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's vehicle regulatory, safety assurance and other programs. In addition, NHTSA will hold a separate public meeting to describe and discuss specific research and development projects.

DATES: The Agency's regular, quarterly public meeting relating to its vehicle regulatory, safety assurance and other programs will be held on September 12, 1996, beginning at 9:45 a.m. and ending at approximately 12:30 p.m. Questions relating to the above programs must be submitted in writing by September 3, 1996, to the address shown below. If sufficient time is available, questions received after September 3, may be answered at the meeting. The individual, group or company submitting a question(s) does not have to be present for the question(s) to be answered. A consolidated list of the questions submitted by September 3, 1996, and the issues to be discussed will be transmitted to interested persons by September 6, 1996, and will be available at the meeting. Also, the agency will hold a second public meeting on September 11, devoted exclusively to a presentation of research and development programs. This meeting will begin at 1:30 p.m. and end at approximately 5:00 p.m. That meeting is described more fully in a separate announcement. The last NHTSA Technical Industry Meeting of this year will be held on December 12, 1996 from 9:45 a.m. to 12:30 p.m. at the Royce Hotel, 31500 Wick Road, Romulus, MI. The Research and Development Industry meeting will be held December 11, 1996 from 1:30 p.m. to 5:00 p.m. at the same location.

ADDRESSES: Questions for the September 12, NHTSA Technical Industry Meeting, relating to the agency's vehicle regulatory and safety assurance programs, should be submitted to Barry Felrice, Associate Administrator for Safety Performance Standards, NPS–01, National Highway Traffic Safety Administration, Room 5401, 400 Seventh Street, SW., Washington, DC 20590, Fax number (202) 366–4329. The meeting will be held at the Best Western Tysons Westpark Hotel, 8401 Westpark Drive, McLean, Virginia.

SUPPLEMENTARY INFORMATION: NHTSA will hold this regular, quarterly meeting to answer questions from the public and the regulated industries regarding the agency's vehicle regulatory, safety assurance and other programs. Questions on aspects of the agency's research and development activities that relate to ongoing regulatory actions should be submitted, as in the past, to the agency's Safety Performance Standards Office. The purpose of this meeting is to focus on those phases of NHTSA activities which are technical, interpretative or procedural in nature. Transcripts of these meetings will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at ten cents a page, (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, Room 5108, 400 Seventh Street, SW., Washington DC 20590. The Technical Reference Section is open to the public from 9:30 a.m. to 4:00 p.m.

We would appreciate the questions you send us to be organized by categories to help us to process the questions into agenda form more efficiently.

Sample format as follows:

I. RULEMAKING

A. Crashavoidance

B. Crashworthiness

C. Other Rulemakings

II. CONSUMER INFORMATION

III. MISCELLANEOUS

NHTSA will provide auxiliary aids to participants as necessary. Any person desiring assistance of ''auxiliary aids'' (e.g., sign-language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, Brailled materials, or large print materials and/or a magnifying device), please contact Barbara Carnes on (202) 366–1810, by COB August 30, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–20348 Filed 8–8–96; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

July 29, 1996.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this

information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0014.
Form Number: IRS Form 637.
Type of Review: Revision.
Title: Application for Registration (For Certain Excise Tax Activities).
Description: Form 637 is used to apply for excise tax registration. The registration applies to a person required to be registered under Internal Revenue Code (IRC) section 4101 for purposes of the Federal excise tax on taxable fuel imposed by IRC 4041 and 4081; and to certain manufacturers or sellers and purchasers that must register under IRC 4222 to be exempt from the excise tax on taxable articles. The data is used to determine if the applicant qualifies for exemption. Taxable fuel producers are required by IRC 4101 to register with the Service before incurring any tax liability.
Respondents: Business or other for-profit, not-for-profit institutions.
Estimated Number of Respondents/Recordkeepers: 2,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	9 hr., 20 min.
Learning about the law or the form	41 min.
Preparing and sending the form to the IRS	53 min.

Frequency of Response: Other (one time only).
Estimated Total Reporting Burden: 21,820 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 96–20357 Filed 8–8–96; 8:45 am]
BILLING CODE 4830–01–P

Submission for OMB review; comment request

July 30, 1996.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Departmental Office/Office of Foreign Assets Control

OMB Number: 1505–0118.
Form Number: None .
Type of Review: Extension.
Title: Travel to Cuba, U.S. Department of the Treasury, Cuban Assets Control Regulations, Declaration.
Description: Declarations are to be completed by persons traveling from the United States to Cuba. The declarations will provide the U.S. Government information to be used in administering and enforcing economic sanctions imposed against Cuba pursuant to the Cuban Assets Control Regulations, 31 C.F.R. Part 515.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.
Estimated Number of Recordkeepers: 26,000.
Estimated Burden Hours Per Recordkeeper: 5 minutes.
Frequency of Response: Other (each trip).
Estimated Total Recordkeeping Burden: 2,166 hours.
OMB Number: 1505–0145.
Form Number: None.
Type of Review: Extension.
Title: Civil Penalty Provisions, 31 CFR Part 515, Cuban Assets Control Regulations.
Description: The Cuban Assets Control Regulations, 31 CFR Part 515 were amended to add provisions for the imposition of civil monetary penalties and civil forfeiture. A recipient of a prepenalty notice alleging a violation of the CACR is permitted to respond in writing requesting a hearing and/or setting forth the respondent's belief that a penalty should not be imposed, or if imposed, should be in a lesser amount than proposed.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.
Estimated Number of Recordkeepers: 50.
Estimated Burden Hours Per Recordkeeper: 2 hours
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 100 hours.
Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, N.W., Washington, DC 20220.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 96–20358 Filed 8–8–96; 8:45 am]
BILLING CODE 4810–25–P

Submission for OMB review; comment request

August 5, 1996.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0398.
Form Number: ATF F 2093 (5200.3) and ATF F 2098 (5200.16).
Type of Review: Extension.
Title:
Application for Permit Under 26 U.S.C. Chapter 52—Manufacturer of Tobacco Products or Proprietor of Export Warehouse (2093); and
Application for Permit Under 26 U.S.C. 5712—Manufacturer of Tobacco Products or Proprietor of Export Warehouse.
Description: These forms and any additional supporting documentation are used by tobacco industry members to obtain and amend permits necessary to engage in business as a Manufacturer of Tobacco Products or Proprietor of Export Warehouse.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 328.
Estimated Burden Hours Per Respondent:

ATF F 2093 (5200.3) (hours)	2
ATF F 2098 (5200.16) (hours)	1

Frequency of Response: On occasion.
Estimated Total Reporting Burden: 492 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland

Departmental Reports, Management Officer.

[FR Doc. 96–20359 Filed 8–8–96; 8:45 am]

BILLING CODE 4810–31–P

Fiscal Service

Financial Management Service; Proposed Collection of Information: Resolution Authorizing Execution of Depositary, Financial Agency, and Collateral Agreement; and Depositary, Financial Agency, and Collateral Agreement

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the forms, ''Resolution Authorizing Execution of Depositary, Financial Agency, and Collateral Agreement,'' and ''Depositary, Financial Agency, and Collateral Agreement.''

DATES: Written comments should be received on or before October 8, 1996.

ADDRESSES: Direct all written comments to Financial Management Service, 3361–L 75th Avenue, Landover, Maryland 20785.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Aurora Kassalow, Cash Management Policy and Planning Division, 401 14th St., S.W. Washington, D.C. 20227, (202) 874–7157.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: Resolution Authorizing Execution of Depositary, Financial Agency, and Collateral Agreement; and Depositary, Financial Agency, and Collateral Agreement.

OMB Number: None.

Form Number: FMS 5902 and FMS 5903.

Abstract: These forms are used by financial institutions applying for status as depositary of the Federal government to receive public funds and post collateral.

Current Actions: New Information Collection.

Type of Review: Regular, new Collection.

Affected Public: Business/Financial Institutions.

Estimated Number of Respondents: 700.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 175.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 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 on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: August 2, 1996.

Mitchell A. Levine,

Assistant Commissioner.

[FR Doc. 96–20268 Filed 8–8–96; 8:45 am]

BILLING CODE 4810–35–M

Corrections

Federal Register
Vol. 61, No. 155
Friday, August 9, 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 COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 960531152–6152–01; I.D. 042996B]

RIN 0648–AI18

Fisheries of the Exclusive Economic Zone Off Alaska

Correction

In the correction to rule document 96–14593 appearing on page 40481 in the issue of Friday, August 2, 1996, the CFR cite should read as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

48 CFR Part 909

RIN 1991–AB24

Debarment and Suspension (Procurement) and Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants) and Department of Energy Acquisition Regulation

Correction

In rule document 96–16015 beginning on page 39854 in the issue of Wednesday, July 31, 1996, make the following corrections:

909.405 [Corrected]

On page 39857, in the third column, in the heading of 909.405, in the second line, ''(b)'' should read ''(f)''.

909.407–3 [Corrected]

On page 39859, in the first column, in the heading of 909.407–3, in the second line, ''(c)'' should read ''(e)''.

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

8 CFR Parts 3 and 103

Executive Office for Immigration Review; List of Free Legal Services

Correction

In proposed rule document 96–19732 beginning on page 40552 in the issue of Monday, August 5, 1996, make the following corrections:

§ 3.65 [Corrected]

1. On page 40554, in the 1st column, in § 3.65(a), in the 13th line, insert ''an answer'' after ''submit''.

2. On the same page, in the same column, in § 3.65(a), in the 19th line, ''answers'' should read ''answer''.

3. On the same page, in the same column, in § 3.65(a), in the 7th line from the bottom, insert ''or'' after ''organization's''.

PART 103—[CORRECTED]

4. On the same page, in the second column, in the heading of part 103, in the second line, ''SERVICES'' should read ''SERVICE''.

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 217

[INS No. 1782-96]

RIN 1115-AB93

Adding Australia to the List of Countries Authorized To Participate in the Visa Waiver Pilot Program

Correction

In rule document 96–19169 beginning on page 39271 in the issue of Monday, July 29, 1996, make the following correction:

§ 217.5 [Corrected]

On page 39273, in the first column, in § 217.5(a)(1), in the fifth line from the bottom ''[Insert date of publication in the Federal Register]'' should read ''July 29, 1996''.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 157

46 CFR Parts 31 and 35

[CGD 91-045]
RIN 2115-AE01

Operational Measures To Reduce Oil Spills From Existing Tank Vessels Without Double Hulls

Correction

In rule document 96–19236 beginning on page 39770 in the issue of Tuesday, July 30, 1996, make the following corrections:

1. On page 39770, in the first column, under **ADDRESSES**, in the fifth line, ''(C-LRA/3406)'' shousld read ''(G-LRA/3406)''.

2. On page 39772, in the first column, in the first full paragraph, in the ninth line, ''for'' was misspelled.

3. On page 39773, in the 1st column, in the 4th full paragraph, in the 11th line, insert ''(''' after ''[1995]''.

4. On page 39775, in the first column, in the last paragraph, in the first line, ''are'' should read ''were''.

5. On the same page, in the second column:

a. In the fourth line from the top, insert ''and'' after ''U.S.''.

b. In the last paragraph, in the first line, ''include'' should read ''included''; and in the second line, ''rising'' should read ''revising''.

6. On the same page, in the third column, in the second full paragraph, in the third line from the bottom, ''restriction'' should read ''restrictions''.

7. On page 39776, in the 1st column, in the last paragraph, in the 14th line from the bottom, ''place'' should read ''placed''.

8. On the same page, in the 2d column, in the 1st full paragraph, in the 14th line, insert ''(' before ''§ 157.415)''.

9. On the same page. in the third column, in the second paragraph, in the fifth line, ''recommend'' should read ''recommended''; and in the tenth line, insert ''that'' after ''recommended''.

10. On page 39777, in the first column, in the last paragraph, in the sixth line from the bottom, insert ''a'' after ''in''.

11. On the same page, in the second column, in the second paragraph, in the

tenth line, ''requirement'' should read ''requirements''.

12. On page 39778, in the first column, in the first full paragraph, in the third line, ''154.13'' should read ''164.13''.

13. On the same page, in the third column, in the last paragraph, in the tenth line, ''as'' should read ''has''.

14. On page 39779, in the third column, in the first paragraph, in the ninth line from the bottom, ''alternate'' should read ''alternative''.

15. On page 39780, in the first column, in the second full paragraph, in the third line, ''31. 10-21'' should read ''31.10-21''.

16. On the same page, in the 3rd column, in the 1st paragraph, in the 19th line, insert ''a'' before ''measure''; and in the 20th line, ''an'' should read ''and''.

17. On page 39782:

a. In the first column, in the first paragraph, in the third line, ''annex'' should read ''Annex''.

b. In the same column, in the second paragraph, in the eighth line from the bottom, ''come'' should read ''become''.

c. In the same column, in the third paragraph, in the seventh line from the bottom, insert ''the cost of'' after ''than''.

d. In the 2d column, in the 22d line, ''in'' should read ''to''.

e. In the same column, in the last paragraph, beginning in the 16th line, remove ''The estimated survey cost to foreign tankships will be $465,000.''.

f. In the third column, in the first paragraph, beginning in the second line, remove ''for this measure was calculated based on the assumption''.

18. On page 39783, in the second column, in the first paragraph, in the first line, ''applied'' should read ''applies''.

19. On page 39785, in the third column:

a. In the eighth line from the top, ''lift'' should read ''life''.

b. In the 1st paragraph, in the 17th line, ''to'' should read ''in''.

c. In the third paragraph, in the ninth line, ''understood'' should read ''understand''.

20. On page 39787, in the first column, in the third paragraph, in the fourth line, ''157,435'' should read ''157.435''.

21. On the same page, in the second column, in the second paragraph, in the second line, ''master'' should read ''masters''.

§ 157.02 [Corrected]

22. On page 39788, in the third column, in § 157.02(b), in the incorporation by reference material, in the fifth line, after ''3-8,'' insert ''and''.

§ 157.435 [Corrected]

23. On page 39789, in the third column, in § 157.435(a), in the third line, ''system'' should read ''systems''.

§ 157.445 [Corrected]

24. On page 39790, in the first column, in § 157.445(a), in the fourth line, ''section'' should read ''sections''.

§ 157.455 [Corrected]

25. On page 39790, in the third column, in § 157.455(a)(4), in the first line, insert ''master'' after ''tankship''.

§ 157.460 [Corrected]

26. On page 39791, in the first column, in § 157.460(b), in the first line, after ''*system*'' insert a period.

PART 35—[CORRECTED]

27. On page 39794, in the first column, in the authority citation for 46 CFR part 35:

a. In the first line, insert a colon after ''Authority''.

b. In the third line, ''DRR'' should read ''CFR''.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96-ANM-013]

Establishment of Class E Airspace; Libby, MT

Correction

In rule document 96–19674, beginning on page 40316, in the issue of Friday, August 2, 1996, make the following correction:

§71.1 [Corrected]

On page 40316, in the third column, under *Paragraph 6005*, in the last paragraph, in the tenth line, ''115°50′00″W'' should read ''115°42′00″W''.

BILLING CODE 1505–01–D

federal register

Friday
August 9, 1996

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 23, 25, and 33

Airworthiness Standards: Rain and Hail Ingestion Standards; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 23, 25, and 33

[Docket No. 28652; Notice No. 96–12]

RIN 2120–AF75

Airworthiness Standards; Rain and Hail Ingestion Standards

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes changes to the water and hail ingestion standards for aircraft turbine engines. This proposal addresses engine power-loss and instability phenomena attributed to operation in extreme rain or hail that are not adequately addressed by current requirements. This proposal also harmonizes these standards with rain and hail ingestion standards being amended by the Joint Aviation Authorities (JAA). The proposed changes, if adopted, would establish one set of common requirements, thereby reducing the regulatory hardship on the United States and worldwide aviation industry, by eliminating the need for manufactures to comply with different sets of standards when seeking type certification from the Federal Aviation Administration (FAA) and JAA.

DATES: Comments to be submitted on or before November 7, 1996.

ADDRESSES: Comments on this notice may be delivered or mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28652, Room 915G, 800 Independence Avenue, SW., Washington, DC 20591. Comments submitted must be marked: ''Docket No. 28652. Comments may also be sent electronically to the following Room 915G on weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Thomas Boudreau, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5229; telephone (617) 238–7117; fax (617) 238–7199.

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. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in triplicate to the Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Late-filed comments will be considered to the extent practicable. The proposals contained in this notice may be changed in light of comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard on those comments on which the following statement is made: ''Comments to Docket No. 28652.'' The postcard will be date stamped and mailed to the commenter.

Availability of NPRMs

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 webpage at http://www.access.gpo.gov/su__docs for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number of this NPRM.

Person interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Background

Statement of the Problem

There have been a number of multiple turbine engine power-loss and instability events, forced landings, and accidents attributed to operating airplanes in extreme rain or hail. Investigations have revealed that ambient rain or hail concentrations can be amplified significantly through the turbine engine core at high flight speeds and low engine power conditions. Rain or hail through the turbine engine core may degrade compressor stability, combustor flameout margin, and fuel control run down margin. Ingestion of extreme quantities of rain or hail through the engine core may ultimately produce a number of engine anomalies, including surging, power loss, and engine flameout.

Industry Study

In 1987 the Aerospace Industries Association (AIA) initiated a study of natural icing effects on high bypass ratio (HBR) turbofan engines that concentrated primarily on the mechanical damage aspects of icing encounters. It was discovered during that study that separate power-loss and instability phenomena existed that were not related to mechanical damage. consequently, in 1988 another AIA study was initiated to determine the magnitude of these threats and to recommend changes to part 33, if appropriate. AIA, working with the Association Europeenne des Constructeurs de Materiel Aerospatial (AECMA), concluded that a potential flight safety threat exists for turbine engines installed on airplanes operating in extreme rain and hail. Further, the study concluded that the current water and hail ingestion standards of 14 CFR part 33 do not adequately address this threat.

Engine Harmonization Effort

the FAA is committed to undertaking and supporting harmonization of standards in part 33 with those in Joint Aviation Requirements-Engines (JAR–E). In August 1989, as a result of that commitment, the FAA Engine and propeller Directorate participated in a meeting with the Joint Aviation Authorities (JAA), AIA, and AECMA. The purpose of the meeting was to establish a philosophy, guidelines, and a working relationship regarding the resolution of issues arising from standards that need harmonization, including the adoption of new standards

when needed. All parties agreed to work in partnership to address jointly the harmonization task. The partnership was later expanded to include the airworthiness authority of Canada, Transport Canada.

This partnership identified seven items which where considered the most critical to the initial harmonization effort. New rain and hail ingestion standards are an item on this list of seven items and, therefore, represent a critical harmonization effort.

Aviation Rulemaking Advisory Committee Project

In December 1992, the FAA requested the Aviation Rulemaking Advisory Committee (ARAC) to evaluate the need for new rain and hail ingestion standards. This task, in turn, was assigned to the Engine Harmonization Working Group (EHWG) of the Transport Airplane and Engine Issues Group (TAEIG) on December 11, 1992 (57 FR 58840). On November 7, 1995, the TAEIG recommended to the FAA that it proceed with rulemaking and associated advisory material even though one manufacturer has expressed reservations. This NPRM and associated advisory material reflects the ARAC recommendations.

Disposition of Objections

One manufacturer participating in the EHWG has expressed reservations with the proposal. The reservations focused on the degree of conservatism built into the assumptions regarding weather statistics. These reservations include concerns about a bias in the hail characterization towards geographical areas of extremely high hailstorm probabilities and with an apparent rounding up of the hail threat definition from 8/3 g/m^3 to 10 g/m^3. The manufacturer also expressed concern regarding the lack of standardized test procedures and analytical methods for compliance within the industry.

During the early phase of defining the environmental threat, for both rain and hail, engineering judgment suggested that expressing rain water content (RWC) and hail water content (HWC) as a function of a joint probability was an appropriate method. That joint probability is the product of the prior probability of a storm occurring at a given point and the conditional probability of a given water concentration value occurring within that storm. Given the potential for a pilot to avoid a storm and the ability for an engine to recover sufficiently for continued safe flight, a joint probability of 10^{-8} was determined adequate for establishing the certification standards for rain and hail. Accounting for hail shaft exposure times, the hail threat levels could vary from 8.7 g/m^3 to 10.2 g/m^3. The choice of 10 g/m^3 was agreed to by the EHWG as the certification standard that would be suitable for all applications. It was not simply a round up. Admittedly, the only credible hail data available was for high hail probability areas in North America and Europe. While these data may not represent the average world environment, they do represent areas of high commercial air traffic through which aircraft equipped with turbine engines normally operate.

The EHWG also consider the proposal and the associated harmonization activity to be an effective method of reaching a more uniform method for compliance by manufacturers. That activity has already fostered a significant sharing of knowledge on the subject.

Current Requirements

The current water and large hailstone ingestion standards are valid tests for addressing permanent mechanical damage resulting from such ingestions. However, they do not adequately address engine power-loss and instability effects, such as run down and flameout at lower than takeoff-rated power settings for turbine engines installed on airplanes.

The EHWG concluded that, with respect to power-loss and instability effects, the current water ingestion standard is adequate for turbine engines installed on rotorcraft (turboshaft engines) as an alternative to the new rain and hail ingestion standards. The EHWG reached this conclusion after it had reviewed the service experience of rotorcraft turbine engines and could not find an inservice event that would indicate that the current water ingestion standard are inadequate for that application. There are differences between rotorcraft and airplanes that help to explain the differences in the service experience of rotorcraft turbine engines versus other turbine engines. Rotorcraft turbine engines operate at higher power settings during descent than turbine engines installed on airplanes. Also, rotorcraft operate at lower flight speeds than airplanes. The combination of higher engine power and lower flight speed significantly reduces the water concentration amplification effects on rotorcraft turbine engines. Therefore, the proposed new rain and hail ingestion standards apply to all turbine engines, while a harmonized version of a four percent water to engine airflow by weight ingestion standard is proposed as an alternative for turbine engines installed on rotorcraft.

General Discussion of the Proposals

Section 23.901(d)(2), § 23.903(a)(2) and § 25.903(a)(2)

The proposed amendments would revise § 23.903(a)(2) and § 25.903(a)(2) to be consistent with the proposed part 33 changes. Additionally, proposed § 23.901(d)(2) would replace the current text with new text requiring each turbine engine installation to be constructed and arranged not to jeopardize compliance of the engine with § 23.903(a)(2). This would ensure that the installed engine retains the acceptable rain, hail, ice, and bird ingestion capabilities established for the uninstalled engine under § 23.903(a)(2).

Section 33.77

The proposed amendments would remove the large hailstone ingestion standards now specified in § 33.77 (c) and (e), and place them in new § 33.78 (a)(1) and (c). The proposal would also harmonize the four percent water to engine airflow by weight ingestion standard, currently specified in § 33.77 (c) and (e), and place it in new § 33.78(b) as an alternative standard for rotorcraft turbine engines to the proposed new rain and hail ingestion standards. New water and hail ingestion standards for all turbine engines would be introduced in new § 33.78(a)(2). All rain and hail ingestion standards would then be found in one section, as in the current JAR–E.

The intent of the current water ingestion standard is to address a number of concerns including power-loss, instability, and the potential hazardous effects of water associated with case contraction. As stated previously, there have been numerous power-loss and instability events on airplane turbine engines since the standard was promulgated (39 FR 35463, October 1, 1974). The need to better address power-loss and instability effects at lower than takeoff-rated power settings led to the proposed new standards for all turbine engines (new § 33.78(a)(2)). Collectively, the proposed new standards and the proposed changes as contained in new § 33.78 (a)(2) and (b) also better address potential concerns associated with case contractions on turbine engines since they are based on a more thorough understanding of the in-flight effects of rain and hail ingestion.

Section 33.78

The proposed § 33.78 would consolidate all harmonized rain and hail

ingestion standards for turbine engines, and the corresponding harmonized acceptance criteria, into a single section. The proposal also introduces new rain and hail ingestion standards for turbine engines to address the power-loss and instability phenomena identified by AIA and AECMA.

Currently, part 33 and JAR–E have different acceptance criteria for the water and large hailstone ingestion standards. In general, part 33 does not permit any sustained power or thrust loss after the ingestion, while JAR–E permits some power or thrust loss and some minimal amount of mechanical damage. The EHWG determined, however, that the current FAA post ingestion power loss criterion does not consider thrust and power loss variabilities, such as inherent measurement inaccuracies. Therefore, allowing some measured power or thrust loss would be reasonable but must not reduce the level of safety intended by these requirements.

The EHWG concluded that sufficient airplane performance margins exist to permit sustained post ingestion power or thrust losses up to 3 percent at any value of the power or thrust setting parameter. Variabilities and uncertainties associated with thrust and power measurements could conceivably result in upwards of a 3 percent power or thrust measurement error. Therefore, measured post ingestion power or thrust losses up to 3 percent are acceptable and do not represent a reduction in the level of safety provided by current FAA water and large hailstone ingestion standards. However, measured post ingestion power or thrust losses greater than 3 percent, at any value of the primary power or thrust setting parameter, can only be accepted when supported by appropriate airplane performance assessments.

The EHWG also discussed levels of acceptable engine performance degradation that might be experienced as a result of certification testing. This degradation is a power or thrust reduction when pre-test and post test comparisons are made at any given values of the engine manufacturer's normal performance parameters other than the primary power or thrust setting parameter. This power or thrust degradation must not affect the measured power or thrust of the engine at any value of the primary power or thrust setting parameters, but would tend to reduce the available gas path temperature margin of the engine after the test. It is the judgment of the EHWG, based on certification and development test experience, that current and future technology engines should be capable of demonstrating less than 10 percent engine performance degradation from a single hail or rain ingestion event. Some members of the EHWG believe that values greater than 10 percent can be safely accommodated, but consensus could not be obtained in defining this uppermost value. The EHWG accepted the 10 percent value as a compromise certification standard for future use in the context of rain and hail ingestion testing. In the event that future certification tests result in engine performance degradations that exceed 10 percent, the actual demonstrated level must be evaluated for acceptability against the criterion of aircraft safety.

The proposed new rain and hail ingestion standards to address the power loss and instability phenomena refer to a proposed new FAR part 33 appendix for a definition of maximum concentrations of rain and hail in the atmosphere. It is expected that a combination of tests and analyses would be needed to demonstrate compliance. Therefore, this proposal allows for various means of compliance.

Allowing various means of compliance has distinct advantages. The variables associated with an ingestion event are best addressed through a combination of tests and analyses. Also, it is anticipated that further insight into the phenomenon of rain and hail ingestion would be gained through the development of these various compliance methods. Finally, the EHWG believes that applicants would develop compliance methods which minimize the cost impact.

Rain and hail ingestion standards embodied in this rule represent an extremely remote probability of encounter (1×10^{-8}). They are based on current assessments of atmospheric and meteorological conditions and aircraft engine service experience. Both the FAA and the JAA agree that the need for revised standards should be considered as additional service and atmospheric data warrant.

Appendix B

Proposed Appendix B defines the certification standard atmospheric concentrations of rain and hail. These values were derived through detailed meteorological surveys and statistical analyses and represent an extremely remote aircraft encounter.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1990 (44 U.S.C. 3501 *et seq.*), there are no requirements for information collection associated with this proposed rule.

International Compatibility

The FAA has reviewed corresponding International Civil Aviation Organization international standards and recommended practices and Joint Aviation Authorities requirements and has identified no difference in these proposed amendments and the foreign regulations.

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule: (1) Would generate benefits that justify its costs and is not a ''significant regulatory action'' as defined in the Executive Order; (2) is not significant as defined in DOT's Regulatory Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; and (4) would not constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

Incremental Certification Costs

The proposed rule would permit a range of compliance options, thereby enabling manufacturers to select cost-minimizing approaches. Approaches that maximize the use of analytical methods would most likely be the least expensive means to demonstrate compliance, while approaches that rely primarily on engine testing in a simulated rain and hail environment would likely be the most costly. Incremental cost estimates supplied by industry varied depending on engine model and the testing method used.

FAA conservatively estimates that incremental certification costs for airplane turbine engines would be approximately $667,000; this includes $300,000 in additional engineering hours, and $367,000 for the prorated share of the cost of a test facility.

Incremental Manufacturing and Operating Costs

Predicting the rule's effect on manufacturing costs is complicated by design/cost tradeoffs, the large number of permutations of modifications that

could achieve the desired result, and because engine design takes place in the context of constant technological change. Based on discussions with industry representatives, the FAA expects that, once rain/hail centrifuging and engine cycle models are established, compliance would be accomplished through design modifications that would have little impact on manufacturing costs. Such design features may affect: (1) fan blade/propeller, (2) spinner/nose cone, (3) bypass splitter, (4) engine bleeds, (5) accessory loads, (6) variable stator scheduling, and (7) fuel control. Similarly, the FAA expects that the rule would have a negligible effect on operating costs (again, based on discussions with industry representatives).

Expected Benefits

Rain or hail related in-flight engine shutdowns are rare occurrences. This is due, in large part, to the high quality of meteorological data available to ground controllers and pilots, and to well established weather avoidance procedures. However, while such events are infrequent, they pose a serious hazard because they typically occur during a critical phase of flight where recovery is difficult or impossible.

An examination of FAA and National Transportation Safety Board (NTSB) records revealed two accidents that were the result of inflight engine shutdowns or rundowns caused by excessive water ingestion. In each case, the aircraft was in the descent phase of flight. These accidents form the basis of the expected benefits of the proposed rule, as summarized below. However, the following summary should be considered a conservative estimate of the rule's potential benefits for three reasons.

First, the rule should have the effect of increasing turbine engine water ingestion tolerance regardless of the source of water. The historical record shows that many accidents (not included in the following benefit estimates) were caused by other forms of water such as snow and graupel. It is possible that the aircraft in some of these cases would have benefited from the proposed rule.

Second, several other incidents, while not resulting in a crash, nevertheless had catastrophic potential. This potential could be exacerbated by the development of more efficient turbofan powerplants which have permitted large aircraft designs incorporating fewer engines. An industry study identified seven events (not recorded in either the FAA or NTSB databases) in which rain and/or hail affected two or more engines and resulted in an inflight shutdown of at least one engine.

Third, heavy rain and hail are often accompanied by severe turbulence and windshear. While recovery from a water induced engine shutdown is frequently successful, the ability to maintain engine power during an encounter with an unexpected downdraft could be crucial to avoiding a crash.

Benefits of Prevented Aircraft Damage

The available accident and aircraft usage data suggest the categories that are used to classify the benefits of the proposed rule. These classifications are: (1) Large air carrier aircraft (major and national air carriers), and (2) other air carrier aircraft (large regional, medium regional, commuter, and other small certificated air carriers).

An examination of accident records for the period 1975–90, indicates that, in the absence of the proposed rule, the probability of a hull loss due to a water induced loss of engine power is 0.0104 per million airplane departures for large air carriers, and 0.0276 per million airplane departures for other air carriers.

The calculation of the rule's benefits, then, depends on the degree to which the rule can reduce this risk. According to industry representatives, compliance with the proposed standards would reduce the accident rate by two orders of magnitude. That is, the rule is expected to be 99 percent effective in reducing water ingestion accidents. FAA estimates that the annual average benefits per airplane from prevented aircraft damage would be approximately $337 and $97 for large air carriers and other air carriers, respectively.

Benefits of Prevent Injuries and Fatalities

Using projections from the FAA Aviation Forecast, this analysis assumes that the average large air carrier airplane has 168 seats and a load factor of 61 percent. The average regional airplane is assumed to have 30 seats and a load factor of 51 percent. The estimated distribution of fatal, serious, and minor injuries is derived from the actual distribution of casualties in the accidents cited above. On the basis of these assumptions, FAA estimates the annual benefits of prevented casualties per airplane would be $3,062 for operations by large air carriers and $706 for operations by other air carriers.

Benefit-Cost Analysis

The benefits and costs of the proposed rule are compared for two representative engine certifications using the following assumptions: (1) For each certification, 50 engines are produced per year for 10 years (500 engines), (2) incremental certification costs are incurred in year ''0'', (3) engine production begins in year ''3'', (4) the first engines enter service in year ''4'', (5) each engine is retired after 10 years, (6) the discount rate is 7 percent. Also, in order to compare incremental engine costs with expected benefits (which are expressed in terms of the reduction in the airplane accident rate) this analysis assumes that each airplane has two engines.

For each airplane/engine type, the annual benefit per aircraft is the sum of the expected property and casualty benefits. The total benefit for each type certification, then, is the product of the per aircraft annual benefit and the number of aircraft in service summed over the life of the engines. Thus, for representative type certifications, discounted lifecycle benefits would be approximately $3.7 million and $0.8 million for operations by large air carriers and other air carriers, respectively.

FAA finds that the rule would be cost-beneficial. Under conservative production, service life, and incremental engine certification cost assumptions, the expected discounted benefits of prevented casualties and aircraft damage would exceed discounted costs by a factor ranging from 5.5 ($3,661,084/$667,000) for operations by large air carriers to 1.3 ($864,696/$667,000) for operations by other air carriers.

Harmonization Benefits

In addition to the benefits of increased safety, the rule harmonizes with JAR requirements, thus reducing costs associated with certificating aircraft turbine engines to differing airworthiness standards.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 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 is expected to have a ''significant economic impact on a substantial number of small entities.'' Based on the standards and thresholds specified in implementing FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, the FAA has determined that the rule would not have a significant impact on a substantial number of small manufacturers or operators because no turbine engine manufacturer is a ''small entity'' as defined in the order.

International Trade Impact Assessment

The rule would have little or no effect on trade for either U.S. firms marketing turbine engines in foreign markets or foreign firms marketing turbine engines in the U.S.

Federalism Implications

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.

Conclusion

For the reasons discussed above, including the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not significant under Executive Order 12866. In addition, the FAA certifies that this proposal, if adopted, would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). 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 Parts 23, 25, and 33

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 23, 25, and 33 of the Federal Aviation Regulations (14 CFR part 23, 14 CFR part 25, and 14 CFR part 33) as follows:

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, ACROBATIC, AND COMMUTER CATEGORY AIRPLANES

1. The authority citation for part 23 continues to read as follows:

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

2. Section 23.901 is amended by revising paragraph (d)(2) to read as follows:

§ 23.901 Installation.

* * * * *

(d) * * *

(2) Ensure that the capability of the installed engine to withstand the ingestion of rain, hail, ice, and birds into the engine inlet is not less than the capability established for the engine itself under § 23.903(a)(2).

* * * * *

3. Section 23.903 is amended by revising paragraph (a)(2) to read as follows:

§ 23.903 Engines.

(a) * * *

(2) Each turbine engine must either—

(i) Comply with § 33.77 and § 33.78 of this chapter for an airplane for which application for type certification is made on or after [Insert effective date of final rule]; or

(ii) Comply with § 33.77 of this chapter in effect on October 31, 1974, and must have a foreign object ingestion service history that has not resulted in any unsafe condition for an airplane for which application for type certification was made before [Insert effective date of final rule]; or

(iii) Be shown to have a foreign object ingestion service history in similar installation locations which has not resulted in any unsafe condition.

Note: § 33.77 of this chapter in effect on October 31, 1974, was published in 14 CFR parts 1 to 59, Revised as of January 1, 1975. See 39 FR 35467; October 1, 1974.

* * * * *

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

4. The authority citation for part 25 continues to read as follows:

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

5. Section 25.903 is amended by revising paragraph (a)(2) to read as follows:

§ 25.903 Engines.

(a) * * *

(2) Each turbine engine must either—

(i) Comply with § 33.77 and § 33.78 of this chapter for an airplane for which application for type certification is made on or after [Insert effective date of final rule]; or

(ii) Comply with § 33.77 of this chapter in effect on October 31, 1974, and must have a foreign object ingestion service history that has not resulted in any unsafe condition for an airplane for which application for type certification was made before [Insert effective date of final rule]; or

(iii) Be shown to have a foreign object ingestion service history in similar installation locations which has not resulted in any unsafe condition.

Note: § 33.77 of this chapter in effect on October 31, 1974, was published in 14 CFR parts 1 to 59, Revised as of January 1, 1975. See 39 FR 35467; October 1, 1974.

* * * * *

PART 33—AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES

6. The authority citation for part 33 continues to read as follows:

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

7. Section 33.77 is amended by revising paragraphs (c) and (e) to read as follows:

§ 33.77 Foreign object ingestion.

* * * * *

(c) Ingestion of ice under the conditions prescribed in paragraph (e) of this section, may not cause a sustained power or thrust loss or require the engine to be shut down.

* * * * *

(e) Compliance with paragraphs (a), (b), and (c) of this section must be shown by engine test under the following ingestion conditions:

Foreign object	Test quantity	Speed of foreign object	Engine operation	Ingestion
Birds:				
3-ounce size	One for each 50 square inches of inlet area, or fraction thereof, up to a maximum of 16 birds. Three-ounce bird ingestion not required if a 1½-pound bird will pass the inlet guide vanes into the rotor blades.	Liftoff speed of typical aircraft.	Takeoff	In rapid sequence to simulate a flock encounter and aimed at selected critical areas.

Foreign object	Test quantity	Speed of foreign object	Engine operation	Ingestion
1½-pound size	One for the first 300 square inches of inlet area, if it can enter the inlet, plus one for each additional 600 square inches of inlet area, or fraction, thereof up to a maximum of 8 birds.	Initial climb speed of typical aircraft.	Takeoff	In rapid sequence to simulate a flock encounter and aimed at selected critical areas.
4-pound size	One, if it can enter the inlet	Maximum climb speed of typical aircraft, if the engine has inlet guide vanes.	Maximum cruise	Aimed at critical area.
		Liftoff speed of typical aircraft, if the engine does not have inlet guide vanes.	Takeoff	Aimed at critical area.
Ice	Maximum accumulation on a typical inlet cowl and engine face resulting from a 2-minute delay in actuating anti-icing system, or a slab of ice which is comparable in weight or thickness for that size engine.	Sucked in	Maximum cruise	To simulate a continuous maximum icing encounter at 25°F.

Note: The term ''inlet area'' as used in this section means the engine inlet projected area at the front face of the engine. It includes the projected area of any spinner or bullet nose that is provided.

8. Section 33.78 is added to part 33, to read as follows:

§ 33.78 Rain and hail ingestion.

(a) *All engines.* (1) The ingestion of large hailstones (0.8 to 0.9 specific gravity) at the maximum rough air speed, up to 15,000 feet (4,500 meters), associated with a representative aircraft, with the engine at maximum continuous power, may not cause unacceptable mechanical damage or unacceptable power or thrust loss after the ingestion, or require the engine to be shut down. One-half the number of hailstones shall be aimed randomly over the inlet face area and the other half aimed at the critical inlet fact area. The hailstone number and size shall be determined as follows:

(i) One 1-inch (25 millimeters) diameter hailstone for engines with inlet area of not more than 100 square inches (0.0645 square meters).

(ii) One 1-inch (25 millimeters) diameter and one 20-inch (50 millimeters) diameter hailstone for each 150 square inches (0.0968 square meters) of inlet area, or fraction thereof, for engines with inlet area more than 100 square inches (0.0645 square meters).

(2) Except as provided in paragraph (b) of this section, it must be shown that each engine is capable of acceptable operation throughout its specified operating envelope when subjected to sudden encounters with the certification standard concentrations of rain and hail, as defined in Appendix B to this part. Acceptable engine operation precludes flameout, run down, continued or non-recoverable surge or stall, or loss of acceleration and deceleration capability during any three minute continuous period in rain and during any 30 second continuous period in hail. It must also be shown after the ingestion that there is no unacceptable mechanical damage, unacceptable power or thrust loss, or other adverse engine anomalies.

(b) *Engines for rotocraft.* As an alternative to the requirements specified in paragraph (a)(2) of this section, for rotocraft turbine engines only, it must be shown that each engine is capable of acceptable operation during and after the ingestion of rain with an overall ratio of water droplet flow to airflow, by weight, with a uniform distribution at the inlet plane, of at least four percent. Acceptable engine operation precludes flameout, run down, continued or non-recoverable surge or stall, or loss of acceleration and deceleration capability. It must also be shown after the ingestion that there is no unacceptable mechanical damage, unacceptable power loss, or other adverse engine anomalies. The rain ingestion must occur under the following static ground level conditions:

(1) A normal stabilization period at take-off power without rain ingestion, followed immediately by the suddenly commencing ingestion of rain for three minutes at takeoff power, then

(2) Continuation of the rain ingestion during subsequent rapid deceleration to minimum idle, then

(3) Continuation of the rain ingestion during three minutes at minimum idle power to be certified for flight operation, then

(4) Continuation of the rain ingestion during subsequent rapid deceleration to takeoff power.

(c) *Engines for supersonic airplanes.* In addition to complying with paragraph (a)(1) of this section, a separate test for supersonic airplane engines only, shall be conducted with three hailstones ingested at supersonic cruise velocity. These hailstones shall be aimed at the engine's critical face area, and their ingestion must not cause unacceptable mechanical damage or unacceptable power or thrust loss after the ingestion or require the engine to be shut down. The size of these hailstones shall be determined from the linear variation in diameter from 1-inch (25 millimeters) at 35,000 feet (10,500 meters) to 1/4-inch (6 millimeters) at 60,000 feet (18,000 meters) using the diameter corresponding to the lowest expected supersonic cruise altitude. Alternatively, three larger hailstones may be ingested at subsonic velocities such that the kinetic energy of these larger hailstones is equivalent to the applicable supersonic ingestion conditions.

(d) For an engine that incorporates or requires the use of a protection device, demonstration of the rain and hail ingestion capabilities of the engine, as required in paragraphs (a), (b), and (c) of this section, may be waived wholly or in part by the Administrator if the applicant shows that:

(1) The subject rain or hail constituents are of a size that will not pass through the protection device;

(2) The protection device will withstand the impact of the subject water constituents; and

(3) The subject water constituents, stopped by the protective device, will not obstruct the flow of induction air

into the engine, resulting in damage, power or thrust loss, or other adverse engine anomalies in excess of what would be accepted in paragraphs (a), (b), and (c) of this section.

9. Appendix B is added to part 33, to read as follows:

Appendix B to Part 33—Certification Standard Atmospheric Concentrations of Rain and Hail

Figure B1, Table B1, Table B2, Table B3, and Table B4 specify the atmospheric concentrations and size distributions of rain and hail for establishing certification, in accordance with the requirements of § 33.78(a)(2). In conducting tests, normally by spraying liquid water to simulate rain conditions and by delivering hailstones fabricated from ice to simulate hail conditions, the use of water droplets and hailstones having shapes, sizes and distributions of sizes other than those defined in this Appendix B, or the use of a single size or shape for each water droplet or hailstone, can be accepted, provided the applicant shows that the substitution does not reduce the severity of the test.

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FIGURE B1 - Illustration of Rain and Hail Threats. Certification concentrations are obtained using Tables B1 and B2.

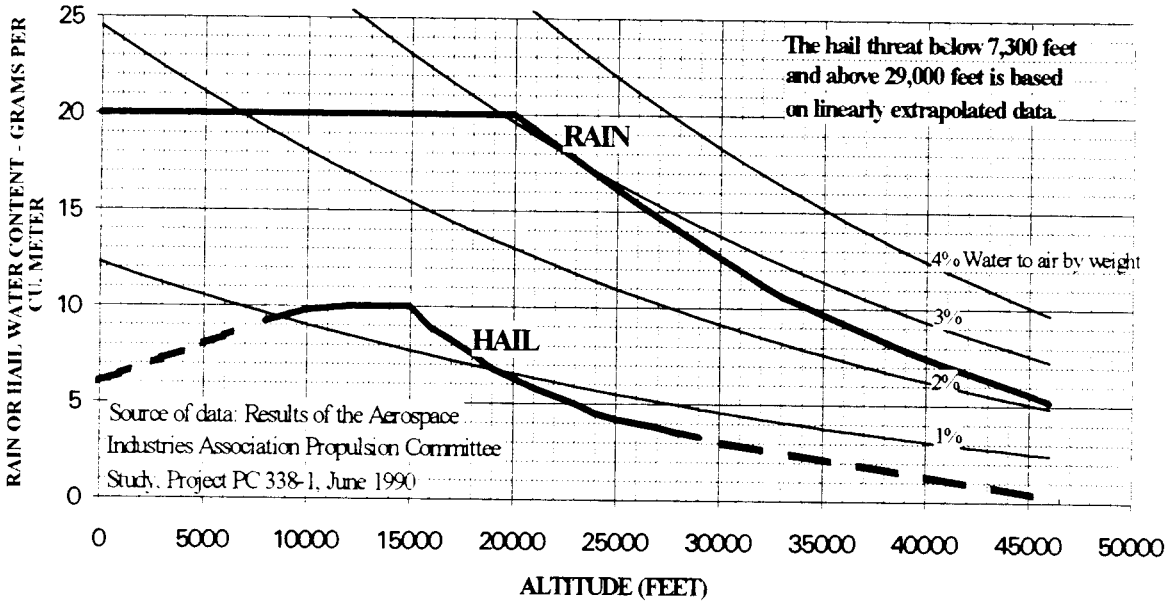

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TABLE B1.—CERTIFICATION STANDARD ATMOSPHERIC RAIN CONCENTRATIONS

Altitude (feet)	Rain water content (RWC) (gramswater/ meter³ air)
0	20.0
20,000	20.0
26,300	15.2
32,700	10.8
39,300	7.7
46,000	5.2

RWC values at other altitudes may be determined by linear interpolation.

Note: Source of data—Results of the Aerospace Industries Association (AIA) Propulsion Committee Study, Project PC 338–1, June 1990.

TABLE B2.—CERTIFICATION STANDARD ATMOSPHERIC HAIL CONCENTRATIONS

Altitude (feet)	Hail water content (HWC) (grams water / meter³ air)
0	6.0
7,300	8.9
8,500	9.4
10,000	9.9
12,000	10.0
15,000	10.0
16,000	8.9
17,700	7.8
19,300	6.6
21,500	5.6
24,300	4.4
29,000	3.3

TABLE B2.—CERTIFICATION STANDARD ATMOSPHERIC HAIL CONCENTRATIONS—Continued

Altitude (feet)	Hail water content (HWC) (grams water / meter³ air)
46,000	0.2

HWC values at other altitudes may be determined by linear interpolation. The hail threat below 7,300 feet and above 29,000 feet is based on linearly extrapolated data.

Note: Source of data—Results of the Aerospace Industries Association (AIA) Propulsion Committee (PC) Study, Project (PC 338–1, June 1990.

TABLE B3.—CERTIFICATION STANDARD ATMOSPHERIC RAIN DROPLET SIZE DISTRIBUTION

Rain droplet diameter (mm)	Contribution to total LWC (%)
0–0.49	0
0.50–0.99	2.25
1.00–1.49	8.75
1.50–1.99	16.25
2.00–2.49	19.00
2.50–2.99	17.75
3.00–3.49	13.50
3.50–3.99	9.50
4.00–4.49	6.00
4.50–4.99	3.00
5.00–5.49	2.00
5.50–5.99	1.25
6.00–6.49	0.50
6.50–7.00	0.25
Total	100.00

Median diameter of rain droplets is 2.66 mm

Note: Source of data—Results of the Aerospace Industry Association (AIA) Propulsion Committee (PC) Study, Project PC 338–1, June 1990.

TABLE B4.—CERTIFICATION STANDARD ATMOSPHERIC HAILSTONE SIZE DISTRIBUTION

Hailstone diameter (mm)	Contribution to total HWC (%)
0.4.9	0
5.0–9.9	17.00
10.0–14.9	25.00
15.0–19.9	22.50
20.0–24.9	16.00
25.0–29.9	9.75
30.0–34.9	4.75
35.0–39.9	2.50
40.0–44.9	1.50
45.0–49.9	0.75
50.0–55.0	0.25
Total	100.00

Median diameter of hailstones is 16 mm.

Note: Source of data—Results of the Aerospace Association (AIA) Propulsion Committee (PC) Study, Project PC 338–1, June 1990.

Issued in Washington, DC on August 2, 1996.

Elizabeth Yoest,

Acting Director, Aircraft Certification Services.

[FR Doc. 96–20265 Filed 8–8–96; 8:45 am]

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federal register

Friday
August 9, 1996

Part III

Environmental Protection Agency

40 CFR Part 122

Interpretative Policy Memorandum on Reapplication Requirements for Municipal Separate Storm Sewer Systems; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 122

[FRL–5533–7]

Interpretative Policy Memorandum on Reapplication Requirements for Municipal Separate Storm Sewer Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Policy statement; interpretation.

SUMMARY: By today's notice EPA announces federal policy, signed by Robert Perciasepe, Assistant Administrator for Water, on May 17, 1996, regarding application requirements for renewal or reissuance of National Pollutant Discharge Elimination System (NPDES) permits for municipal separate storm sewer systems (MS4s). Today's action responds to requests from municipalities and NPDES permit writers for clarification about regulations which do not appear to address reapplication requirements, i.e., permit reissuance. Today's notice explains that MS4 permit applicants and NPDES permit writers have considerable discretion to customize appropriate and streamlined reapplication requirements on a case-by-case basis, specifically, by using the fourth year annual report as the principal reapplication document.

EFFECTIVE DATE: This policy is effective May 17, 1996.

FOR FURTHER INFORMATION CONTACT: Marilyn Fonseca, Office of Wastewater Management, MC–4203, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202)-260–0592, e-mail: Fonseca.Marilyn@epamail.epa.gov

SUPPLEMENTARY INFORMATION: The text of this policy is as follows:

Municipal Separate Storm Sewer System Permit Reapplication Policy

The 1987 amendments to the Clean Water Act added Section 402(p) which directed the Environmental Protection Agency to establish regulations governing storm water discharges under the National Pollutant Discharge Elimination System (NPDES) program. Early in the program, Congress specifically required NPDES permits for municipal separate storm sewer systems (MS4s) serving populations over 100,000. In response, EPA promulgated regulations in 1990 that established permit application requirements for MS4s that serve populations over 100,000. MS4 permits have since been drafted and finalized for many municipal systems. A number of MS4 permits are due to expire and must be reissued.

EPA is providing this policy memorandum to outline permit reapplication requirements for regulated MS4s. There are three components to EPA's reapplication policy. First, EPA is not requiring that the process used for part 1 and 2 of the initial permit application be repeated in full. Second, EPA has identified basic information that should be included in every reapplication package. Finally, EPA is seeking to improve existing MS4 storm water management programs by using information and experience municipalities have gained during the previous permit term.

Is a Permit Reapplication Necessary?

Yes. The requirement that all point source discharges authorized by a NPDES permit must reapply is well established at 40 CFR 122.41(b) and 122.46(a):

> Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.
>
> Duration of permits. NPDES permits shall be effective for a fixed term not to exceed 5 years.

The reapplication requirement is also found at 40 CFR 122.21(d):

> Duty to reapply. . . . All other permittees with currently effective permits shall submit a new application 180 days before the existing permit expires.

Therefore, all regulated Phase I MS4s need to participate in a permit reapplication process.

Where a complete reapplication package has been submitted as directed by the permit authority, conditions of an expired MS4 permit will continue until the effective date of a new permit, as stated in 40 CFR 122.6(a) and (b):

> (a) EPA permits. When EPA is the permit-issuing authority, the conditions of an expired permit continue in force . . . until the effective date of a new permit . . . and (b) Effect. Permits continued under this section remain fully effective and enforceable.

Are Initial MS4 Permit Application Requirements Applicable To Permit Reapplication?

No. The scope of the initial permit application requirements was comprehensive and regulated MS4s invested considerable resources to develop these applications. The initial applications have laid the foundation for the long-term implementation of MS4 storm water management programs. EPA believes reapplications should focus on maintenance and improvement of these programs.

The MS4 permit application requirements at 40 CFR 122.26(d)(1) and (2) apply to the first round permit applications required of large and medium MS4s. The permit application deadline regulations in 40 CFR 122.26(e) (3) & (4) clearly reflect the ''one time'' nature of the Part I & II application requirements for large and medium MS4s. EPA has not promulgated regulations applicable to reapplication for MS4s. Requirements to demonstrate adequate legal authority, perform source identification (e.g., identify major outfalls and facility inventory), characterize data, and develop a storm water management program should have been addressed in the initial application phase. Therefore, to request the same information again, where it has already been provided and has not changed, would be needlessly redundant. Thus, as a practical matter, most first-time permit application requirements are unnecessary for purposes of second round MS4 permit application.

What Basic Information Must Be Submitted for an MS4 Permit Reapplication?

EPA is committed to allowing permitting authorities to develop flexible reapplication requirements that are site-specific. In the absence of reapplication regulations specific to MS4s, minimum reapplication requirements are drawn from the generic NPDES permit application regulations at 40 CFR 122.21(f). EPA regulations suggest the following basic information be included as part of any permit reapplication:

—name and mailing address(es) of the permittee(s) that operate the MS4, and

—names and titles of the primary administrative and technical contacts for the municipal permittee(s).

In addition, in the reapplication, municipalities should identify any proposed changes or improvements to the storm water management program and monitoring activities for the upcoming five year term of the permit, if those proposed changes have not already been submitted pursuant to 40 CFR 122.42(c). [A requirement to submit proposed changes to the storm water management program is specified in the annual reporting requirements in 40 CFR 122.42(c)(2).] EPA encourages permitting authorities to make use of the fourth year annual report as the basic permit reapplication package.

Changes to the storm water management program may be justified due to the availability of new information on the relative magnitude of a problem or new data on water quality impacts of the storm water discharges. Municipalities may also propose to de-emphasize some program components and strengthen others, based on the experience gained under the first permit. Proposed elimination of a program component might be justified upon permit renewal; for example, when a component is no longer a problem area (i.e., all detention basins have been retrofitted) or when a different water quality program would serve the same goals.

The components of the original storm water management program which are found to be effective should be continued and made an ongoing part of the proposed new storm water management program. Such components may include:

—continued emphasis on public education programs, particularly programs on proper disposal of waste oil and household hazardous waste and pesticide application;
—continued, if not greater, emphasis on addressing impacts of new development/construction;
—proper storm design criteria for all new developments;
—retrofitting and/or upgrading of the existing storm sewer system according to a priority system;
—more frequent maintenance of storm sewer systems and storm water treatment systems;
—coordination with adjacent MS4s on monitoring or other efforts; and
—using a watershed approach to storm water management.

The accumulated annual report information as outlined in 40 CFR 122.42(c) should be evaluated and, to the extent applicable, be incorporated by reference into the reapplication package.

To reiterate, MS4s may use the fourth year annual report, which emphasizes proposed changes to the storm water management program, with the additional required basic information, as the MS4 permit reapplication. Changes to the storm water management program should be jointly developed by the permitting authority and the permit applicant. In this regard, we urge permit issuance authorities and permittees to work together to assure that the permit reapplication is complete and addresses all appropriate issues. The permitting agency may request additional technical information be submitted in the reapplication. NPDES permitting authorities, therefore, can exercise their information gathering authority under CWA Section 308, or analogous State provisions to complete the permit reapplication on a case-by case basis, as appropriate.

What Additional Information Should Be Considered for a Reapplication?

EPA also recommends the following information be provided by reapplicants to the permitting authority, as outlined in 40 CFR 122.26(d)(1)(iv)(C):

—identification of any previously unidentified water bodies that receive discharges from the MS4, and
—a summary of any known water quality impacts on the newly identified receiving waters (based on best available data).

In addition, EPA recommends the following information be provided to the permitting authority as well:

—a description of changes in co-applicants since issuance of initial MS4 permit, and
—identification number of the existing NPDES MS4 permit.

Further, EPA encourages permitting authorities to work with permittees to determine if storm water monitoring efforts are appropriate and useful. For example, during the previous permit term, municipalities may have found that their monitoring program was not fully successful in characterizing the nature and extent of storm water problems. Reapplication is an appropriate time for MS4s to evaluate their monitoring program and propose changes to make the program more appropriate and useful. To accomplish this, municipalities may wish to consider using monitoring techniques other than end-of-the pipe chemical-specific monitoring, including habitat assessments, bioassessments and/or other biological methods.

Permitting authorities should incorporate any such new information, together with assembled materials from the initial application and the existing permit, to form the administrative record for any reissued MS4 permits. Such administrative records should be made publicly available as part of the process to reissue the permit.

Dated: June 28, 1996.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 96–20228 Filed 8–8–96; 8:45 am]

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federal register

Friday
August 9, 1996

Part IV

Department of Energy

48 CFR Parts 901, et al.

Acquisition Regulation: Regulatory Reinvention; Final Rule

DEPARTMENT OF ENERGY

48 CFR Parts 901, 905, 906, 908, 915, 916, 917, 922, 928, 932, 933, 935, 936, 942, 945, 952, and 971

RIN 1991–AB25

Acquisition Regulation; Regulatory Reinvention

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) issues a final rule to amend the Department of Energy Acquisition Regulation (DEAR) in its continuing effort to streamline and simplify the acquisition process and to meet the objectives of several Executive Orders (EO), including: EO 12861, Elimination of One-Half of Executive Branch Internal Regulations; EO 12931, Federal Procurement Reform; and EO 12866, Regulatory Planning and Review. This rule revises certain regulatory material and deletes other material that has been determined to be nonregulatory and unnecessary. Specific material that is revised or deleted from the DEAR is summarized in the ''Section-by-Section Analysis'' appearing later in this document.

EFFECTIVE DATE: This final rule is effective September 9, 1996.

FOR FURTHER INFORMATION CONTACT: Kevin M. Smith, Office of Policy (HR–51), Office of Procurement and Assistance Management, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 586–8189.

SUPPLEMENTARY INFORMATION:

I. Background
II. Section-by-Section Analysis
III. Comments on the Notice of Proposed Rulemaking
IV. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under Executive Order 12988
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under Executive Order 12612
F. Review Under the National Environmental Policy Act

I. Background

Executive Order (EO) 12861, dated September 11, 1993, Elimination of One-Half of Executive Branch Internal Regulations, was issued by the President to streamline Government operations, improve productivity, and improve customer service. EO 12931, dated October 13, 1994, Federal Procurement Reform, calls for significant changes to make the Government procurement process more effective and efficient. EO 12866, dated September 30, 1993, Regulatory Planning and Review, requires agencies to review regulations to improve effectiveness and to reduce regulatory burden. This rule represents DOE's third action to eliminate existing regulatory material that is unnecessary. In promulgating this rule, the Department will further the objectives of the EOs by reducing the volume of the DEAR; streamlining operations; reducing constraints, prescriptive requirements, and administrative processes; making requirements outcome oriented vs. process oriented; and, defining roles and assigning responsibilities at the lowest appropriate level within the procurement organization. This rule makes three types of changes to the DEAR. Certain regulatory coverage is being revised and condensed to simplify and streamline the acquisition process; substantive policy changes have not been made in these areas. In addition, to implement certain requirements of the Federal Acquisition Streamlining Act of 1994, Public Law 103–355, regarding the availability of protest files and agency protest reviews, two new solicitation provisions are being added. Consistent with the requirements of E.O. 12979, dated October 25, 1995, Agency Procurement Protests, language also is being added to encourage the use of alternative dispute resolution procedures in appropriate circumstances. Finally, other material that has been determined to be nonregulatory in nature is being removed from the DEAR, including informational material and internal guidance and procedures.

II. Section-by-Section Analysis

1. Part 901 is revised to simplify the language, remove informational material, and remove internal procedures addressing deviations to the regulation, ratification of unauthorized commitments, and selection of contracting officers and their representatives.

2. Subpart 905.4, addressing the internal DOE process for release of contract information, is removed.

3. Section 906.302, citing the Atomic Energy Act authority for circumstances permitting other than full and open competition, is removed.

4. Section 906.303, addressing the internal procedures for processing noncompetitive justifications, is removed.

5. Subpart 908.3, addressing the acquisition of utility services, is moved to the new Part 941.

6. Subpart 908.8, addressing the acquisition of printing and related supplies, and Subpart 908.11, addressing the leasing of motor vehicles, are revised to simplify the language and to remove informational material.

7. Subpart 915.5, addressing unsolicited proposals, is revised to simplify the language, remove informational material, and remove internal procedures.

8. Subpart 915.6, addressing internal source selection procedures, is removed.

9. Subsection 915.970–8, addressing weighted guidelines application considerations, is revised to remove informational material and internal guidance.

10. Section 916.405, containing recommended language for award fee contract clauses, is removed.

11. Subpart 917.70, addressing cost participation, is revised to simplify the language, remove informational material, and remove internal procedures.

12. Subpart 917.72, addressing Program Opportunity Notices for commercial demonstrations, is revised to simplify the language, remove informational material, and remove internal procedures.

13. Subpart 917.73, addressing Program Research and Development Announcements, is revised to simplify the language, remove informational material, and remove internal procedures.

14. Subpart 917.74, addressing the acquisition, use and disposal of real estate, is revised to simplify the language, remove informational material, and remove internal procedures.

15. Subpart 917.75, providing guidance for the use of multiple awards-phased acquisitions, is removed.

16. Section 922.805, providing guidance to the contracting officer for obtaining affirmative action program posters, is removed.

17. Subpart 922.70, providing guidance regarding construction laborers and mechanics, is removed.

18. Subpart 928.1, addressing the use of bonds, is revised to simplify the language, remove informational material, and remove internal procedures.

19. Section 932.102, providing information on contract financing, is revised to simplify the language, remove informational material, and remove internal procedures.

20. Subpart 932.7, providing information on contract financing, is removed.

21. Section 932.802, providing information on the use of partial assignments, is removed.

22. Section 932.805, providing internal procedures for the information to be furnished to assignees, is removed.

23. Subpart 932.9, addressing prompt payments, is revised to simplify the language, remove informational material, and remove internal procedures.

24. Section 932.7000, providing introductory information on loan guarantees, is removed.

25. Section 932.7001, providing definitions, is removed.

26. Subpart 933.1, addressing protests, is revised to update and simplify the language, remove informational material, remove internal procedures, add two new solicitation provisions that address protest file availability and agency protest review, and add alternative dispute resolution procedures.

27. Section 935.016, addressing research opportunity announcements, is revised to simplify the language, remove informational material, and remove internal procedures.

28. Sections 936.601, 936.602–2, 936.602–3, and 936.602–4, providing internal procedures for contracting for architect-engineer services, are removed.

29. Sections 936.603, 936.605, and 936.606, providing internal procedures for contracting for architect-engineer services, are removed.

30. Subpart 936.72, providing internal information and guidance for the acquisition of special equipment, is removed.

31. Part 941, addressing the acquisition of utility services, is added to include the coverage, as revised, that was previously contained in Part 908.

32. Subsection 942.705–1, addressing final indirect cost rate determinations, is revised to simplify the language.

33. Subsection 942.705–3, addressing negotiated rates for educational institutions, is revised to simplify the language.

34. Subsection 942.705–4, addressing negotiated rates for state and local governments, is revised to simplify the language.

35. Subsection 942.705–5, addressing negotiated rates for nonprofit organizations other than educational and state and local governments, is revised to simplify the language.

36. Subpart 942.70, providing internal guidance and procedures for obtaining audit support services, is removed.

37. Subsection 945.505–5, providing internal guidance for making records of plant equipment, is removed.

38. Subsection 945.505–14, providing information for the completion of Government property reports, is removed.

39. Section 952.214, addressing clauses related to sealed bidding, is removed as there is no material under that section title.

40. Section 952.215, addressing clauses related to contracting by negotiation, is removed as the prescriptions for those clauses were removed in an earlier final rule.

41. Subsection 952.233–2 is revised to change the DOE office that receives copies of protests.

42. Subsection 952.233–4 is added to include a new solicitation provision regarding the availability of protest files.

43. Subsection 952.233–5 is added to include a new solicitation provision regarding agency protest reviews.

44. Subsection 952.251–70 is amended to correct the date of the contract clause Contractor Employee Travel Discounts.

45. Part 971, providing internal procedures for the review and approval of contract actions, is removed.

III. Comments on the Notice of Proposed Rulemaking

A Notice of Proposed Rulemaking was published in the Federal Register on May 3, 1996 (61 FR 19891). Interested parties were invited to participate in this rulemaking by submitting comments with respect to the DEAR amendments set forth in the Notice of Proposed Rulemaking. The public comment period closed on July 2, 1996, a period of 60 days. During this period, comments were received from one corporation. These comments focused on the deletion of internal guidance material directed to the Department's acquisition personnel. The corporation stated that some of the information being removed may be helpful to businesses, especially those that are relatively new to contracting with the Government. While we agree that some of this information may be helpful, the material being removed is not regulatory in nature and is not suitable for inclusion in the DEAR pursuant to the direction and guidance provided in the Executive Orders cited above. Removal of this material does not change the Department's acquisition policies. Information on the issues identified in the comments (1) is already publicly available in statutes or the Federal Acquisition Regulation, (2) will be provided in solicitations or announcements issued by the Department for particular acquisitions, or (3) is in internal agency Guides that are available to the public.

No revisions to the rulemaking have been made based on the one submission of comments. However, the final rule does reflect changes from the proposed rule in two areas. The first is in § 908.71, which addresses the acquisition of special items. The rule as proposed would have rewritten this subpart to streamline it. Based on further internal review, Subpart 908.71 will not be amended in this rulemaking and will remain unchanged. The second change is in Part 933, which addresses protests. This final rule makes technical changes in Part 933 by removing references to the General Services Administration Board of Contract Appeals (GSBCA). Pursuant to the Federal Acquisition Reform Act of 1996, the GSBCA will not perform bid protest functions after August 8, 1996.

IV. Procedural Requirements

A. Review Under Executive Order 12866

This regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review, under that Executive Order, by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is

unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the regulations meet the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

The proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of an initial regulatory flexibility analysis for any rule that is likely to have a significant economic impact on a substantial number of small entities. In the preamble to the proposed rule, DOE noted that the proposed rule would reduce the volume of the DEAR, streamline procurement processes, reduce constraints, prescriptive requirements, and administrative processes, and make requirements outcome oriented rather than process oriented. As this rule eliminates regulatory requirements from the acquisition process, it will likely ease the burden placed on small businesses that contract with DOE. Based on this review, DOE certified that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis had been prepared. DOE did not receive any comments on this certification.

D. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.).

E. Review Under Executive Order 12612

Executive Order 12612, entitled ''Federalism,'' 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. DOE has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of States.

F. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR 1500–1508), the Department has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*). Pursuant to Appendix A of Subpart D of 10 CFR 1021, National Environmental Policy Act Implementing Procedures (Categorical Exclusion A6), DOE has determined that this rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

List of Subjects in 48 CFR Parts 901, 905, 906, 908, 915, 916, 917, 922, 928, 932, 933, 935, 936, 942, 945, 952, and 971

Government procurement.

Issued in Washington, D.C., on July 29, 1996.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below: 1. The authority citation for Parts 901, 905, 906, 908, 915, 916, 917, 922, 928, 932, 933, 935, 936, 942, 945, 952, and 971 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

2. Part 901 is revised to read as follows:

PART 901—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 901.1—Purpose, Authority, Issuance

Sec.

901.101 Purpose.
901.102 Authority.
901.103 Applicability.
901.104 Issuance.
901.104–1 Publication and code arrangement.
901.104–2 Arrangement of regulations.
901.104–3 Copies.
901.105 OMB control numbers.

Subpart 901.3—Agency Acquisition Regulations

901.301–70 Other issuances related to acquisition.

Subpart 901.6—Contracting Authority and Responsibilities

901.601 General.
901.602–3 Ratification of unauthorized commitments.

Subpart 901.1—Purpose, Authority, Issuance

901.101 Purpose.

The Department of Energy Acquisition Regulation (DEAR) in this chapter establishes uniform acquisition policies which implement and supplement the Federal Acquisition Regulation (FAR).

901.102 Authority.

The DEAR and amendments thereto are issued by the Procurement Executive pursuant to a delegation from the Secretary in accordance with the authority of section 644 of the Department of Energy Organization Act (42 U.S.C. 7254), section 205(c) of the Federal Property and Administrative Services Act of 1949, as amended, (40 U.S.C. 486(c)), and other applicable law.

901.103 Applicability.

The FAR and DEAR apply to all DOE acquisitions of supplies and services which obligate appropriated funds unless otherwise specified in this chapter.

901.104 Issuance.

901.104–1 Publication and code arrangement.

(a) The DEAR and its subsequent changes are published in the Federal Register, cumulative form in the Code of Federal Regulations, and a separate loose-leaf edition.

(b) The DEAR is issued as chapter 9 of Title 48 of the Code of Federal Regulations.

901.104–2 Arrangement of regulations.

(a) General. The DEAR is divided into the same parts, subparts, sections, subsections and paragraphs as is the FAR.

(b) Numbering. The numbering illustrations at (FAR) 48 CFR 1.104–2(b) apply to the DEAR, but the DEAR numbering will be preceded with a 9 or a 90. Material which supplements the FAR will be assigned the numbers 70 and up.

901.104–3 Copies.

Copies of the DEAR published in the Federal Register or Code of Federal Regulations may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

901.105 OMB control numbers.

The Paperwork Reduction Act of 1980, Public Law 98–511, and the Office of Management and Budget's implementing regulations at 5 CFR part 1320, require that reporting and record

keeping requirements affecting 10 or more members of the public be cleared by that Office. The OMB control number for the collection of information under 48 CFR chapter 9 is 1910–4100.

Subpart 901.3—Agency Acquisition Regulations

901.301–70 Other issuances related to acquisition.

In addition to the FAR and DEAR, there are other issuances which deal with acquisition. Among these are the Federal Property Management Regulations, the DOE Property Management Regulations, and DOE Directives.

Subpart 901.6—Contracting Authority and Responsibilities

901.601 General.

Contracting authority vests in the Secretary of Energy. The Secretary has delegated this authority to the Procurement Executive. The Procurement Executive has redelegated this authority to the Heads of Contracting Activities (HCA). These delegations are formal written delegations containing dollar limitations and conditions. Each HCA in turn makes formal contracting officer appointments within the contracting activity.

901.602–3 Ratification of unauthorized commitments. (DOE coverage—paragraph (b))

(b) (2) The Procurement Executive is authorized to ratify an unauthorized commitment.

(3) The ratification authority of the Procurement Executive in paragraph (b)(2) of this section is delegated to the Head of the Contracting Activity (HCA) for individual unauthorized commitments of $25,000 or under. The ratification authority of the HCA is nondelegable.

PART 905—PUBLICIZING CONTRACT ACTIONS

Subpart 905.4—[Removed]

3. Subpart 905.4 (sections 905.403, 905.403–70, and 905.404–1) is removed.

PART 906—COMPETITION REQUIREMENTS

906.302 and 906.302–7 [Removed]

4. Section 906.302 and 906.302–70 are removed.

906.303 and 906.303–1 [Removed]

5. Section 906.303 and 906.303–1 are removed.

PART 908—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 908.3—[Removed]

6. Subpart 908.3 (sections 908.303, 908.303–70, 908.303–71, and 908.307) is removed.

7. Subpart 908.8 is revised to read as follows:

Subpart 908.8—Acquisition of Printing and Related Supplies

Sec.
908.802 Policy.

Subpart 908.8—Acquisition of Printing and Related Supplies

908.802 Policy. (DOE coverage—paragraph (b))

(b) Inclusion of printing requirements (limited exceptions are set forth in paragraphs 35–2 through 35–4 of the Government Printing and Binding Regulations) in contracts for supplies and services is prohibited unless specifically approved by the Director, Office of Administrative Services, Headquarters. Contracting officers shall insert the clause at 48 CFR 952.208–70.

8. Subpart 908.11 is revised to read as follows:

Subpart 908.11—Leasing of Motor Vehicles

Sec.
908.1102 Presolicitation requirements.
908.1104 Contract clauses.
908.1170 Leasing of fuel-efficient vehicles.

Subpart 908.11—Leasing of Motor Vehicles

908.1102 Presolicitation requirements. (DOE coverage—paragraph (a))

(a)(4) Commercial vehicle lease sources may be used only when the General Services Administration (GSA) has advised that it cannot furnish the vehicle(s) through the Interagency Motor Pool System and it has been determined that the vehicle(s) are not available through the GSA Consolidated Leasing Program.

908.1104 Contract clauses. (DOE coverage—paragraph (e))

(e) The clause at 48 CFR 952.208–7, Tagging of Leased Vehicles, shall be inserted whenever a vehicle(s) is to be leased over 60 days, except for those vehicles exempted by (FPMR) 41 CFR 101–38.6.

908.1170 Leasing of fuel-efficient vehicles.

(a) All sedans and station wagons and certain types of light trucks, as specified by GSA, that are acquired by lease for 60 continuous days or more for official use by DOE or its authorized contractors, are subject to the requirements of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 and of Executive Order 12003 and subsequent implementing regulations.

(b) Leased vehicles will meet the miles-per-gallon criteria of, and be incorporated in, the approved plan of the fiscal year in which leases are initiated, reviewed, extended, or increased in scope. Vehicle leases will specify the vehicle model type to be provided.

PART 915—CONTRACTING BY NEGOTIATION

9. Subpart 915.5 is revised to read as follows:

Subpart 915.5—Unsolicited Proposals

Sec.
915.502 Policy.
915.503 General.
915.505 Content of unsolicited proposals.
915.506 Agency procedures.
915.507 Contracting methods.

Subpart 915.5—Unsolicited Proposals

915.502 Policy.

(a) Present and future needs demand the involvement of all resources in exploring alternative energy sources and technologies. To achieve this objective, it is DOE policy to encourage external sources of unique and innovative methods, approaches, and ideas by stressing submission of unsolicited proposals for government support. In furtherance of this policy and to ensure the integrity of the acquisition process through application of reasonable controls, the DOE:

(1) Disseminates information on areas of broad technical concern whose solutions are considered relevant to the accomplishment of DOE's assigned mission areas;

(2) Encourages potential proposers to consult with program personnel before expending resources in the development of written unsolicited proposals;

(3) Endeavors to distribute unsolicited proposals to all interested organizations within DOE;

(4) Processes unsolicited proposals in an expeditious manner and, where practicable, keeps proposers advised as discrete decisions are made;

(5) Assures that each proposal is evaluated in a fair and objective manner; and,

(6) Assures that each proposal will be used only for its intended purpose and the information, subject to applicable laws and regulations, contained therein will not be divulged without prior permission of the proposer.

(b) Extensions of contract work resulting from unsolicited proposals

shall be processed in accordance with the procedures at 48 CFR 943.170.

915.503 General. (DOE coverage—paragraph (f))

(f) Unsolicited proposals for the performance of support services are, except as discussed in this paragraph, unacceptable as the performance of such services is unlikely to necessitate innovative and unique concepts. There may be rare instances in which an unsolicited proposal offers an innovative and unique approach to the accomplishment of a support service. If such a proposal offers a previously unknown or an alternative approach to generally recognized techniques for the accomplishment of a specific service(s) and such approach will provide significantly greater economy or enhanced quality, it may be considered for acceptance. Such acceptance shall, however, require approval of the acquisition of support services in accordance with applicable DOE Directives and be processed as a deviation to the prohibition in this paragraph.

915.505 Content of unsolicited proposals. (DOE coverage—paragraph (b))

(b)(5) Unsolicited proposals for nonnuclear energy demonstration activities not covered by existing formal competitive solicitations or program opportunity notices may include a request for federal assistance or participation, and shall be subject to the cost sharing provisions of 48 CFR 917.70.

915.506 Agency procedures. (DOE coverage—paragraph (b))

(b) Unless otherwise specified in a notice of program interest, all unsolicited proposals should be submitted to the Unsolicited Proposal Coordinator, Office of Procurement and Assistance, Washington, DC 20585. If the proposer has ascertained the cognizant program office through preliminary contacts with program staff, the proposal may be submitted directly to that office. In such instances, the proposer should separately send a copy of the proposal cover letter to the unsolicited proposal coordinator to assure that the proposal is logged in the Department's automated tracking system for unsolicited proposals.

915.507 Contracting methods. (DOE coverage—paragraph (d))

(d) DOE's cost participation policy, at 48 CFR 917.70, shall be followed in determining the extent to which the DOE will participate in the cost for the proposed effort.

Subpart 915.6—[Removed]

10. Subpart 915.6 (sections 915.610, 915.612, and 915.613) is removed.

11. Subsection 915.970–8 is revised to read as follows:

915.970–8 Weighted guidelines application considerations.

The Department has developed internal procedures to aid the contracting officer in the application of weighted guidelines and to assure a reasonable degree of uniformity across the Department.

PART 916—TYPES OF CONTRACTS

916.405 [Removed]

12. Section 916.405 is removed.

PART 917—SPECIAL CONTRACTING METHODS

13. Subpart 917.70 is revised to read as follows:

Subpart 917.70—Cost Participation

Sec.
917.7000 Scope of subpart.
917.7001 Policy.

Subpart 917.70—Cost Participation

917.7000 Scope of subpart.

(a) This subpart sets forth the DOE policy on cost participation by organizations performing research, development, and/or demonstration projects under DOE prime contracts. This subpart does not cover efforts and projects performed for DOE by other Federal agencies.

(b) Cost participation is a generic term denoting any situation where the Government does not fully reimburse the performer for all allowable costs necessary to accomplish the project or effort under the contract. The term encompasses cost sharing, cost matching, cost limitation (direct or indirect), participation in kind, and similar concepts.

917.7001 Policy.

(a) When DOE supports performer research, development, and/or demonstration efforts, where the principal purpose is ultimate commercialization and utilization of the technologies by the private sector, and when there are reasonable expectations that the performer will receive present or future economic benefits beyond the instant contract as a result of performance of the effort, it is DOE policy to obtain cost participation. Full funding may be provided for early phases of development programs when the technological problems are still great.

(b) In making the determination to obtain cost participation, and evaluating present and future economic benefits to the performer, DOE will consider the technical feasibility, projected economic viability, societal and political acceptability of commercial application, as well as possible effects of other DOE-supported projects in competing technologies.

(c) The propriety, manner, and amount of cost participation must be decided on a case-by-case basis.

(d) Cost participation is required for demonstration projects unless exempted by the Under Secretary. Demonstration projects, pursuant to this subpart, include demonstrations of technological advances and field demonstrations of new methods and procedures, and demonstrations of prototype commercial applications for the exploration, development, production, transportation, conversion, and utilization of energy resources.

14. Subpart 917.72 is revised to read as follows:

Subpart 917.72—Program Opportunity Notices for Commercial Demonstrations

Sec.
917.7200 Scope of subpart.
917.7201 Policy.
917.7201–1 General.

Subpart 917.72—Program Opportunity Notices for Commercial Demonstrations

917.7200 Scope of subpart.

(a) This subpart discusses the policy for the use of a program opportunity notice solicitation approach to accelerate the demonstration of the technical feasibility and commercial application of all potentially beneficial non-nuclear energy sources and utilization technologies.

(b) This subpart applies to demonstrations performed by individuals, educational institutions, commercial or industrial organizations, or other private entities, public entities, including State and local governments, but not other Federal agencies. For purposes of this subpart, commercial demonstration projects include demonstrations of technological advances, field demonstrations of new methods and procedures, and demonstration of prototype commercial applications for the exploration, development, production, transportation, conversion, and utilization of non-nuclear energy resources.

917.7201 Policy.

917.7201–1 General.

(a) It is DOE's intent to encourage the submission of proposals to accelerate the demonstration of the technical, operational, economic, and commercial feasibility and environmental acceptability of particular energy technologies, systems, subsystems, and components. Program opportunity notices will be used to provide information concerning scientific and technological areas encompassed by DOE's programs. DOE shall, from time to time, issue program opportunity notices for proposals for demonstrations of various forms of non-nuclear energy and technology utilization.

(b) Each program opportunity notice shall as a minimum describe: the goal of the intended demonstration effort; the time schedule for award; evaluation criteria; program policy factors; the amount of cost detail required; and proposal submission information. Program policy factors are those factors which, while not appropriate indicators of a proposal's individual merit (i.e., technical excellence, proposer's ability, cost, etc.), are relevant and essential to the process of choosing which of the proposals received will, taken together, best achieve the program objectives. All such factors shall be predetermined and specified in the notice so as to notify proposers that factors which are essentially beyond their control will affect the selection process.

15. Subpart 917.73 is revised to read as follows:

Subpart 917.73—Program Research and Development Announcements

Sec.
917.7300 Scope of subpart.
917.7301 Policy.
917.7301–1 General.

Subpart 917.73—Program Research and Development Announcements

917.7300 Scope of subpart.

(a) This subpart discusses the policy for the use of a program research and development announcement (PRDA) solicitation approach to obtain and select proposals from the private sector for the conduct of research, development, and related activities in the energy field.

917.7301 Policy.

917.7301–1 General.

(a) PRDAs shall be used to provide potential proposers with information concerning DOE's interest in entering into arrangements for research, development, and related projects in specified areas of interest. It is DOE's intent to solicit the submission of ideas which will serve as a basis for research, development, and related activities in the energy field. It is DOE's desire to encourage the involvement of small business concerns, small disadvantage business concerns, and women-owned small business concerns in research and development undertaken pursuant to PRDAs.

(b) The PRDA should not replace existing acquisition procedures where a requirement can be sufficiently defined for solicitation under standard advertised or negotiated acquisition procedures. Similarly, it should not inhibit or curtail the submission of unsolicited proposals. However, a proposal which is submitted as though it were unsolicited but is in fact germane to an existing PRDA shall be treated as though submitted in response to the announcement or returned without action to the proposer, at the proposer's option. Further, the PRDA is not to be used in a competitive situation where it is appropriate to negotiate a study contract to obtain analysis and recommendations to be incorporated in the subsequent request for proposals.

(c) The PRDA is to be used only where:

(1) Research and development is required in support of a specific project area within an energy program with the objective of advancing the general scientific and technological base, and this objective is best achieved through:

(i) A diversity of possible approaches, within the current state of the art, available for solving the problems;

(ii) The involvement of a broad spectrum of organizations in seeking out solutions to the problems posed;

(iii) The application of the unique qualifications or specialized capabilities of many individual proposers which will enable them to perform portions of the research project (without necessarily possessing the qualifications to perform the entire project) so that the overall support may be broken into segments which cannot be ascertained in advance; and,

(iv) The fostering of new and creative solutions.

(2) Consistent with paragraph (c)(1) of this section, it is anticipated that choices will have to be made among dissimilar concepts, ideas, or approaches; and

(3) It is determined that a broad range of organizations exist that would be capable of contributing towards the overall research and development goals identified in paragraph (c)(1) of this section.

(d) Each PRDA shall as a minimum describe: the area(s) of program interest; time schedule for award; proposal submittal information; evaluation criteria; and program policy factors. The PRDA should clearly emphasize to proposers that program policy factors are essentially beyond their control and will affect the selection process. The PRDA should also state that DOE reserves the right to select for award or support any, all, or none of the proposals received in response to an announcement.

16. Subpart 917.74 is revised to read as follows:

Subpart 917.74—Acquisition, Use, and Disposal of Real Estate

Sec.
917.7401 General.
917.7402 Policy.
917.7403 Application.

Subpart 917.74—Acquisition, Use, and Disposal of Real Estate

917.7401 General.

Special circumstances and situations may arise under cost-type contracts when, in the performance of the contract or subcontract, the performer shall be required, or otherwise find it necessary, to acquire real estate or interests therein by:

(a) Purchase, on DOE's behalf or in its own name, with title eventually vesting in the Government.

(b) Lease, and DOE assumes liability for, or otherwise will pay for the obligation under the lease.

(c) Acquisition of temporary interest through easement, license or permit, and DOE funds the cost of the temporary interest.

917.7402 Policy.

It is the policy of the Department of Energy that, when real estate acquisitions are made, the following policies and procedures shall be applied to such acquisitions:

(a) Real estate acquisitions shall be mission essential; effectively, economically, and efficiently managed and utilized; and disposed of promptly, when not needed;

(b) Acquisitions shall be justified, with documentation which describes the need for the acquisitions, general requirements, cost, acquisition method to be used, site investigation reports, site recommended for selection, and property appraisal reports; and

(c) Acquisition by lease, in addition to the requirements in paragraphs (a) and (b) of this section:

(1) Shall not exceed a one-year term if funded by one-year appropriations.

(2) May exceed a one-year term, when the lease is for special purpose space funded by no-year appropriations and approved by the Department.

(3) Shall contain an appropriate cancellation clause which limits the Government's obligation to no more than the amount of rent to the earliest cancellation date plus a reasonable cancellation payment.

(4) Shall be consistent with Government laws and regulations applicable to real estate management.

917.7403 Application.

The clause at 48 CFR 952.217–70 shall be included in contracts or modifications where contractor acquisitions are expected to be made.

Subpart 917.75—[Removed]

17. Subpart 917.75 (sections 917.7500, 917.7501, and 917.7502) is removed.

PART 922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

922.805 [Removed]

18. Section 922.805 is removed.

Subpart 922.70—[Removed]

19. Subpart 922.70 (sections 922.7000 and 922.7001) is removed.

PART 928—BONDS AND INSURANCE

20. Subpart 928.1 is revised to read as follows:

Subpart 928.1—Bonds

Sec.
928.101–1 Policy on use.
928.103–3 Payment bonds.
928.103–70 Review of performance and payment bonds for other than construction.

Subpart 928.1—Bonds

928.101–1 Policy on use.

In addition to the restriction on use of bid guarantees in FAR 28.101–1(a), a bid guarantee may be required only for fixed price or unit price contracts entered into as a result of sealed bidding. They may not be required for negotiated contracts.

928.103–3 Payment bonds.

A determination that is in the best interest of the Government to require payment bonds in connection with other than construction contracts may be made by the contracting officer on individual acquisitions.

928.103–70 Review of performance and payment bonds for other than construction.

A performance or payment bond, other than an annual bond, shall not antedate the contract to which it pertains.

PART 932—CONTRACT FINANCING

21. Section 932.102 is revised to read as follows:

932.102 Description of contract financing methods. (DOE coverage—paragraph (e))

(e)(2) Progress payments based on a percentage or stage of completion may be authorized by the Head of the Contracting Activity when a determination is made that progress payments based on costs cannot be practically employed and that there are adequate safeguards provided for the administration of progress payments based on a percentage or stage of completion.

Subpart 932.7—[Removed]

22. Subpart 932.7 (section 932.703–1) is removed.

932.802 [Removed]

23. Section 932.802 is removed.

932.805 [Removed]

24. Section 932.805 is removed.

25. Subpart 932.9 is revised to read as follows:

Subpart 932.9—Prompt Payment

Sec.
932.970 Implementing DOE policies and procedures.

Subpart 932.9—Prompt Payment

932.970 Implementing DOE policies and procedures.

(a) *Invoice payments.* (1) *Contract Settlement Date.* For purposes of determining any interest penalties under cost-type contracts, the effective date of contract settlement shall be the effective date of the final contract modification issued to acknowledge contract settlement and to close out the contract.

(2) *Constructive acceptance periods.* Where the contracting officer determines, in writing, on a case-by-case basis, that it is not reasonable or feasible for DOE to perform the acceptance or approval function within the standard period, the contracting officer should specify a longer constructive acceptance or approval period, as appropriate. Considerations include, but are not limited to, the nature of supplies or services involved, geographical site location, inspection and testing requirements, shipping and acceptance terms, and available DOE resources.

(b) *Contract financing payments.* Contracting officers may specify payment due dates that are less than the standard 30 days when a determination is made, in writing, on a case-by-case basis, that a shorter contract financing payment cycle will be required to finance contract work. In such cases, the contracting officer should coordinate with the finance and program officials that will be involved in the payment process to ensure that the contract payment terms to be specified in solicitations and resulting contract awards can be reasonably met. Consideration should be given to geographical separation, workload, contractor ability to submit a proper request, and other factors that could affect timing of payment. However, payment due dates that are less than 7 days for progress payments or less than 14 days for interim payments on cost-type contracts are not authorized.

932.7000 [Removed]

26. Section 932.7000 is removed.

932.7001 [Removed]

27. Section 932.7001 is removed.

PART 933—PROTESTS, DISPUTES AND APPEALS

28. Subpart 933.1 is revised to read as follows:

Subpart 933.1—Protests

Sec.
933.103 Protests to the agency.
933.104 Protests to GAO.
933.106 Solicitation provisions.

Subpart 933.1—Protests

933.103 Protests to the agency. (DOE coverage—paragraphs (f), (i), (j), and (k))

(f) If FAR 33.103(f) requires that award be withheld or performance be suspended or the awarded contract be terminated pending resolution of an agency protest, authority to award and/or continue performance of the protested contract may be requested by the Head of the Contracting Activity (HCA), concurred in by counsel, and approved by the Procurement Executive.

(i)(1) Protests filed with the contracting officer before or after award shall be decided by the Head of the Contracting Activity except for the following cases, which shall be decided by the Procurement Executive:

(i) The protester requests that the protest be decided by the Procurement Executive.

(ii) The HCA is the contracting officer of record at the time the protest is filed, having signed either the solicitation where the award has not been made, or the contract, where the award or nomination of the apparent successful offeror has been made.

(iii) The HCA concludes that one or more of the issues raised in the protest have the potential for significant impact on DOE acquisition policy.

(2) Upon receipt of a protest requesting a decision by the Procurement Executive, the contracting activity shall immediately provide a copy of the protest to the Office of Clearance and Support.

(j) The Department of Energy encourages direct negotiations between an offeror and the contracting officer in an attempt to resolve protests. In those situations where the parties are not able to achieve resolution, the Department favors the use of alternative dispute resolution (ADR) techniques to resolve protests. A protest requesting a decision at the Headquarters level shall state whether the protester is willing to utilize ADR techniques such as mediation or nonbinding evaluation of the protest by a neutral. Upon receipt of a protest requesting a decision at the Headquarters level, the Office of Clearance and Support will explore with the protester whether the use of ADR techniques would be appropriate to resolve the protest. Both parties must agree that the use of such techniques is appropriate. If the parties do not mutually agree to utilize ADR to resolve the protest, the protest will be processed in accordance with the procedures set forth in paragraph (k).

(k) Upon receipt of a protest lodged with the Department, the contracting officer shall prepare a report similar to that discussed in FAR 33.104(a)(3)(iii). In the case of a protest filed at the Headquarters level, the report shall be forwarded to the Office of Clearance and Support within 21 calendar days of being notified of such a protest with a proposed response to the protest. The Procurement Executive (for protests at the Headquarters level or those specific HCA protests cited in paragraph (i)(1) of this section) or an HCA (for protests at the contracting activity level) will render a decision on a protest within 35 calendar days, unless a longer period of time is determined to be needed.

933.104 Protests to GAO. (DOE coverage—paragraphs (a), (b), (c), and (g))

(a)(2) The contracting officer shall provide the notice of protest.

(b) *Protests before award.* (1) When the Department has received notice from the GAO of a protest filed directly with the GAO, a contract may not be awarded until the matter is resolved, unless authorized by the Head of the Contracting Activity in accordance with FAR 33.104(b). Before the Head of the Contracting Activity authorizes the award, the required finding shall be concurred in by the DOE counsel handling the protest, endorsed by the Senior Program Official, and approved by the Procurement Executive. The finding shall address the likelihood that the protest will be sustained by the GAO.

(c) *Protests after award.* Before the Head of the Contracting Activity authorizes performance, the finding required by FAR 33.104(c)(2) shall be concurred in by the DOE counsel handling the protest, endorsed by the Senior Program Official, and approved by the Procurement Executive.

(g) *Notice to GAO.* (1) The report to the GAO regarding a decision not to comply with the GAO's recommendation, discussed at FAR 33.104(f), shall be provided by the HCA making the award, after approval of the Procurement Executive. If a DOE-wide policy issue is involved, the report shall be provided by the Procurement Executive.

(2) It is the policy of the Department to comply promptly with recommendations set forth in Comptroller General Decisions except for compelling reasons.

(3) The GAO does not have jurisdiction to consider subcontractor protests. 933.106 Solicitation provisions.

(a) The contracting officer shall supplement the provision at FAR 52.233–2, Service of Protest, in solicitations for other than simplified acquisitions by adding the provision at 48 CFR 952.233–2.

(b) The contracting officer shall include the provision at 48 CFR 952.233–4 in solicitations for purchases above the simplified acquisition threshold.

(c) The contracting officer shall include the provision at 48 CFR 952.233–5 in solicitations for purchases above the simplified acquisition threshold.

PART 935—RESEARCH AND DEVELOPMENT CONTRACTING

29. Subsections 935.016–3 through 935.016–7 and 935.016–9 are removed, and section 935.016 and subsections 935.016–1, 935.016–2 and 935.016–8 are revised to read as follows:

935.016 Research opportunity announcements.

935.016–1 Scope.

(a) FAR 35.016 sets forth the policies and procedures for contracting for research through the use of broad agency announcements as authorized by the Competition in Contracting Act of 1984 (CICA) (41 U.S.C. 259(b)(2)) and Federal Acquisition Regulation FAR 6.102(d)(2). Within DOE, broad agency announcements will be designated as Research Opportunity Announcements (ROAs).

(b) Research Opportunity Announcements are a form of competitive solicitation under which DOE's broad mission and program-level research objectives are defined; proposals which offer meritorious approaches to those objectives are requested from all offerors capable of satisfying the Government's needs; those proposals are evaluated by scientific or peer review against stated specific evaluation criteria; and selection of proposals for possible contract award is based upon that evaluation, the importance of the research to the program objectives, and funds availability.

935.016–2 Applicability.

(a) This section applies to all DOE Headquarters and field program organizations which, by virtue of their statutorily mandated mission or other such authority as may exist, support energy or energy-related research activities through contractual relationships.

(1) The ROA may be used as a competitive solicitation procedure through which DOE acquires basic and applied research in support of its broad mission and program-level research objectives, and these objectives may be best achieved through relationships where contractors pursue diverse and dissimilar solutions and approaches to scientific and technological areas related to DOE's missions and programs.

(2) The ROA shall not be used as a solicitation method when one or more of the following conditions exist:

(i) In accordance with the Federal Grant and Cooperative Agreement Act, Public Law 97–258, the principal purpose of the relationship will be assistance;

(ii) The purpose of the research is to accelerate the demonstration of the technical, operational, economic, or commercial feasibility and environmental acceptability of particular energy technologies, systems, subsystems, and components that would appropriately be acquired by Program Opportunity Notices (PONs) in accordance with 48 CFR 917.72;

(iii) The research is required in support of a specific project area within an energy program which appropriately would be acquired by Program Research and Development Announcements (PRDAs) in accordance with 48 CFR 917.73;

(iv) The research requirements can be sufficiently defined to allow the use of contracting by negotiation in accordance with FAR part 15;

(v) The purpose of the research is the acquisition of goods and services related to the development of a specific system or hardware acquisition; or,

(vi) Any funds to be obligated to a resulting contract will be used to conduct or support a conference or training activity.

(b) The following limitations are applicable to the use of ROAs:

(1) The use of broad agency announcements for the acquisition of that part of development not related to the development of a specific system or hardware is authorized by FAR 35.016(a). Notwithstanding that authorization, ROAs shall be used within DOE only to acquire basic and applied research.

(2) Proposals shall not be solicited from, and contracts shall not be awarded to, any specific entity which operates a Government-owned or-controlled research, development, special production, or testing establishment, such as DOE's management and operating contractor facilities, Federally Funded Research and Development Centers chartered by other agencies, or other such entities. This limitation shall not be used to preclude the parent organization of the entity operating the Government-owned or -controlled facility, its subsidiaries, other divisions, or other related business affiliates from proposing, or receiving awards, under DOE's ROA solicitations, provided that any proposed resources (personnel, facilities, and other resources) used in the management and operation of the Government-owned or -controlled facility have been approved for use in the ROA effort by the sponsoring agency.

935.016–8 Selection of proposals.

(a) After considering the evaluation findings, the importance of the proposed research to the program objectives, and funds availability, the Selection Official shall determine whether a specific proposal warrants selection for negotiation and award of a contract. The decision of the Selection Official shall be documented in writing and shall address, as appropriate, such issues as:

(1) The scientific and technical merit of the proposal in relation to the ROA evaluation criteria;

(2) The qualifications, capabilities, and experience of the proposed personnel; technical approach; facilities; and where applicable, cost participation by the offeror (or any combination of the above);

(3) The importance of the proposed research to the program objectives;

(4) Which areas of the proposal, whether in whole or in part, have been selected for funding, and the amount of that funding; and,

(5) Assurances that any other requirements which are imposed by statute, regulation, or internal directives relating to the specific research activities and which are properly the responsibility of the program office have been satisfied.

(b) Absent extenuating circumstances, selection decisions regarding any individual proposal should be made within six (6) months after receipt of the proposal. Proposals which have been evaluated may be accumulated to allow for a consolidated selection decision so long as not more than six (6) months have passed since the receipt of any of the proposals so accumulated.

(c) The cognizant DOE program official shall notify successful and unsuccessful offerors of any selection/non-selection decisions. These notices shall be made in writing promptly after the decision is made, and shall, at a minimum, state in general terms, the basis for the determination.

PART 936—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

936.601 through 936.602–4 [Removed]

30. Sections 936.601, 936.602–2, 936.602–3, and 936.602–4 are removed.

936.603 through 936.606 [Removed]

31. Sections 936.603, 936.605, and 936.606 are removed.

Subpart 936.72—[Removed]

32. Subpart 936.72 (sections 936.7200, 936.7201, and 936.7202) is removed.

33. Part 941 is added at the end of Subchapter F as follows:

PART 941—ACQUISITION OF UTILITY SERVICES

Subpart 941.2—Acquiring Utility Services

Sec.
941.201–70 DOE Directives.
941.201–71 Use of subcontracts.

Subpart 941.2—Acquiring Utility Services

941.201–70 DOE Directives.

Utility services (defined at FAR 41.101) shall be acquired in accordance with FAR part 41 and DOE Directives in subseries 4540 (Public Services).

941.201–71 Use of subcontracts.

Utility services for the furnishing of electricity, gas (natural or manufactured), steam, water and/or sewerage at facilities owned or leased by DOE shall not be acquired under a subcontract arrangement, except as provided for at 48 CFR 970.0803 or if the prime contract is with a utility company.

PART 942—CONTRACT ADMINISTRATION

34. Subsection 942.705–1 is revised to read as follows:

942.705–1 Contracting officer determination procedure. (DOE coverage—paragraphs (a) and (b))

(a)(3) The Department of Energy shall use the contracting officer determination procedure for all business units for which it shall be required to negotiate final indirect cost rates. A list of such business units is maintained by the Office of Policy, within the Headquarters procurement organization.

(b) (1) Pursuant to FAR 52.216–7, Allowable Cost and Payment, contractors shall be requested to submit their final indirect cost rate proposals reflecting actual cost experience during the covered period to the cognizant contracting officer responsible for negotiating their final rates.

The DOE negotiating official shall request all needed audit service in accordance with internal procedures.

35. Subsection 942.705–3 is revised to read as follows:

942.705–3 Educational institutions. (DOE coverage—paragraph (a))

(a)(2) The negotiated rates established for the institutions cited in OMB Circular No. A–88 are distributed to the Cognizant DOE Office (CDO) assigned lead office responsibility for all DOE indirect cost matters relating to a particular contractor by the Office of Policy, within the Headquarters procurement organization.

36. Subsection 942.705–4 is revised to read as follows:

942.705–4 State and local governments.

A list of cognizant agencies for State/local government organizations is periodically published in the Federal Register by the Office of Management and Budget (OMB). The responsible agencies are notified of such assignments. The current negotiated rates for State/local government activities is distributed to each CDO by the Office of Policy, within the Headquarters procurement organization.

37. Subsection 942.705–5 is revised to read as follows:

942.705–5 Nonprofit organizations other than educational and state and local governments.

OMB Circular A–122 establishes the rules for assigning cognizant agencies for the negotiation and approval of

indirect cost rates. The Federal agency with the largest dollar value of awards (contracts plus federal financial assistance dollars) will be designated as the cognizant agency. There is no published list of assigned agencies. The Office of Policy, within the Headquarters procurement organization, distributes to each CDO the rates established by the cognizant agency.

Subpart 942.70—[Removed]

38. Subpart 942.70 (sections 942.7000, 942.7001, 942.7002, 942.7003, 942.7003–1 through 942.7003–9, and 942.7004) is removed.

PART 945—GOVERNMENT PROPERTY

945.505–5 [Removed]

39. Subsection 945.505–5 is removed.

945.505–14 [Removed]

40. Subsection 945.505–14 is removed.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

952.214 [Removed]

41. Section 952.214 is removed.

952.215 [Removed]

42. Section 952.215 and subsections 952.215–22 and 952.215–23 are removed.

43. Subsection 952.233–2 is revised to read as follows:

952.233–2 Service of protest.

As prescribed in 48 CFR 933.106(a), add the following to the end of the clause at FAR 52.233–2:

(c) Another copy of a protest filed with the General Accounting Office shall be furnished to the following address within the time periods described in paragraph (b) of this clause: U.S. Department of Energy, Assistant General Counsel for Procurement and Financial Assistance (GC–61), 1000 Independence Avenue, S.W., Washington, DC 20585, Fax: (202) 586–4546.

44. Subsection 952.233–4 is added to read as follows:

952.233–4 Notice of protest file availability.

As prescribed in 933.106(b), insert the following provision:

Notice of Protest File Availability (Sep 1996)

(a) If a protest of this procurement is filed with the General Accounting Office (GAO) in accordance with 4 CFR Part 21, any actual or prospective offeror may request the Department of Energy to provide it with reasonable access to the protest file pursuant to FAR 33.104(a)(3)(ii), implementing section 1065 of Public Law 103–355. Such request must be in writing and addressed to the contracting officer for this procurement.

(b) Any offeror who submits information or documents to the Department for the purpose of competing in this procurement is hereby notified that information or documents it submits may be included in the protest file that will be available to actual or prospective offerors in accordance with the requirements of FAR 33.104(a)(3)(ii). The Department will be required to make such documents available unless they are exempt from disclosure pursuant to the Freedom of Information Act. Therefore, offerors should mark any documents as to which they would assert that an exemption applies. (See 10 CFR part 1004.)

45. Subsection 952.233–5 is added to read as follows:

952.233–5 Agency protest review.

As prescribed in 48 CFR 933.106(c), insert the following provision:

Agency Protest Review (Sep 1996)

Protests to the Agency will be decided either at the level of the Head of the Contracting Activity or at the Headquarters level. The Department of Energy's agency protest procedures, set forth in 933.103, elaborate on these options and on the availability of a suspension of a procurement that is protested to the agency. The Department encourages potential protesters to discuss their concerns with the contracting officer prior to filing a protest.

952.251–70 [Amended]

46. Subsection 952.251–70 is amended by revising the date of the clause to read ''(June 1995)''.

PART 971—REVIEW AND APPROVAL OF CONTRACT ACTIONS [REMOVED]

47. Part 971 is removed.

[FR Doc. 96–20328 Filed 8–8–96; 8:45 am]

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August 9, 1996

Part V

Office of Personnel Management

5 CFR Part 831, et al.

Election of Retirement Coverage by Current and Former Nonappropriated Fund Employees; Interim Final Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831, 837, 841, 842, 843, 844, and 847

RIN 3206–AH57

Elections of Retirement Coverage by Current and Former Nonappropriated Fund Employees

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement the civilian-retirement provisions of the National Defense Authorization Act for Fiscal Year 1996 and to consolidate existing regulations concerning employees affected by these provisions. That statute provides certain employees with an opportunity to elect to continue vested retirement coverage after a qualifying employment move between a civil service position and a nonappropriated fund instrumentality (NAFI), and vice versa, and under limited circumstances to receive credit for past NAFI service under the Civil Service Retirement System or the Federal Employees Retirement System. These regulations establish election procedures and the methodology for computing the employee costs as required by the statute.

DATES: Interim rules effective August 10, 1996; comments must be received on or before October 8, 1996.

ADDRESSES: Send comments to John E. Landers, Chief, Retirement Policy Division; Retirement and Insurance Service; Office of Personnel Management; P.O. Box 57; Washington, DC 20044; or deliver to OPM, Room 4351, 1900 E Street, NW., Washington DC.

FOR FURTHER INFORMATION CONTACT: Cynthia Reinhold, (202) 606–0299.

SUPPLEMENTARY INFORMATION:

1. Overview

Section 1043 of the National Defense Authorization Act for Fiscal Year 1996, Public Law 104–106 approved February 10, 1996, amends the existing provisions of law under which certain employees who are vested in the Civil Service Retirement System (CSRS), the Federal Employees Retirement System (FERS), or a retirement plan established for employees of nonappropriated fund instrumentalities (NAFI) described in section 2105(c) of title 5, United States Code, may elect to continue coverage in a vested retirement system upon a move between appropriated and nonappropriated fund employment. Additionally, section 1043 provides a 1-year period for certain employees who would have been eligible to elect to continue vested retirement benefits had the new requirements been in effect at the time of the change in employment, to retroactively elect to continue the retirement coverage they had before a qualifying employment move that occurred after December 31, 1965, and before the effective date of implementing regulations. During the retroactive election period, certain employees now covered by a NAFI retirement system who have prior service under CSRS or FERS may elect to return to CSRS or FERS coverage or to receive credit under the NAFI retirement system for FERS service. [Note: The following sentence and § 847.415 may be amended depending on the response to our inquiry to the IRS.] NAFI employees who elect to return retroactively to CSRS coverage will receive full CSRS coverage for the retroactive period and will be prospectively covered by the CSRS Offset provisions, which are applicable to CSRS employees who are mandatorily covered by Social Security, because the Social Security coverage in effect during their NAFI service will continue. Certain employees who have been continuously covered by FERS and have prior service with a NAFI may be eligible to elect to return to coverage under the NAFI retirement system, or to receive credit under FERS for the NAFI service.

2. Qualifying Moves

The Portability of Benefits for Nonappropriated Fund Employees Act of 1990 (sections 8347(q) and 8461(n) of title 5, United States Code), Public Law 100–508 provided that certain NAFI employees within the Department of Defense (DoD) and the U.S. Coast Guard may elect to continue vested coverage under a retirement system for NAFI employees upon a move to a DoD or Coast Guard appropriated fund position. Likewise, certain DoD or Coast Guard appropriated fund employees could elect to continue vested retirement coverage under CSRS or FERS upon a move to a DoD or Coast Guard NAFI position.

The right to make an election under the 1990 Portability Act is linked to conditions surrounding the employment move. Only those employees whose move between civil service and NAFI employment, or vice versa, met certain criteria set out in the law were granted the opportunity to elect to continue retirement coverage; the law did not make NAFI service creditable under CSRS or FERS.

Section 1043 of Public Law 104–106 expands the opportunities for employees to elect to continue retirement coverage upon a change in employment status. Except in limited circumstances explained below, the changes made by section 1043 have not made service with a NAFI creditable for CSRS or FERS purposes.

3. Qualifying Moves for Prospective Elections

An employment move triggers an opportunity to elect to continue retirement coverage under the provisions of the 1996 Act if it meets all of the following four criteria:

- The employee must not have had a prior opportunity to elect to continue the same retirement coverage under the 1990 Portability provisions, and
- The employee must have been vested in a retirement plan prior to the change in employment, and
- The employee must have moved from a NAFI within the DoD or the Coast Guard to any civil service position, or have moved from a civil service position to a NAFI within the DoD or the Coast Guard, and
- The break in employment qualifying for retirement coverage was not more than 1 year.

These provisions apply to any move occurring on or after August 10, 1996. A move is considered to have been made at the time the individual enters into the new position, not at the time of separation from the prior position. For example, an individual may have separated from an appropriated fund position subject to FERS on December 31, 1995. The same individual received an appointment with a NAFI subject to the NAFI retirement plan on September 29, 1996. Assuming all other criteria are met, the individual has completed a qualifying employment move and is eligible to elect to continue FERS coverage instead of accepting NAFI plan coverage.

4. Qualifying Moves for Retroactive Elections

For certain employees who moved from a civil service position subject to CSRS or FERS to a position in a NAFI covered by a NAFI retirement system, and vice versa, at any time after December 31, 1965, and before August 10, 1996, section 1043 of Public Law 104–106 provides a limited opportunity to elect to continue retirement coverage retroactive to the date of the qualifying employment move. To be eligible to retroactively elect retirement coverage,

the move to or from civil service and NAFI employment must meet the new definition of ''qualifying move'' in section 847.402 of these regulations. However, the law specifically excludes three classes of individuals from making a retroactive election.

Previous Retirement Coverage Election Opportunity

Employees who had an opportunity to elect to continue retirement coverage under the provisions of the 1990 Portability Act before February 10, 1996, or who elected to continue retirement coverage before August 10, 1996, are not eligible to elect retirement coverage based on an earlier qualifying move.

Employees with a qualifying move occurring after February 10, 1996, (the date Public Law 104–106 was enacted) and before August 10, 1996, may elect to continue retirement coverage based on a qualifying move under these regulations only if they have not already exercised an election right under the provisions of the 1990 Portability Act. The DoD issued a blanket waiver of the 30-day time limit for elections under the 1990 Portability Act on March 4, 1996. Employees who delayed their election right under the waiver may now elect to continue coverage under either the 1990 Portability rules or the retroactive provisions established by these regulations. DoD will allow until December 31, 1996, for employees in this category—all of whom are DoD employees who have made a qualifying employment move under the 1990 Portability Act on or after February 10, 1996—to make their retirement coverage elections under the new regulations.

Continuous Retirement Coverage Requirement

Current NAFI employees who moved under conditions which would allow an opportunity to elect to continue retirement coverage may make a retroactive election only if they have remained continuously subject to a retirement system established for NAFI employees since the qualifying move. A break in service of 3 days or less is not considered a break in retirement coverage for retroactive election eligibility purposes. Likewise, a current FERS employee who would be eligible to retroactively elect to continue NAFI retirement system coverage is eligible to make that election only if he or she has remained continuously subject to FERS since the qualifying move. (The statute contains an inconsistent reference to continuous CSRS coverage following the employment move (section 1043(c)(2)(B)(II)), which cannot be given effect in conjunction with the plain and unambiguous statement in section 1043(c)(2)(B)(III), as explained in the next paragraph.)

Moves to the CSRS

If the employment move on which an election would be based was from a NAFI to the CSRS, the employee is not eligible to make a retroactive election. Subclause (III) of section 1043(c)(2)(B) bars any individual from making a retroactive election—

> if such election would be based on a move to the Civil Service Retirement System from a retirement system established for employees [of a NAFI].

Therefore, an employee who is currently subject to CSRS has no new opportunity under these regulations to elect to continue retirement coverage based on a move from a NAFI retirement system to CSRS.

The bar on retroactive elections based on moves to the CSRS also applies to employees now covered by FERS who elected FERS during the 1987 open season or later. If an employee moved from a NAFI retirement system to CSRS (including the CSRS Interim provisions in effect from January 1, 1984 through December 31, 1986, and the CSRS Offset provisions in effect on and after January 1, 1987), and later elected FERS coverage, he or she is not eligible to make a retroactive election of NAFI retirement system coverage. Moves from a NAFI retirement system to CSRS Interim coverage, followed by automatic, as opposed to elective, FERS coverage, with all the CSRS Interim service being retroactively converted to FERS service, will be considered a move to FERS.

5. Alternative Election of Service Credit

Section 1043 of Public Law 104–106 also provides for an alternative election for employees currently covered by FERS or a NAFI retirement system. To be eligible to alternatively elect service credit, the FERS or NAFI employee must meet all the eligibility criteria for a retroactive election of retirement coverage. However, the requirement that the employee not have had a previous opportunity to elect to continue retirement coverage under the 1990 Portability Act provisions does not apply. That is, an employee currently covered by FERS or participating in a NAFI retirement system who previously elected his or her current retirement coverage based on a past qualifying move, or who had the opportunity to elect to continue retirement coverage, is eligible to make an alternative election provided he or she meets all other criteria.

Under the alternative election opportunity, an eligible employee covered by FERS may elect to receive credit in his or her FERS retirement benefit for any prior civilian service which would be creditable for NAFI retirement system purposes and to continue coverage under FERS for all future periods of Federal service. Similarly, a NAFI employee who is participating in a NAFI retirement system may elect to receive credit toward eligibility for a NAFI retirement benefit for any prior civilian service which would be creditable for FERS purposes, without regard to redeposit, and to continue coverage under the NAFI retirement system for all future periods of Federal service. By making this election in lieu of a retroactive election of retirement coverage, an employee with multiple periods of service subject to another retirement system could combine credit for the service under his or her current retirement system. In contrast, by making a retroactive election of retirement coverage, only service performed since the date of the qualifying move becomes creditable under the new retirement system.

For example, an individual was employed in a NAFI from 1981 through 1988 and subject to the NAFI's retirement system. Five months after her separation from the NAFI, the same individual was employed in a civil service position subject to FERS. She remained subject to FERS until early 1995, and then after a 5-month break in service she became employed by a NAFI covered by the NAFI retirement system and has remained so employed to date. This employee now may choose among the following elections:

A. Elect to be covered by FERS retroactive to the effective date of her 1995 NAFI appointment. The employee would not receive FERS credit for the NAFI service from 1981 through 1988 since her qualifying move is the 1995 move from FERS to a NAFI (the move in 1988 from a NAFI to the FERS is not qualifying since she did not remain continuously covered by FERS); or

B. Elect to remain in the NAFI retirement system with retirement eligibility credit for her FERS service. Should the employee move to a FERS position in the future, she would remain covered by her NAFI retirement system. Her FERS service would cease to be creditable for any purpose under FERS.

C. Make no election. The employee would remain subject to a NAFI retirement plan with service from 1988 to 1995 subject to FERS. Should the employee move to FERS in the future, she may have an opportunity to

continue the NAFI retirement coverage if her move is qualifying.

To be eligible for the alternative election opportunity, the FERS or NAFI employee must be otherwise eligible to elect to continue retirement coverage retroactive to the date of a qualifying move. Therefore, FERS employees who are unable to elect to retroactively continue retirement coverage because they moved from a NAFI to CSRS are also unable to elect to credit previous NAFI service under FERS. A FERS or NAFI retirement system annuitant is also ineligible to elect to credit previous service toward his or her annuity benefit.

6. Service Which Is Creditable Under the Alternative Election

Under the alternative election (to remain in the current retirement system and receive credit for service performed under a previous retirement system), section 1043 provides that any service which would be qualifying for FERS or NAFI retirement purposes may be credited toward the current retirement system. In many cases, employees opted to withdraw their contributions to a retirement system upon employment in a position that was subject to another retirement system with no opportunity to combine the service. While a refund would generally terminate an individual's service credit under FERS or a NAFI retirement system, section 1043 provides for the transfer of service credit regardless of refund status. In the case of a FERS employee who has previously received a refund of his or her NAFI retirement contributions and elects FERS service credit for the NAFI service, the DoD or Coast Guard will transfer the employer contributions which were deposited on the employee's behalf during the NAFI employment. In the case of a NAFI employee who elects NAFI credit for previous FERS service, OPM will certify the periods of FERS service as qualifying to the DoD or Coast Guard if the employee has withdrawn his or her contributions for the FERS service. For service subject to FERS, transferable service would include non-contributory service performed prior to January 1, 1989. Non-contributory service performed after December 31, 1988, is not creditable FERS service and credit for such service would therefore not transfer to a NAFI retirement system. Military service is creditable under the general CSRS and FERS rules and is not affected by these regulations.

7. Effective Dates

Prospective and retroactive elections of retirement coverage made on or after August 10, 1996, are effective on the date of appointment to a retirement-covered position which completed the qualifying move. Under no circumstances can an election take effect earlier than the first appointment subject to retirement coverage.

An alternative election to remain covered under the current FERS or NAFI retirement system, and to obtain service credit for time under the other system, is effective on the date of receipt of the election in the employing agency. The service performed subject to another retirement system becomes creditable under the current retirement system at the time the election is made.

8. Transfer of Contributions

Section 1043 of Public Law 104–106 requires that for certain elections, the current retirement system transfer to the elected retirement system all retirement deductions withheld from the employee's salary, interest on the employee's deductions, and retirement contributions contributed by the employing agency on the employee's behalf.

For elections of CSRS and FERS coverage, including elections of FERS service credit, the DoD or the Coast Guard will transfer to the Civil Service Retirement and Disability Fund the NAFI employee and employer retirement contributions credited to the employee.

Employee retirement contributions transfer with interest because this is specifically provided by section 1043(c)(2)(C)(i). No interest is includable in a transfer of employer contributions.

Any employee deductions plus interest which are transferred to the Civil Service Retirement and Disability Fund will become part of the employee's credit which is payable to the employee or survivors in the case of separation or death. The government share of the NAFI contributions, if any, is not payable to the employee or the employee's survivors under any circumstances. NAFI contributions transferred to the Fund will thereafter accrue interest under current procedures.

For retroactive elections of NAFI retirement plan coverage, the Office of Personnel Management will transfer to either the DoD or the Coast Guard the total amount withheld from the employee's salary for FERS retirement, any deposits made by the employee for civilian service, interest accrued on the employee's deductions and contributions, and amounts contributed by the employing agency without interest. For elections by NAFI employees of NAFI retirement credit for previous periods of FERS service, section 1043 does not allow OPM to transfer any contributions associated with the FERS service to the DoD or Coast Guard.

9. Employee Costs Associated With Retroactive Elections

Section 1043 of Public Law 104–106 provides that if the total amount of the contributions transferred to the elected retirement system do not cover the increase in the ''actuarial present value'' of the employee's future retirement benefit attributable to the service covered by the election, the employee must fund the difference. The actuarial present value of a retirement benefit is the amount of money that would have to be set aside to finance all of the retirement benefits an employee would receive during his or her expected lifetime. Therefore, section 1043 requires employees to fully finance the increase in their retirement benefit attributable to the retroactive election which is not otherwise funded by the transfer of contributions.

The regulations require that the calculation of the actuarial present value of NAFI service made creditable under CSRS or FERS be delayed until the time a retirement or survivor benefit based on the NAFI service actually becomes payable. By delaying the calculation, the exact annuity benefit based on the employees' age, service, salary and survivor election can be determined. This method is preferable to calculating a future retirement benefit based on a set of assumed conditions which may not reflect the employee's actual circumstances. In the event the additional NAFI service does not increase the retirement benefit payable to the employee or survivor, as in some disability retirements, the employee will not be required to fund the NAFI service.

The regulations do not require that the employee fund the increase in the actuarial present value by making a deposit. Rather, the section 1043 funding requirement will be satisfied by a permanent reduction in the monthly retirement benefit. The monthly reduction will be based on actuarial factors which effectively collect the increase in the actuarial present value over the remaining life expectancy of the retiree or survivor. If the NAFI service does not create an annuity entitlement or increase the payable benefit to the employee or survivor, then the monthly reduction would be zero. If the NAFI service does increase the CSRS or FERS benefit, the employee or survivor annuity will reflect credit for

all the NAFI service attributable to the retroactive election and a permanent actuarial reduction based on the amount required to fund the annuity increase.

10. Calculation of Annuity Benefit Which Includes NAFI Service

At the time that a CSRS or FERS benefit payable to an employee or survivor includes NAFI service made creditable by a retroactive election, OPM will determine the actuarial present value of the NAFI service, if any, and the monthly reduction in the annuity benefit. In most cases the calculation will be made effective with the commencing date of the retirement or survivor benefit. However, for FERS disability annuitants and survivor annuitants, the calculation will not be made until a benefit based on the employee's years of service and salary becomes payable, usually at age 62. OPM will compare two annuity benefit computations:

(A) The actuarial present value of a CSRS or FERS annuity that includes credit for all NAFI service.

(B) The actuarial present value of a CSRS or FERS annuity without credit for the NAFI service attributed to the election.

The actuarial present value is computed by multiplying the monthly rate of annuity by a factor calculated by OPM's actuary using generally accepted actuarial standards and on the basis of assumptions used by the Board of Actuaries of the Civil Service Retirement System.

At the time OPM computes the actuarial present value of crediting the NAFI service, we will increase the amount of contributions transferred to the Fund by interest after the date of the transfer. The difference between the actuarial present value of the benefits computed under (A) and (B), above, is the actuarial present value of crediting the NAFI service. The difference between the actuarial present value of the NAFI service and the amount of contributions which were transferred, plus interest, is the amount which will be funded by a monthly annuity reduction. The regulations refer to this amount as the ''deficiency.''

If the additional NAFI service does not increase the annuity otherwise payable to an individual, then there will be no reduction in the annuity for the retroactive election. This could occur in cases where the benefit payable is based on factors other than years of service and salary. A disability benefit or a CSRS survivor annuity, for example, may be based on a straight percentage of average salary and additional NAFI service would not increase the benefit.

The deficiency is divided by the actuarial present value factor corresponding to the employee or survivor's age at the time of the calculation to determine the amount of the monthly annuity reduction. After the annuity is reduced in this way, any further reductions for survivor, CSRS–Offset, or the alternative form of annuity still apply. Future cost-of-living adjustments are applied to the monthly annuity payable after these reductions. If a survivor benefit becomes payable after the death of a retired employee, the monthly survivor benefit is not additionally reduced due to a deficiency. For example:

Employee retires at age 62 under FERS with 18 years of FERS service and an additional 5 years of NAFI service made creditable under FERS. High-three average salary is $40,000. The contributions transferred from the NAFI retirement system, plus interest, equal $5,000.

Present value factor for age 62.	161.3
Single life FERS annuity with credit for NAFI service.	$843/month
Actuarial present value.	$135,976 (161.3 × 843)
Single life FERS annuity without credit for NAFI service.	$600/month
Actuarial present value.	$96,780 (161.3 × 600)
Actuarial present value of NAFI service.	$39,196 (135,976 − 96,780)
Unfunded amount (deficiency).	$34,196 (39,196 − 5,000 in contributions)
Monthly reduction ...	$212 (34,196 ÷ 161.3)
Single life FERS annuity.	$631/month (843 − 212)
FERS annuity with survivor benefit.	$567 (0.9 × 631)
Rate of survivor annuity.	$315 (50% of $631)

In the above example, the employee did not retire earlier than he would have otherwise been eligible to retire without the NAFI service. Since annuity eligibility was not affected, the increase in the single life annuity due to the NAFI service election is equal to the amount transferred to the Fund divided by the appropriate present value factor. (In the above example: $5,000 ÷ 161.3 = $31. Annuity without NAFI service increases $31 by the NAFI service election.)

When the NAFI service allows an employee to retire earlier than he or she could have without the NAFI service, an additional step is added to the computation of the funding deficiency. Because no annuity would be immediately payable if NAFI service was not combined with civil service, the present value of the immediate annuity that includes NAFI service must be compared to the present value of the deferred annuity that would have been the only benefit payable without crediting the NAFI service. To determine the deficiency at the time the actual annuity payments begin, we must therefore discount the present value of the deferred annuity benefit at the time it would commence. In other words, we begin by computing the present value of the deferred annuity on its commencing date (without credit for the NAFI service). This is computed by multiplying the deferred annuity rate by the actuarial factor for the employee's age at the time the deferred annuity would begin. By definition, the present value of the deferred annuity on its commencing date (without credit for the NAFI service) is the amount that would be required to fund such an annuity on that date. However, the present value of the future deferred annuity on the date when payments would begin, that is, the amount that would have to be set aside on the actual annuity commencing date to fund the future deferred annuity, is lower because the amount set aside would earn interest from the actual immediate commencing date to the deferred annuity commencing date. The method used to adjust the present value of the deferred annuity is set out in section 847.607.

11. Effect of FERS Refunds

These regulations allow individuals who received a refund of their FERS retirement contributions upon a move to a NAFI and elect to continue coverage under FERS an opportunity to receive credit for the FERS service represented by the refund. Employees under CSRS may repay previous refunds at any time they are subject to CSRS. A refund of FERS contributions generally cannot be repaid and the service represented by the refund is not creditable toward FERS annuity eligibility or FERS annuity computation. However, in the case of a NAFI employee who retroactively elects FERS coverage, but received a refund of his or her FERS contributions, the employee will receive credit for any periods of refunded FERS service in the computation of the FERS benefit. The amount of the FERS refund will accrue interest through the date of separation. The refund amount plus interest will be added to the amount of the funding deficiency, and therefore included in the actuarial reduction in the annuity.

12. Present Value Factors

The following three charts contain the present value factors that will apply to a CSRS or FERS annuity which includes NAFI service made creditable by an election under section 1043 of Public Law 104–106 under the current economic assumptions of interest at 7 percent and inflation at 4.5 percent together with the demographic assumptions adopted by the Board of Actuaries. *See* 58 FR 49066, September 21, 1993.

CSRS PRESENT VALUE FACTORS APPLICABLE TO AN ANNUITY PAYABLE FOLLOWING AN ELECTION UNDER SECTION 1043 OF PUBLIC LAW 104–106

Age at calculation	Present value of a monthly annuity	Age at calculation	Present value of a monthly annuity	Age at calculation	Present value of a monthly annuity
17	377.9	42	285.5	67	150.7
18	375.0	43	280.8	68	145.4
19	372.0	44	276.2	69	140.2
20	368.9	45	270.4	70	134.7
21	365.8	46	264.7	71	129.4
22	362.6	47	259.2	72	124.0
23	359.3	48	253.5	73	118.8
24	356.0	49	247.2	74	113.6
25	352.6	50	240.4	75	108.5
26	349.2	51	235.0	76	103.5
27	345.7	52	229.8	77	98.7
28	342.1	53	224.4	78	93.9
29	338.4	54	218.6	79	89.4
30	334.7	55	212.6	80	84.9
31	331.0	56	207.5	81	80.5
32	327.1	57	202.4	82	76.3
33	323.3	58	197.0	83	72.3
34	319.3	59	192.3	84	68.4
35	315.3	60	188.3	85	64.7
36	311.2	61	182.9	86	61.2
37	307.1	62	177.0	87	57.9
38	302.8	63	171.9	88	54.7
39	298.6	64	166.5	89	51.8
40	294.4	65	161.1	90	48.9
41	290.0	66	156.0		

FERS PRESENT VALUE FACTORS APPLICABLE TO AN ANNUITY PAYABLE FOLLOWING AN ELECTION UNDER SECTION 1043 OF PUBLIC LAW 104–106 WHEN ANNUITY IS INCREASED BY COLAS

Age at calculation	Present value of a monthly annuity	Age at calculation	Present value of a monthly annuity	Age at calculation	Present value of a monthly annuity
17	301.7	42	238.5	67	139.1
18	299.8	43	235.0	68	134.6
19	297.9	44	231.5	69	130.1
20	296.0	45	227.9	70	125.4
21	294.0	46	224.2	71	120.7
22	291.9	47	220.3	72	116.0
23	289.8	48	216.5	73	111.4
24	287.7	49	212.6	74	106.8
25	285.4	50	208.6	75	102.2
26	283.2	51	204.5	76	97.8
27	280.8	52	200.3	77	93.5
28	278.4	53	196.1	78	89.2
29	276.0	54	191.8	79	85.0
30	273.5	55	187.4	80	80.9
31	270.9	56	183.1	81	77.0
32	268.2	57	178.6	82	73.1
33	265.5	58	174.2	83	69.4
34	262.8	59	169.7	84	65.8
35	260.0	60	165.1	85	62.4
36	257.1	61	160.4	86	59.1
37	254.1	62	161.3	87	56.0
38	251.1	63	157.1	88	53.0
39	248.1	64	152.5	89	50.2
40	245.2	65	148.0	90	47.5
41	241.9	66	143.6		

FERS PRESENT VALUE FACTORS APPLICABLE TO AN ANNUITY PAYABLE FOLLOWING AN ELECTION UNDER SECTION 1043 OF PUBLIC LAW 104–106 WHEN ANNUITY IS NOT INCREASED BY COLAS

Age at calculation	Present value of a monthly annuity	Age at calculation	Present value of a monthly annuity
40	169.2	51	161.9
41	168.8	52	161.6
42	168.4	53	161.2
43	168.1	54	160.6
44	167.7	55	160.0
45	166.9	56	160.0
46	166.1	57	160.2
47	165.4	58	160.4
48	164.7	59	161.2
49	163.7	60	162.7
50	162.4	61	163.5

13. Effects of an Election

Any prospective or retroactive election made under these regulations is irrevocable. By electing to continue retirement coverage, the employee also consents to a permanent reduction in the future monthly annuity benefit if the benefit becomes payable at an earlier date or is increased by the NAFI service. Once an employee has elected coverage under a specific retirement system, he or she continues to be covered by that retirement system for all future periods of Federal service not otherwise excluded from retirement coverage, whether employed in a civil service position or with a NAFI. The elected retirement coverage will also apply to any service the individual may perform as a reemployed annuitant.

A retroactive election of retirement coverage will have the same effect as if it had been timely made at the time of the move. For employees who elect to continue CSRS or FERS coverage, the NAFI service performed since the move on which the election is based is fully creditable in the future CSRS or FERS annuity for title and computation, including average salary purposes. FERS employees who elect FERS service credit for previous periods of NAFI service will also receive full credit toward title and computation for any previous period of creditable NAFI service.

NAFI employees who elect to remain covered by the NAFI retirement system and receive credit for previous periods of FERS civilian service may also elect whether the FERS service will be creditable for title only, or for title and computation of the NAFI retirement benefit. If the employee elects to receive credit for the FERS service in the computation of the NAFI retirement benefit, he or she is required to pay the actuarial present value of the FERS service made creditable by the election. An election to credit FERS civilian service for any purpose toward a NAFI retirement system will terminate an employee's eligibility for a FERS annuity based on the same service. Although the employee's contributions for the FERS service may remain to his credit, an election to credit FERS service in a NAFI retirement benefit will prevent the FERS service from remaining creditable for any purpose under FERS.

14. Time Limit for Elections

Section 1043 of Public Law 104–106 amended the definition of a qualifying move to allow retirement coverage elections when employees move to or from a NAFI and any other Federal agency and also increased the allowable break in service between retirement-covered civil service and NAFI positions from not more than 3 days to 1 year. At the time of employment, agencies will give qualifying employees 30 days in which to make their election. This time limit may be extended if the agency fails to provide a timely opportunity for the employee to make the election.

The retroactive election opportunity expires 1 year after the effective date of the regulations. Since that day (August 10, 1997) is a Sunday, the deadline stated in the regulation is the following Monday, August 11, 1997. Because section 1043 requires that eligible employees receive timely notice of the opportunity to make the retroactive election, and that employees be counselled concerning the election opportunity, the employing agency will have authority to waive the time limit in the event that an employee did not receive such notice or counselling.

Waiver of Notice of Proposed Rulemaking

Under section 553(b)(3)(B) and (d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and to make these rules effective in less than 30 days. The regulations are effective August 10, 1996, 6 months after enactment of the statutory change. The statute requires OPM to establish by regulation the procedure for electing retirement coverage retroactive to a qualifying move and for computing the costs associated with the election and to prescribe the implementing regulations within 6 months of enactment. Elections under the new law cannot be made until the implementing regulations take effect. Therefore, delaying implementation of these regulations would unnecessarily delay the availability of the benefits of the new law.

List of Subjects

5 CFR Parts 831, 837, 841, 842, 843, and 844

Administrative practice and procedure, Air traffic controllers, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 847

Administrative practice and procedure, Disability benefits, Government employees, Pensions, Reporting and recordkeeping requirements, Retirement.

James B. King,

Director.

Accordingly, OPM is amending Title 5, Code of Federal Regulations, parts 831, 837, 841, 842, 843, 844, and adding 847 as follows:

PART 831—RETIREMENT

1. The authority citation for part 831 is revised to read as follows:

Authority: 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2); § 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); § 831.303 also issued under 5 U.S.C. 8334(d)(2); § 381.502 also issued under 5 U.S.C. 8337; § 831.502 also issued under section 1(3), E.O. 11228, 3 CFR 1964–1965 Comp.; § 831.663 also issued under 5 U.S.C.8339 (j) and (k)(2); §§ 831.663 and 831.664 also issued under section 11004(c)(2) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66; § 831.682 also issued under section 201(d) of the Federal Employees Benefits Improvement Act of 1986, Pub. L. 99–251, 100 Stat. 23; subpart S also issued under 5 U.S.C. 8345(k); subpart V also issued under 5 U.S.C. 8343a and section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, 101 Stat. 1330–275; § 831.2203 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; 104 Stat. 1388–328.

Subpart B—Coverage

2. In section 831.201(h), the reference ''§ 831.204'' is removed and ''part 847 of this chapter'' is added in its place.

§ 831.204 [Removed]

3. Section 831.204 is removed.

Subpart G—Computation of Annuities

4. Section 831.704 is added to read as follows:

§ 831.704 Annuities including credit for service with a nonappropriated fund instrumentality.

An annuity that includes credit for service with a nonappropriated fund instrumentality performed after December 31, 1965, based on an election under subpart D of part 847 of this chapter is computed under part 847 of this chapter.

Subpart T—Payment of Lump Sums

5. Section 831.2009 is added to read as follows:

§ 831.2009 Lump sum payments which include contributions made to a retirement system for employees of a nonappropriated fund instrumentality.

A lump sum payment will include employee contributions and interest as provided under subpart G of part 847 of this chapter.

PART 837—REEMPLOYMENT OF ANNUITANTS

6. The authority citation for part 837 continues to read as follows:

Authority: 5 U.S.C. 8337, 8344, 8347, 8455, 8456, 8461, and 8468 and section 302 of Pub. L. 99–335, June 6, 1986, as amended.

Subpart A—General Provisions

7. Section 837.104 is added to read as follows:

§ 837.104 Reemployment of former employees of nonappropriated fund instrumentalities.

A former employee of a nonappropriated fund instrumentality who has made an election of retirement coverage under part 847 of this chapter will continue to be covered under the elected retirement system for all periods of service as a reemployed annuitant.

8. Section 837.506 is added to read as follows:

§ 837.506 Computation of redetermined annuity for former employees of nonappropriated fund instrumentalities.

The redetermined annuity of a former employee of a nonappropriated fund instrumentality who elected CSRS or FERS coverage under subpart D of part 847 of this chapter is recomputed under part 847 of this chapter.

PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

9. The authority citation for part 841 continues to read as follows:

Authority: 5 U.S.C. 8461; § 841.108 also issued under 5 U.S.C. 552a; subpart D also issued under 5 U.S.C. 8423; § 841.504 also issued under 5 U.S.C. 8422; § 841.506 also issued under 5 U.S.C. 7701(b)(2); § 841.507 also issued under section 505 of Pub. L. 99–335; § 841.508 also issued under section 505 of Pub. L. 99–335; Subpart J also issued under 5 U.S.C. 8469.

Subpart A—General Provisions

10. In section 841.102, paragraphs (b) through (f) are redesignated as paragraphs (b)(1) through (b)(5), and paragraph (c) is added to read as follows:

§ 841.102 Regulatory structure for the Federal Employees Retirement System.

* * * * *

(c)(1) Part 831 of this chapter contains information about the Civil Service Retirement System.

(2) Part 835 of this chapter contains information about debt collection from FERS benefits.

(3) Part 837 of this chapter contains information about reemployment of FERS annuitants.

(4) Part 838 of this chapter contains information about court orders affecting FERS benefits.

(5) Part 847 of this chapter contains information about elections under the Civil Service Retirement System or FERS relating to periods of service with a nonappropriated fund instrumentality under the jurisdiction of the armed forces.

(6) Parts 294 and 297 of this chapter and § § 831.106 and 841.108 of this chapter contain information about disclosure of information from OPM records.

(7) Part 581 of this chapter contains information about garnishment of Government payments including salary and CSRS and FERS retirement benefits.

(8) Parts 870, 871, 872, and 873 of this chapter contain information about the Federal Employees Group Life Insurance Program.

(9) Part 890 of this chapter contains information about coverage under the Federal Employees Health Benefits Program.

(10) Chapter II (parts 1200 through 1299) of this title contains information about appeals to the Merit Systems Protection Board.

(11) Chapter VI (parts 1600 through 1699) of this title contains information about the Federal Employees Thrift Savings Plan.

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

11. The authority citation for part 842 is revised to read as follows:

Authority: 5 U.S.C. 8461(g); § § 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); § 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); § § 842.604 and 842.611 also issued under 5 U.S.C. 8417; § 842.607 also issued under 5 U.S.C 8416 and 8417; § 842.614 also issued under 5 U.S.C. 8419; § 842.615 also issued under 5 U.S.C. 8418; § 842.703 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; § 842.707 also issued under section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203; § 842.708 also issued under section 4005 of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239 and section 7001 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; subpart H also issued under 5 U.S.C 1104.

Subpart A—Coverage

12. In section 842.104(f), the reference ''§ 842.106'' is removed and ''part 847 of this chapter'' is added in its place.

§ 842.106 [Removed]

13. Section 842.106 is removed.

Subpart C—Credit for Service

14. In section 842.304, paragraph (d) is added to read as follows:

§ 842.304 Civilian Service.

* * * * *

(d) *Credit for service performed as an employee of a nonappropriated fund*

instrumentality. (1) Credit for service with a nonappropriated fund instrumentality is allowed in accordance with an election under part 847 of this chapter.

(2) Service under FERS for which the employee withdrew all deductions is creditable in accordance with an election made under part 847 of this chapter.

(3) An annuity that includes credit for service with a nonappropriated fund instrumentality or refunded service under paragraph (d)(2) of this section is computed under part 847 of this chapter.

15. Section 842.310 is added to read as follows.

§ 842.310 Service not creditable because of an election under part 847 of this chapter.

Any FERS service which becomes creditable under a retirement system established for nonappropriated fund employees due to an election made under part 847 of this chapter is not creditable for any purpose under FERS.

PART 843—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DEATH BENEFITS AND EMPLOYEE REFUNDS

16. The authority citation for part 843 continues to read as follows:

Authority: 5 U.S.C. 8461; §§ 843.205, 843.208, and 843.209 also issued under 5 U.S.C. 8424; § 843.309 also issued under 5 U.S.C. 8442; § 843.406 also issued under 5 U.S.C. 8441.

Subpart B—One-Time Payments

17. Section 843.212 is added to read as follows:

§ 843.212 Lump-sum payments which include contributions made to a retirement system for employees of a nonappropriated fund instrumentality.

A lump-sum payment will include employee contributions and interest as provided under subpart G of part 847 of this chapter.

Subpart C—Current and Former Spouse Benefits

18. Section 843.314 is added to read as follows:

§ 843.314 Amount of survivor annuity where service includes credit for service with a nonappropriated fund instrumentality.

The survivor annuity in the case of an employee or survivor whose service includes service with a nonappropriated fund instrumentality made creditable by an election under subpart D of part 847 of this chapter is computed under part 847 of this chapter.

PART 844—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DISABILITY RETIREMENT

19. The authority citation for part 844 continues to read as follows:

Authority: 5 U.S.C. 8461.

Subpart A—General Provisions

20. Section 844.106 is added to read as follows:

§ 844.106 Disability annuities which include credit for service with a nonappropriated fund instrumentality.

A disability annuity that includes credit for service with a nonappropriated fund instrumentality performed after December 31, 1965, based on an election under subpart D of part 847 of this chapter is computed under part 847 of this chapter.

21. Part 847 is added to read as follows:

PART 847—ELECTIONS OF RETIREMENT COVERAGE BY CURRENT AND FORMER EMPLOYEES OF NONAPPROPRIATED FUND INSTRUMENTALITIES

Subpart A—General Provisions

Sec.

847.101 Purpose and scope.
847.102 Regulatory structure.
847.103 Definitions.
847.104 OPM responsibilities.
847.105 Agency responsibilities.
847.106 Agency decision concerning eligibility.
847.107 Appeals to MSPB.
847.108 Computation of time.

Subpart B—Elections to continue retirement coverage after a qualifying move

847.201 Purpose and scope.
847.202 Definition of qualifying move.
847.203 Elections of CSRS coverage.
847.204 Elections of FERS coverage.
847.205 Elections of NAFI retirement system coverage.
847.206 Time limit for making an election.
847.207 Effective dates of elections.
847.208 Changes of election.
847.209 Collection of CSRS and FERS retirement contributions from NAFI employers.
847.210 Collection of NAFI retirement contributions from Federal agencies.
847.211 Death of employee during election opportunity period.

Subpart C—Procedures for Elections Under the Retroactive Provisions

847.301 Purpose and scope.
847.302 Notice of election rights.
847.303 Election forms.
847.304 Time limit.
847.305 Basic records.

Subpart D—Elections of Coverage Under the Retroactive Provisions

General Provisions

847.401 Purpose and scope.
847.402 Definition of qualifying move.

Elections of CSRS or FERS Coverage Based on a Move from CSRS or FERS to NAFI

847.411 Election requirements.
847.412 Elections of FERS instead of CSRS.
847.413 Effective date of an election.
847.414 Crediting future NAFI service.
847.415 OASDI coverage.
847.416 Credit for refunded FERS service.

Elections to Remain in FERS Coverage with Credit for NAFI Service Based on a Move from NAFI to FERS

847.421 Election requirements.
847.422 Crediting future NAFI service.
847.423 Credit for refunded FERS service.

Elections to Remain in NAFI Coverage with Credit for FERS Service Based on a Move from FERS to NAFI

847.431 Election requirements.
847.432 Effect of a refund of FERS deductions.
847.433 Exclusion from FERS for future service.

Elections of NAFI Coverage Based on a Move from NAFI to FERS

847.441 Election requirements.
847.442 Effective date.
847.443 Exclusion from FERS for future service.

Subpart E—Transfers of Contributions Under the Retroactive Provisions

847.501 Purpose and scope.
847.502 Transfers to the CSR Fund.
847.503 Transfers from the CSR Fund.
847.504 Amount of transfer.
847.505 When transfer occurs.
847.506 Procedures for transfer.
847.507 Earnings after transfer.

Subpart F—Additional Employee Costs Under the Retroactive Provisions

847.601 Purpose and scope.
847.602 Present value factors.
847.603 Date of present value and deficiency determinations.
847.604 Methodology for determining deficiency.
847.605 Methodology for determining the present value of annuity with service credit.
847.606 Methodology for determining the present value of annuity without service credit—credit not needed for title.
847.607 Methodology for determining the present value of annuity without service credit—credit needed for title.
847.608 Reduction in annuity due to deficiency.

Appendix A to Subpart F of Part 847—List of Events for Which Inclusion of NAFI Service May Affect the Rate of Annuity Payable

Subpart G—Computation of Benefits Under the Retroactive Provisions

847.701 Purpose and scope.
847.702 Lump-sum payments and refunds.
847.703 Reductions in annuity.

847.704 Maximum survivor annuity election.
847.705 Cost-of-living adjustments.

Authority: 5 U.S.C. 8347(a) and 8461(g) and section 1043(b) of Pub. L. 104–106, Div. A, Title X, Feb. 10, 1996, 110 Stat. 434. Subpart B also issued under 5 U.S.C. 8347(q) and 8461(n).

Subpart A—General Provisions

§ 847.101 Purpose and scope.

(a) This part contains the regulations issued by the Office of Personnel Management (OPM) to implement the statutory election rights under the Portability of Benefits for Nonappropriated Fund Employees Act of 1990 and section 1043 of the National Defense Authorization Act for Fiscal Year 1996 of certain current and former NAFI employees.

(b) This part establishes—

(1) The eligibility requirements for making an election;

(2) The procedures for making elections;

(3) The methodologies to determine the employee costs associated with the elections; and

(4) The methodologies to calculate benefits that include credit for NAFI service based on such elections.

(c)(1) The regulations in this part apply to individuals covered by CSRS or FERS (and their survivors) and the employers of such individuals. The Department of Defense and the U.S. Coast Guard will issue any necessary regulations to implement these election rights to the extent they affect NAFI retirement systems under their jurisdiction.

(2) The regulations in this part apply only to CSRS benefits and FERS basic benefits. They do not apply to benefits under the Thrift Savings Plan described in subchapter III of chapter 84, of title 5, United States Code.

§ 847.102 Regulatory structure.

(a)(1) Subpart A of this part contains information applicable to all elections under this part.

(2) Subpart B of this part contains information about prospective retirement coverage elections under sections 8347(q) and 8461(n) of title 5, United States Code.

(3) Subpart C of this part contains information about the procedures applicable to retroactive retirement coverage and alternative credit elections under section 1043(c)(2) of the National Defense Authorization Act for Fiscal Year 1996.

(4) Subpart D of this part contains information about the types of retroactive elections available, the eligibility requirements for each type of election, the effects of an election on CSRS and FERS coverage during future employment, and the effective dates of CSRS and FERS coverage applicable to elections under section 1043(c)(2) of the National Defense Authorization Act for Fiscal Year 1996.

(5) Subpart E of this part contains information about transferring retirement contributions in connection with elections under section 1043(c)(2) of the National Defense Authorization Act for Fiscal Year 1996.

(6) Subpart F of this part contains information about determining the employee costs associated with elections under section 1043(c)(2) of the National Defense Authorization Act for Fiscal Year 1996.

(7) Subpart G of this part contains information about benefits indirectly affected by elections under section 1043(c)(2) of the National Defense Authorization Act for Fiscal Year 1996.

(b) Section 831.305 of this chapter contains information about CSRS credit for NAFI service performed after June 18, 1952, but before January 1, 1966.

(c)(1) Part 831 of this chapter contains information about the Civil Service Retirement System.

(2) Parts 841 through 844 of this chapter contain information about FERS basic benefits.

(3) Part 837 of this chapter contains information about reemployment of annuitants.

(4) Parts 870, 871, 872, and 873 of this chapter contain information about the Federal Employees Group Life Insurance Program.

(5) Part 890 of this chapter contains information about coverage under the Federal Employees Health Benefits Program.

(6) Chapter II (parts 1200 through 1299) of this title contains information about appeals to the Merit Systems Protection Board.

(7) Chapter VI (parts 1600 through 1699) of this title contains information about the Federal Employees Thrift Savings Plan.

§ 847.103 Definitions.

(a) Except as provided in paragraph (b) of this section, the definitions in sections 8331 and 8401 of title 5, United States Code, apply throughout this part.

(b) In this part—

Actuarial present value means the amount of money (earning interest at an assumed rate) required at the time of retirement to finance an annuity that is payable in monthly installments for the annuitant's lifetime based on mortality rates for annuitants under CSRS and FERS; and increases each year at an assumed rate of inflation. Interest, mortality, and inflation rates used in computing the present value are those used by the Board of Actuaries of the Civil Service Retirement System for valuation of CSRS and FERS, based on dynamic assumptions.

Age means the number of years an individual has been alive as of his or her last birthday.

Agency means an executive agency as defined in section 105 of title 5, United States Code; a legislative branch agency; a judicial agency; and the U.S. Postal Service and Postal Rate Commission.

Annuitant means a *retiree* or a *survivor.*

CSRS or FERS means the Civil Service Retirement System or the Federal Employees Retirement System as described in chapters 83 and 84 of title 5, United States Code.

Deferred annuity date means the earliest date on which a retiree would be eligible, without credit for the NAFI service, to receive a deferred annuity based on his or her actual date of separation.

Deficiency means the remainder of the actuarial present value or crediting NAFI service, after subtracting the amount credited to the employee from a transfer to the Fund under subpart E of this part, and earnings under § 847.507 on the transferred amount.

Employee contributions with interest means the dollar amount deducted from an employee's pay for retirement system participation, plus any amounts the employee deposited for civilian service credit under the retirement system, and interest, if any, payable under § 841.605 of this chapter (for FERS) or under applicable NAFI retirement system rules.

Fund means the Civil Service Retirement and Disability Fund established in section 8348 of title 5, United States Code.

Government contributions means the dollar amount which was contributed on behalf of an employee by his or her employer for retirement system participation.

Monthly annuity rate means the amount of the monthly single life annuity under CSRS or FERS (computed without regard to any survivor benefit reductions computed under sections 8339 (j) or (k), and 8418 through 8420 of title 5, United States Code), before any offset relating to benefits under the Social Security Act under section 8349 of title 5, United States Code, but after including any reduction for age (5 U.S.C. 8339(h) or 8415(f)) or for crediting nondeduction civilian service performed before October 1, 1982 (5 U.S.C.A. 8339(i), note).

NAFI means a nonappropriated fund instrumentality described in section 2105(c) of title 5, United States Code.

Retiree means a former employee who, on the basis of his or her service meets all the requirements for title to a CSRS or FERS annuity and files claim therefor.

Survivor means a widow, widower, or former spouse entitled to a CSRS or FERS annuity based on the service of a deceased employee, separated employee, or retiree.

§ 847.104 OPM responsibilities.

(a) OPM will issue guidance to employing agencies to use when notifying their employees about the opportunity to make an election under this part and for counselling employees in connection with the election.

(b) OPM will issue instructions to agencies concerning the transfer of funds and recordkeeping in connection with these elections.

§ 847.105 Agency responsibilities.

(a) Each agency is responsible for notifying its employees of the opportunity to make an election under this part and for determining if an employee who wishes to make an election is qualified to do so, and for counselling employees in accordance with guidance issued by OPM.

(b) If an agency determines that an employee is not eligible to make an election under this part, the agency shall issue a final decision to the employee that meets the requirements of § 847.106, including notice of the right to appeal under § 847.107.

§ 847.106 Agency decision concerning eligibility.

(a) If the agency determines that the employee is not eligible to make an election under this part, it must issue a final decision to the employee.

(b) A final decision shall be in writing, shall fully set forth the findings and conclusions of the agency, and shall contain notice of the right to request an appeal provided in § 847.107.

§ 847.107 Appeals to MSPB.

(a) An individual whose rights or interests under the CSRS or FERS are affected by a final decision of the employing agency may request the Merit Systems Protection Board to review such decision in accordance with procedures prescribed by the Board.

(b) Paragraph (a) of this section is the exclusive remedy for review of agency decisions concerning eligibility to make an election under this part. An agency decision must not allow review under any employee grievance procedures, including those established by chapter 71 of title 5, United States Code, and part 771 of title 5, Code of Federal Regulations.

§ 847.108 Computation of time.

In computing a period of time for filing documents, the day of the action or event after which the designated period of time begins to run is not included. The last day of the period is included unless it is a Saturday, a Sunday, or a legal holiday; in this event, the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.

Subpart B—Elections to continue retirement coverage after a qualifying move

§ 847.201 Purpose and scope.

This subpart contains OPM's regulations on the procedures, eligibility requirements, time limits and effects of elections under sections 8347(q) and 8461(n) of title 5, United States Code.

§ 847.202 Definition of qualifying move.

(a) A qualifying move occurring on or after August 10, 1996, which would allow an opportunity to elect to continue retirement coverage under CSRS and FERS must meet all the following criteria:

(1) The employee must not have had a prior opportunity to elect to continue CSRS or FERS retirement coverage;

(2) The employee must have been vested in CSRS or FERS prior to the move to a NAFI;

(3) The employee must have moved from a position covered by CSRS or FERS to a retirement-covered position in a NAFI; and

(4) The employee must begin employment in a retirement-covered position in a NAFI no later than 1 year after separation from CSRS- or FERS-covered employment.

(b) A qualifying move occurring on or after August 10, 1996, which would allow an opportunity to elect to continue retirement coverage under a NAFI retirement system must meet all the following criteria:

(1) The employee must not have had a prior opportunity to elect to continue NAFI retirement system coverage;

(2) The employee must have been a vested participant in the NAFI retirement system (as the term ''vested participant'' is defined by that retirement system) prior to the move to a CSRS- or FERS-covered position;

(3) The employee must have moved from a NAFI to a civil service position subject to CSRS or FERS coverage; and

(4) The employee must be appointed to a CSRS- or FERS-covered position no later than 1 year after separation from retirement-covered NAFI employment.

(c) A qualifying move occurring between January 1, 1987, and August 9, 1996, which would allow an opportunity to elect to continue retirement coverage under CSRS or FERS must meet all the following criteria:

(1) The employee must not have had a prior opportunity to elect to continue CSRS or FERS retirement coverage;

(2) The employee must have been vested in CSRS or FERS prior to the move to a NAFI;

(3) The employee must have moved from a CSRS- or FERS-covered position within the Department of Defense or the U.S. Coast Guard to a retirement covered position with a NAFI; and

(4) The employee must begin employment in a retirement-covered position in a NAFI no later than 4 days after separation from CSRS- or FERS-covered employment.

(d) A qualifying move occurring between January 1, 1987, and August 9, 1996, which would allow an opportunity to elect to continue retirement coverage under a NAFI retirement system must meet all the following criteria:

(1) The employee must not have had a prior opportunity to elect to continue NAFI retirement system coverage;

(2) The employee must have been a vested participant in the NAFI retirement system (as the term ''vested participant'' is defined by that retirement system) prior to the move to the civil service;

(3) The employee must have moved from a NAFI to a CSRS- or FERS-covered position within the Department of Defense or the U.S. Coast Guard; and

(4) The employee must be appointed to a CSRS- or FERS-covered position no later than 4 days after separation from retirement-covered NAFI employment.

(e) A qualifying move under paragraphs (a) and (b) of this section is considered to occur on the date the individual enters into the new position, not at the time of separation from the prior position.

(f) A retroactive election opportunity under subpart D of this part (pertaining to elections of CSRS, FERS, or NAFI retirement coverage) is not considered a prior opportunity to elect retirement coverage under this section.

§ 847.203 Elections of CSRS coverage.

(a) An employee who completes a qualifying move (under § 847.202(a) or (c)) from a CSRS-covered position to a NAFI may elect to continue CSRS coverage.

(b) An employee who elects CSRS coverage under this section will be

covered by CSRS (or FERS, if the employee subsequently transfers to FERS under part 846 of this chapter) during all periods of future service not excluded from coverage by CSRS, including any periods of service with a NAFI.

(c) An employee who makes an election under paragraph (a) of this section and who has had a break in service exceeding 3 days is eligible to elect FERS under part 846 of this chapter.

§ 847.204 Elections of FERS coverage.

(a) An employee who completes a qualifying move under § 847.202(a) and (c) from a FERS-covered position to a NAFI may elect to continue FERS coverage.

(b) An employee who elects FERS coverage under this section will be covered by FERS during all periods of future service not excluded from coverage by FERS, including any periods of service with a NAFI.

§ 847.205 Elections of NAFI retirement system coverage.

(a) An employee who completes a qualifying move under § 847.202(b) and (d) from a NAFI position to a CSRS- or FERS-covered position may elect to continue coverage under the NAFI retirement system.

(b) An employee who elects NAFI retirement system coverage under this section is excluded from coverage under CSRS or FERS during that and all subsequent periods of employment, including any periods of service as a reemployed annuitant.

§ 847.206 Time limit for making an election.

(a) Except as provided in paragraph (b) of this section, the time limit for making the election is 30 days after the qualifying move.

(b) Agencies may waive the time limit if it finds that the employee was not timely given the opportunity to make the election, or, despite due diligence, was prevented by circumstances beyond his or her control from making an election within the time limit.

(c) An agency decision to waive the time limit must comply with the provisions of § 847.106, including notification of the right of appeal under § 847.107.

§ 847.207 Effective dates of elections.

Elections under this subpart are effective on the date of the qualifying move.

§ 847.208 Changes of election.

An election under this subpart is irrevocable when received by the employing agency.

§ 847.209 Collection of CSRS and FERS retirement contributions from NAFI employers.

CSRS and FERS salary deductions and contributions for NAFI employees who have elected CSRS or FERS coverage under this subpart must be made and submitted to OPM in the manner currently prescribed for the transmission of withholdings and contributions.

§ 847.210 Collection of NAFI retirement contributions from Federal agencies.

The Department of Defense and the U.S. Coast Guard will establish procedures for agencies to withhold and submit retirement contributions to the retirement systems for employees who elect to be covered by a retirement system for NAFI employees under this subpart.

§ 847.211 Death of employee during election opportunity period.

(a) When an employee eligible to make an election under this subpart dies before expiration of the time limit under § 847.206, the employee is deemed to have made the election and to be covered, at time of death, by the retirement system that covered the employee before the qualifying move.

(b) The deemed election under paragraph (a) of this section does not apply if the eligible survivor elects to have it not apply.

(c) An election by the survivor to decline the deemed election must be in writing and filed no later than 30 days after the employing agency notifies the survivor of the right to decline the deemed election.

Subpart C—Procedures for Elections Under the Retroactive Provisions

§ 847.301 Purpose and scope.

This subpart establishes the procedures applicable to elections section 1043(c)(2) of the National Defense Authorization Act for Fiscal Year 1996.

§ 847.302 Notice of election rights.

The employing agency must provide notice to all eligible employees of the opportunity to elect to continue retirement coverage under subpart D of this part. Failure to provide notice to the employee is justification for waiving the time limit under § 847.304.

§ 847.303 Election forms.

(a) Eligible employees may make an election under subpart D of this part on a form prescribed by OPM and filed with the employing agency.

(b) For elections of retirement coverage under subpart D of this part, the election form will require that the employee obtain a certification from his or her previous retirement system showing dates of service, amounts transferable from the previous retirement system to the elected retirement system under subpart E of this part, and that the employee became vested in the retirement system. If an employee was covered by more than one retirement system, he or she must obtain certification from each retirement system.

§ 847.304 Time limit.

(a) Except as provided in paragraph (b) of this section, the time limit for making an election under subpart D of this part is August 11, 1997.

(b) Because Public Law 104–106 requires that eligible employees receive timely notice of the opportunity to make the election under subpart D of this part, and that employees must be counselled concerning the election opportunity, the employing agency must waive the time limit in paragraph (a) of this section in the event that an employee did not receive such notice or counselling.

§ 847.305 Basic records.

(a) Agencies must establish and maintain retirement accounts for employees subject to CSRS or FERS in the manner prescribed by OPM.

(b) The individual retirement record (Standard Form 2806 for CSRS, or Standard Form 3100 for FERS) is the basic record for action on all claims for annuity or refund, and those pertaining to deceased employees and annuitants.

Subpart D—Elections of Coverage Under the Retroactive Provisions

General Provisions

§ 847.401 Purpose and scope.

This subpart contains OPM's regulations concerning the types of elections available, the eligibility requirements for each type of election, the effects of an election on CSRS and FERS coverage during future employment, and the effective dates of CSRS and FERS coverage applicable to retroactive retirement coverage and credit elections under section 1043(c)(2) of the National Defense Authorization Act for Fiscal Year 1996.

§ 847.402 Definition of qualifying move.

(a) A qualifying move occurring after December 31, 1965, and before August 10, 1996, which would allow an employee the opportunity to elect to

continue retirement coverage under CSRS or FERS retroactive to the date of the move must meet all the following criteria:

(1)(i) For moves occurring before February 10, 1996, the employee must not have had a prior opportunity to elect to continue CSRS, FERS, or NAFI retirement coverage under § 847.202 (c) or (d);

(ii) For moves occurring on or after February 10, 1996, the employee must not have made an election under § 847.202 (c) or (d);

(2) The employee must have been vested in CSRS or FERS prior to the move to a NAFI;

(3) The employee must have moved from a position covered by CSRS or FERS to a retirement-covered position in a NAFI;

(4) The employee must have begun employment in a retirement-covered position in a NAFI no later than 1 year after separation from CSRS- or FERS-covered employment; and

(5) The employee must, since moving to the NAFI position, have continuously participated in a retirement system established for NAFI employees, disregarding any break in service of not more than 3 days.

(b) A qualifying move occurring after December 31, 1965, and before August 10, 1996, which would allow an employee the opportunity to elect to continue retirement coverage under a NAFI retirement system retroactive to the date of the qualifying move must meet all the following criteria:

(1)(i) For moves occurring before February 10, 1996, the employee must not have had a prior opportunity to elect to continue CSRS, FERS, or NAFI retirement coverage under § 847.202(c) or (d);

(ii) For moves occurring on or after February 10, 1996, the employee must not have made an election under § 847.202(c) or (d);

(2) The employee must have been a vested participant in the NAFI retirement system (as the term ''vested participant'' is defined by that retirement system) prior to the move to a FERS-covered position;

(3) The employee must have moved from a NAFI to a civil service position subject to FERS coverage or CSRS/SS coverage, as defined in § 846.102 of this chapter, followed by the employee's automatic conversion to FERS coverage;

(4) The employee must have been appointed to a FERS-covered position no later than 1 year after separation from retirement-covered NAFI employment; and

(5) The employee must, since moving to the FERS position, have been continuously covered by FERS, disregarding any break in service of not more than 3 days.

(c) A move from a NAFI to CSRS, including CSRS/SS as defined under § 846.102 of this chapter followed by an election of FERS coverage under § 846.201 of this chapter, is not a qualifying move for an election of retirement coverage under § 847.431 (pertaining to elections of NAFI service credit for FERS service) and § 847.441 (pertaining to elections of NAFI retirement coverage).

(d) A qualifying move under paragraphs (a) and (b) of this section is considered to occur on the date the individual entered into the new position, not at the time of separation from the prior position.

ELECTIONS OF CSRS OR FERS COVERAGE BASED ON A MOVE FROM CSRS OR FERS TO NAFI

§ 847.411 Election requirements.

(a) An employee who completed a qualifying move under § 847.402(a) may elect to be covered by CSRS, if the qualifying move was from a CSRS-covered position, or FERS, if the qualifying move was from a FERS-covered position, for all Federal service following the qualifying move. Employees who elect to be covered by CSRS will be prospectively covered by the CSRS Offset provisions set out in subpart J of part 831 of this chapter.

(b) A survivor eligible for benefits under the NAFI retirement system which covered an employee at the time of death may make an election under this section if the employee was otherwise eligible to make an election, but died before expiration of the time limit under § 847.304.

§ 847.412 Elections of FERS instead of CSRS.

(a) An employee who elects CSRS coverage under § 847.411(a) may, during the 6-month period beginning on the date the election under § 847.411(a) is filed with the employing agency, elect to become subject to FERS.

(b) An election of FERS under this section is subject to the provisions of part 846 of this subchapter and takes effect on the first day of the first pay period after the employing agency receives the election.

§ 847.413 Effective date of an election.

(a) An election under § 847.411 is effective on the first day of NAFI employment subject to retirement coverage following CSRS- or FERS-covered employment.

(b) Deductions and contributions for CSRS or FERS coverage under § 831.111 or § 841.501 of this chapter begin effective on the first day of the next pay period after the agency receives the employee's election under § 847.411(a).

(c) An election under § 847.411 is irrevocable when received by the employing agency.

(d) NAFI service performed on and after the effective date of an election under § 847.411 becomes fully creditable for retirement eligibility and computation of the annuity benefit, including computation of average pay.

847.414 Crediting future NAFI service.

An employee who elects CSRS or FERS coverage under § 847.411 will be covered by CSRS or FERS during all periods of future service not excluded from coverage by CSRS or FERS, including any periods of service with a NAFI and service as a reemployed annuitant.

§ 847.415 OASDI coverage.

An employee who elects CSRS coverage under § 847.411 is prospectively subject to both the Old Age, Survivors, and Disability Insurance (OASDI) tax and CSRS as described in subpart J of part 831 of this chapter, known as CSRS Offset, effective from the first day of the next pay period after the employing agency receives the employee's election under § 847.411(a).

§ 847.416 Credit for refunded FERS service.

(a) An employee or survivor who elects FERS coverage under § 847.411 will receive credit in the FERS annuity for the service represented by any refund of the unexpended balance under § 843.202 of this chapter.

(b) The amount of the refund, increased by interest as computed under § 842.305(e) of this chapter, will be added to the deficiency computed under § 847.604 and collected in accordance with the provisions of § 847.609 (pertaining to a monthly reduction in the annuity benefit).

ELECTIONS TO REMAIN IN FERS COVERAGE WITH CREDIT FOR NAFI SERVICE BASED ON A MOVE FROM NAFI TO FERS

§ 847.421 Election requirements.

(a)(1)(i) A FERS employee who completed a qualifying move under § 847.402(b) may, instead of the election provided by § 847.441 (pertaining to elections of NAFI retirement coverage), elect to remain subject to FERS for all subsequent periods of service.

(ii) Prior service under a NAFI retirement system becomes creditable under FERS rules without regard to whether a refund of contributions for

such period has been paid by the NAFI retirement system.

(2) A FERS employee who has had a previous opportunity to elect retirement coverage under § 847.202(c) and (d) is not excluded from making this election.

(b) A survivor may make an election under paragraph (a) of this section if the employee was otherwise eligible to elect FERS coverage and FERS service credit, but died before expiration of the time limit under § 847.304.

(c) NAFI service made creditable under FERS by an election under this section become creditable for FERS retirement eligibility and FERS annuity computation, including average pay, upon receipt of the election by the employing agency.

(d) A election under this section is irrevocable when received by the employing agency.

§ 847.422 Crediting future NAFI service.

An employee who elects to remain in FERS coverage with credit for NAFI service under § 847.421(a) will be covered by FERS during all periods of future service not excluded from coverage by FERS, including any periods of service with a NAFI and service as a reemployed annuitant.

§ 847.423 Credit for refunded FERS service.

(a) An employee or survivor who elects FERS coverage with credit for NAFI service under § 847.421 will receive credit in the FERS annuity for the service represented by any refund of the unexpended balance under § 843.202 of this chapter.

(b) The amount of the refund, increased by interest as computed under § 842.305(e) of this chapter, will be added to the deficiency computed under § 847.604 and collected in accordance with the provisions of § 847.609 (pertaining to a monthly reduction in the annuity benefit).

ELECTIONS TO REMAIN IN NAFI COVERAGE WITH CREDIT FOR FERS SERVICE BASED ON A MOVE FROM FERS TO NAFI

§ 847.431 Election requirements.

(a)(1)(i) A NAFI employee who completed a qualifying move from FERS under § 847.402(a) may, instead of the election provided by § 847.411 (pertaining to elections of CSRS and FERS coverage), elect to remain subject to the current NAFI retirement system for all subsequent periods of service.

(ii) Prior service under FERS becomes credible under the NAFI retirement system rules.

(2) A NAFI employee who has had a previous opportunity to elect retirement coverage under § 847.202(c) and (d) is not excluded from making this election.

(b) A survivor may make an election under paragraph (a) of this section if the employee was otherwise eligible, but died before expiration of the time limit under § 847.304.

(c) An election under this section is irrevocable when received by the employing agency.

§ 847.432 Effect of a refund of FERS deductions.

OPM will inform the NAFI retirement system of the amount of service performed under FERS, without regard to whether a refund of contributions for such period has been paid under FERS.

§ 847.433 Exclusion from FERS for future service.

(a) An employee who elects NAFI retirement system coverage with credit for FERS service under § 847.431(a) is excluded from coverage under FERS during that and all subsequent periods of employment, including any periods of service as a reemployed annuitant.

(b) FERS service which becomes creditable in a NAFI retirement benefit based on an election under § 847.431 is not creditable for any purpose under FERS.

ELECTIONS OF NAFI COVERAGE BASED ON A MOVE FROM NAFI TO FERS

§ 847.441 Election requirements.

(a) An employee who completed a qualifying move under § 847.402(b) may elect to be covered by a NAFI retirement system for all Federal service following the qualifying move.

(b) A survivor eligible for benefits under FERS may make an election under this section if the employee was otherwise eligible to make an election, but died before expiration of the time limit under § 847.304.

§ 847.442 Effective date.

(a) An election under § 847.441 is effective on the first day of FERS-covered employment following NAFI employment subject to retirement coverage.

(b) Deductions and contributions for NAFI retirement system coverage begin effective on the first day of the next pay period after the agency receives the employee's election under § 847.441(a).

(c) An election under § 847.441 is irrevocable when received by the employing agency.

§ 847.443 Exclusion from FERS for future service.

An employee who elects NAFI retirement system coverage with credit for FERS service under § 847.441(a) is excluded from coverage under FERS during that and all subsequent periods of employment, including any periods of service as a reemployed annuitant.

Subpart E—Transfers of Contributions Under the Retroactive Provisions

§ 847.501 Purpose and scope.

This subpart regulates transferring retirement contributions and crediting those contributions to offset the employee costs in connection with elections section 1043(c)(2) of the National Defense Authorization Act for Fiscal Year 1996.

§ 847.502 Transfers to the CSR Fund.

For elections of CSRS or FERS coverage under § 847.411 or FERS coverage and service credit under § 847.421, the amount under § 847.504 will be transferred to the Fund using the procedures established under § 847.506.

§ 847.503 Transfers from the CSR Fund.

For elections of NAFI retirement system coverage under § 847.441, the amount under § 847.504 will be transferred from the Fund using the procedures established under § 847.506.

§ 847.504 Amount of transfer.

(a) All transfers must include employee contributions with interest, if not previously refunded, and Government contributions for civilian service which becomes creditable under the elected retirement system due to an election under §§ 847.411, 847.421, and 846.441.

(b) If the employee has withdrawn his or her contributions to the retirement system, the amount required by paragraph (a) of this section, less the amount refunded, will be transferred.

§ 847.505 When transfer occurs.

(a) OPM, the Department of Defense, and the U.S. Coast Guard will transfer the amount specified in § 847.504 as soon as practicable after receipt of an election of retirement coverage under subpart D of this part.

(b) The transfer of contributions may not be delayed until the employee retires or separates from service.

§ 847.506 Procedures for transfer.

OPM, the Department of Defense, and the U.S. Coast Guard will jointly determine the procedure for transfer of contributions.

§ 847.507 Earnings after transfer.

Amounts transferred to the Fund under § 847.502 that are used to determine the deficiency under § 847.604 accrue interest at the rate

prescribed under § 841.603 of this chapter from the date of receipt in OPM through the date determined under § 847.603 (pertaining to the date of calculation of any deficiency).

Subpart F—Additional Employee Costs Under the Retroactive Provisions

§ 847.601 Purpose and scope.

(a) The purpose of this subpart is to establish the methodology that OPM will use to determine—

(1) The cost of an employee's election under § 847.411 or § 847.421; and

(2) The amount by which annuity payments may be affected as a result of the election.

(b) This subpart applies only to CSRS and FERS benefits. The Departments of Defense, and the U.S. Coast Guard will issue regulations providing methodologies for NAFI's under their jurisdictions.

§ 847.602 Present value factors.

(a) OPM publishes the following tables (available at personnel and payroll offices):

(1) One table of present value factors for all CSRS annuities;

(2) One table of present value factors for FERS annuities that do not receive cost-of-living adjustments before the retiree attains age 62; and

(3) One table of present value factors for FERS annuities that receives cost-of-living adjustments before the retiree attains age 62.

(b)(1) Each present value factor will equal the amount of money (earning interest at an assumed rate) required at the date of computation to fund an annuity that starts out at the rate of $1 a month and is payable in monthly installments for the annuitant's lifetime based on mortality rates for annuitants paid from the Fund; and increases each year, assuming a certain rate of inflation.

(2) Interest, mortality, and inflation rates used in computing the present value are those used by the Board of Actuaries of the Civil Service Retirement System for valuation of CSRS and FERS, based on dynamic assumptions.

(3) The present value factors are unisex factors obtained by averaging distinct present value factors, which take into account mortality for retirees and survivors under CSRS and FERS.

(c)(1) When OPM publishes in the Federal Register notice of normal cost percentages under § 841.407 of this chapter, it will also publish the CSRS and FERS tables of present value factors for use for this part.

(2) The present value factors will be based on the assumptions used to compute the normal cost percentages.

(3) Changes in the tables of present value factors will be effective on the first day of the month in which the changes in the normal cost percentages become effective.

§ 847.603 Date of present value and deficiency determinations.

(a) For determining the deficiency under § 847.604, OPM will determine, under §§ 847.605 through 847.607, the present values of future retirement benefits (with and without credit for the NAFI service) as of the first date on which inclusion of credit for the NAFI service will affect the rate of annuity payable.

(b) Appendix A to this subpart contains a table in which the left column is a list of events for which inclusion of credit for the NAFI service will affect the rate of annuity payable and the right column indicates the date on which the deficiency will be determined.

§ 847.604 Methodology for determining deficiency.

(a) When an event listed in the left column of the table in Appendix A to this subpart occurs, OPM will compute the deficiency, as follows:

(1) As of the date of computation under § 847.603, OPM will determine—

(i) The present value of the annuity including credit for the NAFI service under § 847.605;

(ii) The present value of the annuity without credit for the NAFI service under § 847.606 or § 847.607, as applicable; and

(iii) The amount credited to the employee from a transfer to the Fund under subpart E of this part including earnings under § 847.507.

(2) OPM will add the amount determined under paragraphs (a)(1)(ii) and (iii) of this section and subtract that sum from the amount determined under paragraph (a)(1)(i) of this section.

(b) If the amount determined under paragraph (a)(2) of this section is greater than zero, the deficiency is equal to that amount.

(c) If no event listed in the left column of the table in Appendix A to this subpart occurs—that is, the additional service credit does not cause an increase in an employee annuity or a survivor annuity actually paid—or, if the amount determined under paragraph (a)(2) of this section is less than or equal to zero, the deficiency equals zero.

§ 847.605 Methodology for determining the present value of annuity with service credit.

(a) OPM will determine the present value of the annuity including service credit for NAFI service under paragraph (b) or (c) of this section.

(b) In cases in which the annuity is payable to a retiree, the present value under paragraph (a) of this section equals the monthly annuity rate including credit for the NAFI service as of the date of computation under § 847.603 times the present value factor for the retiree's age on that date.

(c) In cases in which the annuity is payable to a survivor, the present value under paragraph (a) of this section equals the monthly annuity rate including credit for the NAFI service as of the date of computation under § 847.603 times the present value factor for the survivor's age on that date.

§ 847.606 Methodology for determining the present value of annuity without service credit—credit not needed for title.

(a) If credit for the NAFI service is not necessary to provide title to an annuity payable on the date of computation under § 847.603, OPM will determine the present value of the annuity without credit for the NAFI service under paragraph (b) or (c) of this section.

(b) In cases in which the annuity is payable to a retiree, the present value under paragraph (a) of this section equals the monthly annuity rate without credit for the NAFI service as of the date of computation under § 847.603 times the present value factor for the retiree's age on that date.

(c) In cases in which the annuity is payable to a survivor, the present value under paragraph (a) of this section equals the monthly annuity rate including credit for the NAFI service as of the date of computation under § 847.603 times the present value factor for the survivor's age on that date.

§ 847.607 Methodology for determining the present value of annuity without service credit—credit needed for title.

(a) If credit for the NAFI service is necessary to provide title to an annuity payable on the date of computation under § 847.603, OPM will determine the present value of the annuity without credit for the NAFI service under paragraph (b) or (c) of this section.

(b)(1) In cases in which the annuity is payable to a retiree, the present value under paragraph (a) of this section equals the present value of the deferred annuity without credit for the NAFI service as of the deferred annuity date discounted for interest to that date determined under § 847.603.

(2) The present value of the deferred annuity without credit for the NAFI

service as of the deferred annuity date equals the retiree's monthly annuity rate without credit for the NAFI service as of the deferred annuity date times the present value factor for the retiree's age on that date.

(3) The present value under paragraph (b)(2) of this section is discounted for interest by dividing that amount by a factor equal to the value of exponential function in which—

(i) The base is one plus the assumed interest rate under § 841.405 of this chapter on the date determined under § 847.603, and

(ii) The exponent is one-twelfth of the number of months between the date determined under § 847.603 and the deferred annuity date.

(c) In cases in which the annuity is payable to a survivor, the present value under paragraph (a) of this section equals zero, that is, no survivor annuity would ever become payable without credit for the NAFI service.

§ 847.608 Reduction in annuity due to deficiency.

Any annuity payable in the case of an employee who has made an election under subpart D of this part will include credit for the NAFI service. The monthly annuity rate on the date determined under § 847.603 will be permanently reduced by an amount equal to the amount of any deficiency divided by the present value factor for the annuitant's age on that date.

Appendix A to Subpart F of Part 847—List of Events for Which Inclusion of NAFI Service May Affect the Rate of Annuity Payable

Type of event	Date deficiency will be determined
CSRS or FERS non-disability retirement.	Commencing date of annuity.
CSRS disability retirement.	Commencing date of annuity.[1]
FERS disability retirement.	First day of month following 62nd birthday.[2]
CSRS death in service.	Commencing date of survivor annuity.[3]
FERS death in service.	Commencing date of survivor annuity.
FERS death of disability annuitant prior to age 62.	Commencing date of survivor annuity.
FERS death of separated employee.	Commencing date of survivor annuity.
CSRS or FERS redetermination of annuity.	Commencing date of redetermined annuity benefit.

[1] Disability annuity with and without credit for NAFI service must be computed. If annuity payable under each computation is identical due to guaranteed minimum annuity, then deficiency is zero.

[2] Generally, the date the deficiency is determined will be the disability retiree's 62nd birthday. However, if an annuity benefit based on the retiree's actual years of service and salary becomes payable prior to age 62, the deficiency is computed at that time.

[3] Deficiency amount could be zero if survivor is eligible for the guaranteed minimum annuity amount under both computations.

Subpart G—Computation of Benefits Under the Retroactive Provisions

§ 847.701 Purpose and scope.

This subpart establishes the methodology that OPM will use to determine benefit payable in connection with an election made under subpart D of this part.

§ 847.702 Lump-sum payments and refunds.

(a) Employee contributions with interest which are transferred to the Fund under subpart E of this part are included in any lump-sum credit or unexpended balance payable to the employee or the employee's survivors under subpart T of part 831 of this chapter or under part 843 of this chapter.

(b) Government contributions which are transferred to the Fund under subpart E of this part are not included in any lump-sum credit or unexpended balance and are not payable to the employee or the employee's survivors.

§ 847.703 Reductions in annuity.

The CSRS or FERS basic annuity of an employee or survivor who has elected retirement coverage under subpart D of this part is reduced in the following order—

(a) For age, if applicable, as provided under sections 8339(h) and 8415(f) of title 5, United States Code.

(b) For noncontributory service performed before October 1, 1982, if applicable, as provided under 5 U.S.C.A. 8339(i), note.

(c) For deficiency, as determined under subpart F of this part.

(d) To provide a survivor annuity to a spouse or former spouse, if applicable, as provided under sections 8339(j)(4) and 8419(a) of title 5, United States Code.

(e) Any other reductions which may apply.

§ 847.704 Maximum survivor annuity election.

The amount of the employee's benefit after reduction for any deficiency under § 847.608 is—

(a) For CSRS, the maximum amount that may be designated as the survivor base under section 8339 (j) or (k) to title 5, United States Code;

(b) For FERS, the employee annuity (for survivor benefit purposes) under sections 8416 through 8420 of title 5, United States Code.

§ 847.705 Cost-of-living adjustments.

Cost-of-living adjustments are applied to the rate payable to the retiree or survivor, including the reduction for any deficiency described in § 847.608.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

AGRICULTURE DEPARTMENT

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AGRICULTURE DEPARTMENT

Grain Inspection, Packers and Stockyards Administration

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Federal regulatory reform; published 7-10-96

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Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

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New drug applications--

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HOUSING AND URBAN DEVELOPMENT DEPARTMENT

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Community development work study program; published 7-10-96

Human subjects protection; Federal regulatory reform; published 7-10-96

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Federal Aviation Administration

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AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

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National Oceanic and Atmospheric Administration

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