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Presidential Documents

Title 3—

The President

Proclamation 6949 of October 29, 1996

National American Indian Heritage Month, 1996

By the President of the United States of America

A Proclamation

Throughout our history, American Indian and Alaska Native peoples have been an integral part of the American character. Against the odds, America's first peoples have endured, and they remain a vital cultural, political, social, and moral presence. Tribal America has brought to this great country certain values and ideas that have become ingrained in the American spirit: the knowledge that humans can thrive and prosper without destroying the natural environment; the understanding that people from very different backgrounds, cultures, religions, and traditions can come together to build a great country; and the awareness that diversity can be a source of strength rather than division.

As we celebrate American Indian Heritage Month this year, we take note of the injustices that have been suffered by American Indian people. Even today, few enjoy the full bounty of America's prosperity. But even as we look to the past, we must also look to the future. Along with other Americans, American Indians and Alaska Natives will face new challenges in the coming century. We can ill afford to leave any of our people behind. Tribal America must figure as prominently in our future as it has in our past.

Let us rededicate ourselves to the principle that all Americans have the tools to make the most of their God-given potential. For Indian tribes and tribal members, this means that the authority of tribal governments must be accorded the respect and support to which they are entitled under the law. It means that American Indian children and youth must be provided a solid education and the opportunity to go on to college. It means that more must be done to stimulate tribal economies, create jobs, and increase economic opportunities.

Our bridge to the 21st century will rest upon the foundation we build today. We must teach our children about our past—both the good and the bad—so that they may learn from our successes and mistakes. We must provide our children with the knowledge and skills to permit them to surpass our own achievements and create a stronger, more united American community. We must provide them greater opportunity. It was the Iroquois who taught that in every deliberation we should consider the impact of our decisions on the next 7 generations.

In recognition of the important contributions of American Indian and Alaska Native peoples to our country and in light of the special legal relationship between the tribes and the Government of the United States, and obligations pursuant thereto, we celebrate National American Indian Heritage Month.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 1996 as National American Indian Heritage Month. I urge all Americans, as well as their elected representatives at the Federal, State, local, and tribal levels, to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of October, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twenty-first.

William J. Clinton

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Rules and Regulations

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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.

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GENERAL SERVICES ADMINISTRATION

5 CFR Chapter LVII

41 CFR Part 105–735

RIN 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the General Services Administration

AGENCY: General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration, with the concurrence of the Office of Government Ethics (OGE), is issuing a regulation for GSA employees that supplements the Standards of Ethical Conduct for Employees of the Executive Branch. The supplemental regulation generally, with certain exceptions, prohibits solicited sales to subordinates by GSA employees; prohibits the purchase of property sold by GSA; prohibits the purchase of real estate by certain GSA employees; prohibits the taking and disposal of Government property; requires employees to obtain approval before engaging in certain outside employment; and identifies appropriate officials to whom waste, fraud, abuse and corruption are to be reported. The General Services Administration (GSA) is also removing its old standards of conduct regulations from the Code of Federal Regulations (certain provisions which have not been superseded are being reissued in an internal GSA order) and inserting in their place a cross-reference to the new provisions and to applicable executive branch-wide standards of ethical conduct, as well as to applicable financial disclosure regulations.

EFFECTIVE DATE: November 1, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Eugenia D. Ellison or Mr. Dan Ross, General Services Administration, Office of General Counsel, Ethics Law Staff, 18th & F Streets, NW., Room 5135, Washington, DC 20405; telephone: (202) 501–0765, FAX: (202) 501–6347.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics (OGE) published a final rule entitled Standards of Ethical Conduct for Employees of the Executive Branch (Standards). *See* 57 FR 35006–35067, as corrected at 57 FR 48557, 57 FR 52583, and 60 FR 51667, with additional grace period extensions at 59 FR 4779–4780, 60 FR 6390–6391, 60 FR 66857–66858, and 61 FR 40950–40952. The Standards, codified at 5 CFR part 2635 and made effective February 3, 1993, establish uniform standards of ethical conduct that are applicable to all executive branch employees.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific regulations supplementing 5 CFR Part 2635 that are necessary to implement their respective ethics programs. With OGE's concurrence, GSA has determined that the following supplemental regulations, being codified in new 5 CFR chapter LVII, consisting of part 6701, are necessary for successful implementation of GSA's ethics program, in light of GSA's unique programs and operations.

II. Analysis of the New Regulations

Section 6701.101 General

Section 6701.101 of the final rule explains that the regulations apply to all GSA employees and supplement the executive branch-wide Standards at 5 CFR part 2635. It also notes that employees are subject to 5 CFR part 2635 and the executive branch financial disclosure regulations at 5 CFR part 2634.

Section 6701.102 Prohibition on Solicited Sales to Subordinates

5 CFR part 2635 prohibits an employee from using public office for private gain, but contains no specific prohibition on sales to subordinate personnel where the sale price is fair and does not result in a gift to the superior. Likewise, any item for which fair market value is paid by the recipient would not be a gift for purposes of the gifts to superiors provisions in subpart C of the Standards. Under GSA's old standards of conduct regulation at 41 CFR 105–735.202(d)(6), which is simultaneously being removed in this rulemaking document, a prohibition on sales to subordinates was included. Section 6701.102 of this new supplemental regulation is a restatement with minor modifications of that prohibition. It has been GSA's experience that such an additional prohibition is necessary to eliminate coercion, intimidation, or pressure, or the appearance thereof, that employees could be subjected to by official superiors in this regard.

Section 6701.102 generally prohibits GSA employees in supervisory positions from soliciting or making solicited sales to GSA employees who are under their supervision at any level, regardless of whether the solicited sale takes place on or off duty. Section 6701.102 extends the prohibition against commercial solicitation by official superiors that was in 41 CFR 105–735.202(d)(6) to part-time employees and special Government employees who have employees under their supervision, consistent with GSA's determination that hours of work are not a sufficient basis for distinguishing those supervisors from other supervisors for the purpose of furthering the interests served by the prohibition.

The section specifically permits the one-time sale by an official superior to a subordinate of his own personal property or privately owned dwelling. It also permits the off duty sales by an employee during outside employment for a retail establishment or under other circumstances not involving solicited sales.

Section 6701.103 Prohibited Purchases of Property Sold by GSA

Section 6701.103 supplements the prohibition on the use of public office for private gain at 5 CFR 2635.702, and the prohibition on the use of nonpublic information at 5 CFR 2635.703. It prohibits GSA employees from purchasing for themselves or others any personal or real property being sold by GSA. An employee may not purchase such property directly or indirectly. GSA has broad authority to dispose of surplus Government property through public sales. It is therefore important to preserve the public's confidence that these powers will not be misused to

benefit the private interests of a GSA employee. Prohibiting employees from engaging in certain purchases that may appear improper is essential to achieve this objective.

This prohibition is similar to the prohibition in the old GSA standards of conduct at 41 CFR § 105–735.217, which is simultaneously being removed in this rulemaking document. However, the exception in the old rule for items sold by GSA-operated stores is not being preserved because GSA no longer operates such stores. Also, unlike the GSA standards of conduct, the prohibition only applies to the employee, his spouse and minor children, but does not apply to any other members of the employee's household.

This prohibition is not intended to apply to property under the control of and sold by an agency other than GSA. The purchase of assets sold by other agencies would be subject to the regulations of the agency controlling or disposing of the assets, and not subject to GSA's regulations.

Section 6701.103(b) excepts from the prohibition in § 6701.103(a) foreign gifts purchased pursuant to 41 CFR part 101-49. Further, § 6701.103(c) authorizes the Administrator or his designee to grant a written waiver of the prohibition in § 6701.103(a) based upon a determination that the waiver is lawful, and meets the waiver standard established in that subsection. The waiver provision is intended, in appropriate cases, to ease the burden that the supplemental regulation may impose on the private lives of GSA employees, while ensuring that employees do not engage in action that may interfere with the objective and impartial performance of their official duties or raise questions about possible misuse of Government position. The general prohibition and waiver provisions included in § 6701.105 would also apply to all GSA employees.

Section 6701.104 Prohibited Purchases of Real Estate by Certain GSA Employees Involved in the Acquisition or Disposal of Real Estate

Section 6701.104(a) supplements the prohibition on the use of public office for private gain at 5 CFR 2635.702, and the prohibition on the use of nonpublic information at 5 CFR 2635.703. Through its Public Buildings Service, GSA exercises broad authority to acquire and dispose of real estate for the Government. This section generally prohibits GSA employees who personally and substantially participate in or have official responsibility for the acquisition or disposal of real estate or interests therein from purchasing any real estate or interest therein. It is similar to the prohibition in the GSA standards of conduct at 41 CFR 105–735.218, which is simultaneously being removed in this rulemaking document, dealing with the purchase of real estate. Unlike the GSA standards of conduct, however, § 6701.104(a) does not apply to all GSA employees whose official duties are in any way related to the acquisition or disposal of real estate or interests therein, or to the maintenance or improvement of real estate. Section 6701.104 limits the scope of coverage to employees who participate personally and substantially or have official responsibility over the acquisition or disposal of real estate or interests therein as part of their official duties.

The general restriction in § 6701.104(a) prohibits an employee from purchasing such property directly or indirectly. This provision ensures that employees do not engage in actions that may interfere with the objective and impartial execution of their official duties or raise questions about possible misuse of their official positions. So as not to interfere unduly with employees' private lives, an exception in paragraph (b) of this section provides that the prohibition does not apply to an employee's purchase of a personal residence or other residential property, such as a vacation home.

Section 6701.104(c) authorizes the employee's immediate supervisor to grant a written waiver of the prohibition in § 6701.104(a), based upon a determination that the waiver is lawful and meets the waiver standard established in that subsection. This waiver standard is the same as that established in § 6701.103(c) for the purchase of property sold by GSA. The waiver provision is intended, in appropriate cases, to ease the burden that the supplemental regulation may impose on the private lives of GSA employees, while ensuring that employees do not engage in action that may interfere with the objective and impartial performance of their official duties or raise questions about possible misuse of their Government positions or nonpublic information.

Section 6701.105 Taking or Disposing of Government Property

Section 6701.105 supplements the prohibitions on misuse of position in subpart G of the Standards, by specifically adding a prohibition on the taking or disposing of Government property. It continues the longstanding prohibition in GSA's regulations at 41 CFR 105–735.206, which is simultaneously being removed in this rulemaking document, that Government property can only be disposed of as authorized. Under § 6701.105, a GSA employee may not, directly or indirectly, take or dispose of, or allow the taking or disposal of, Government property, unless authorized to do so. This provision is necessary for inclusion in GSA's supplemental regulation because of GSA's broad responsibilities regarding the disposal of surplus Government property, and is intended to ensure that GSA employees do not misuse information and resources to which they have access because of their official responsibilities.

Section 6701.106 Prior Approval for Outside Employment

Under 5 CFR 2635.803 an agency that determines it is necessary or desirable for the purpose of administering its ethics program may, by supplemental regulation, require employees to obtain prior written approval before engaging in outside employment. The GSA standards of conduct regulation at 41 CFR 105–735.204 (which is now being repealed), requires prior notification of and administrative concurrence in proposed outside employment, and is in essence a prior approval requirement that has remained in effect under the note following 5 CFR 2635.803, as extended at 59 FR 4779–4780, 60 FR 6390–6391, 60 FR 66857–66858, and 61 FR 40950–40952 (see also appendixes A–C to 5 CFR part 2635). This requirement has been in effect for many years and has served GSA well in ensuring that its employees avoid violations of the standards of conduct and conflict of interest statutes.

Therefore, § 6701.106(a) of this final supplemental rule requires that a GSA employee who wishes to engage in outside employment with a prohibited source must obtain prior written approval from his or her immediate supervisor before engaging in such outside employment. This prior approval requirement applies without regard to whether the employment is to be undertaken with or without compensation. It does not apply, however, to special Government employees. Section 6701.106 will help to ensure that the outside employment activities of GSA employees are not prohibited by statute or Federal regulation, including the executive branch-wide Standards in 5 CFR part 2635, and these supplemental regulations.

Section 6701.106(b) sets forth requirements for information to be provided in the employee's request for prior approval. To ensure that

§ 6701.106 is not itself construed as authority to deny permission to engage in outside employment, paragraph (c) states that approval shall be granted unless a determination is made that the outside employment is expected to involve conduct prohibited by statute or regulations, including 5 CFR part 2635 and these supplemental regulations.

At § 6701.106(d)(1), ''employment'' is broadly defined to cover any form of non-Federal employment or business relationship involving the provision of personal services, including writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of nonprofit charitable, religious, professional, social, fraternal and similar organizations, unless such activities involve the provision of professional services or advice and are for compensation other than reimbursement of expenses. Although it is simply a restatement of the definition at 5 CFR 2635.203(d), paragraph (d)(2) of § 6701.106 sets forth for ease of reference the definition of ''prohibited source'' that is essential to the determination of when prior approval is required by § 6701.106.

Section 6701.107 Reporting Waste, Fraud, Abuse and Corruption

Section 6701.107 assists employees in adhering to the general principle of ethical conduct at 5 CFR 2635.101(b)(11), under which an employee shall disclose waste, fraud, abuse, and corruption to appropriate authorities. It also identifies GSA's Office of the Inspector General as an authority to which it would be appropriate for an employee to disclose waste, fraud, abuse and corruption. This new provision is similar to the old standards of conduct provision at 41 CFR 105–735.216, which is simultaneously being removed in this rulemaking document, but no longer specifies the Assistant Inspector General for Investigations in the Central Office or the appropriate Special Agent in charge in the regions as the only appropriate authorities to whom such matters must be reported.

III. Removal of GSA's Old Standards of Conduct Provisions and Reissuance of Certain Nonsuperseded Provisions in an Internal Order

Because GSA's old standards of conduct have been largely superseded by the new executive branch financial disclosure regulations at 5 CFR part 2634 and the new executive branch-wide Standards at 5 CFR part 2635, as supplemented by the regulations contained in GSA's new 5 CFR part 6701, GSA is simultaneously removing from the CFR its old standards of conduct, which have been codified at 41 CFR part 105–735, and is replacing those provisions superseded by 5 CFR parts 2634 and 2635 with a section that provides cross-references to those parts and to GSA's new supplemental regulations. Moreover, in accordance with 5 CFR 2635.105(c)(3), GSA is reissuing in an internal GSA Order (ADM 7900.9A) those sections of 41 part 105–735 which are not contained in the Standards or GSA's supplemental regulation, and which GSA has authority, independent of 5 CFR parts 2634 and 2635, to issue. A copy of GSA Order ADM 7900.9A will be given to all GSA employees and is available from GSA's Office of General Counsel.

IV. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553 (b) and (d), the GSA finds good cause not to seek public comment on this rule nor to provide for a 30-day delayed effective date. Such comment and delayed effective date are unnecessary because the GSA is essentially restating existing regulations in a different form. Moreover, to complete the transition from GSA's prior ethics rules to the new Government-wide standards of ethical conduct regulations, these rulemaking actions should take place as soon as possible. This final rule will become effective as soon as published in the Federal Register.

E.O. 12866, Regulatory Planning and Review

GSA has determined this proposal is not subject to the Office of Management and Budget review under Executive Order 12866.

Regulatory Flexibility Act

GSA has determined under the Regulatory Flexibility Act (5 U.S.C. 601–611) that this rule will not have significant economic impact on a substantial number of small entities because it affects only GSA employees. Therefore, a Regulatory Flexibility Statement and Analysis has not been prepared.

Paperwork Reduction Act

GSA has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

Environmental Impact

The publication of this rule will not have a significant impact upon the quality of the human environment or the conservation of energy resources.

List of Subjects

5 CFR Part 6701

Conflict of interests, Ethical standards, Executive branch standards of ethical conduct, Government employees.

41 CFR Part 105–735

Conflict of interests, Ethical standards, Executive branch standards of conduct, Government employees.

Dated: October 25, 1996.

Martha N. Johnson,

Chief of Staff, General Services Administration.

Approved: October 28, 1996.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the General Services Administration, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations, and title 41, chapter 105, of the Code of Federal Regulations, as follows:

TITLE 5—[AMENDED]

1. A new chapter LVII, consisting of part 6701, is added to title 5 of the Code of Federal Regulations to read as follows:

CHAPTER LVII—GENERAL SERVICES ADMINISTRATION

PART 6701—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE GENERAL SERVICES ADMINISTRATION

Sec.

6701.101 General.
6701.102 Prohibition on solicited sales to subordinates.
6701.103 Prohibited purchases of property sold by GSA.
6701.104 Prohibited purchases of real estate by certain GSA employees involved in the acquisition or disposal of real estate.
6701.105 Taking or disposing of Government property.
6701.106 Prior approval for outside employment.
6701.107 Reporting waste, fraud, abuse and corruption.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.702, 2635.703, 2635.802, 2635.803.

§ 6701.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the General Services Administration (GSA) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) contained in 5 CFR part 2635. In addition to the executive branch-wide Standards in 5 CFR part 2635 and this part, GSA employees are subject to the executive branch financial disclosure regulations contained in 5 CFR part 2634.

§ 6701.102 Prohibition on solicited sales to subordinates.

A GSA employee shall not engage in solicitation of sales, on or off duty, to any GSA employee under his supervision, at any level. This prohibition applies, but is not limited to, solicitation for the sale of insurance, stock, mutual funds, real estate, computer equipment and any other commodities, goods or services except:

(a) The one-time sale of the employee's personal property or privately owned dwelling; or

(b) Sales made in the course of outside employment of GSA employees in retail stores and under other circumstances not involving solicitation.

§ 6701.103 Prohibited purchases of property sold by GSA.

(a) *General prohibition.* Except as provided in paragraphs (b) and (c) of this section, no GSA employee, or spouse or minor child of a GSA employee, shall purchase, directly or indirectly Government property, real or personal, being sold by GSA.

(b) *Exception.* The prohibition in paragraph (a) of this section does not apply to the purchase of foreign gifts deposited with the agency pursuant to 5 U.S.C. 7342, that an employee may purchase pursuant to 41 CFR part 101–49.

(c) *Waiver.* An employee may make a purchase otherwise prohibited by paragraph (a) of this section where a written waiver of the prohibition has been given to the employee by the Administrator of GSA or his designee. Such a waiver may be granted only upon a determination that the waiver is not otherwise prohibited by law and that, in the mind of a reasonable person with knowledge of the particular circumstances, the purchase of the property will not raise a question as to whether the employee has used his official position or nonpublic information to obtain an advantageous purchase or create an appearance of loss of impartiality in the performance of the employee's duties.

§ 6701.104 Prohibited purchases of real estate by certain GSA employees involved in the acquisition or disposal of real estate.

(a) *General prohibition.* Except as provided in paragraphs (b) and (c) of this section, employees who personally and substantially participate in or have official responsibility for the acquisition or disposal of real estate or interests therein, shall not directly or indirectly purchase or participate as an agent or otherwise in the purchase of any real estate or interest therein.

(b) *Exception.* The prohibition in paragraph (a) of this section does not apply to an employee's purchase of real estate for use as his personal or other residential property, such as a vacation home.

(c) *Waiver.* An employee may make a purchase otherwise prohibited by this section where a written waiver of the prohibition has been given to the employee by the employee's immediate supervisor, with the advice of a Deputy Standards of Conduct Counsellor or the Designated Agency Ethics Official. Such a waiver may be granted only if a determination is made that the waiver is not otherwise prohibited by law or regulation, and that in the mind of a reasonable person with knowledge of the particular circumstances, the purchase of such real estate or interest therein will not raise a question as to whether the employee will use his official position or nonpublic information to obtain an advantageous purchase or create an appearance of loss of impartiality in the performance of the employee's duties.

§ 6701.105 Taking or disposing of Government property.

An employee shall not, directly or indirectly, take or dispose of, or allow the taking or disposal of, Government property, unless authorized to do so. For purposes of this section, property remains Government property until disposed of in accordance with applicable rules and regulations.

§ 6701.106 Prior approval for outside employment.

(a) *Approval requirement.* A GSA employee, other than a special Government employee, shall obtain written approval from his immediate supervisor prior to engaging in outside employment with a prohibited source, with or without compensation.

(b) *Form of request for approval.* A request for approval of outside employment shall include, at a minimum, the following:

(1) The employee's name, location and occupational title;

(2) A brief description of the employee's official duties;

(3) The nature of the outside employment, including a full description of the specific duties or services to be performed;

(4) The name and address of the prospective outside employer for which work will be done; and

(5) A statement that the employee currently has no official duties involving a matter that affects the outside employer and will disqualify himself from future participation in matters that could directly affect the outside employer.

(c) *Standard for approval.* Approval shall be granted unless a determination is made that the outside employment is expected to involve conduct prohibited by statute or regulation, including 5 CFR part 2635 and this part.

(d) *Definitions.* For purposes of this section:

(1) *Employment* means any form of non-Federal employment or business relationship involving the provision of personal services by the employee. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless the participation involves the provision of professional services or advice for compensation other than reimbursement for actual expenses.

(2) *Prohibited source* has the meaning in 5 CFR 2635.203(d), and includes any person who:

(i) Is seeking official action by GSA;

(ii) Does business or seeks to do business with GSA;

(iii) Conducts activities regulated by GSA;

(iv) Has interests that may be substantially affected by performance or nonperformance of the employee's official duties; or

(v) Is an organization a majority of whose members are described in paragraphs (d)(2)(i) through (iv) of this section.

Note to § 6701.106: An employee may obtain advice from an agency ethics official as to whether a potential employer is a prohibited source.

§ 6701.107 Reporting waste, fraud, abuse and corruption.

GSA employees shall disclose immediately any waste, fraud, abuse, and corruption to appropriate authorities, such as the Office of Inspector General.

TITLE 41—[AMENDED]

CHAPTER 105—GENERAL SERVICES ADMINISTRATION

2. Part 105–735 of 41 CFR chapter 105 is revised to read as follows:

PART 105–735—STANDARDS OF CONDUCT

§ 105–735.1 Cross-references to employee ethical conduct standards, financial disclosure regulations, and other regulations.

Employees of the General Services Administration are subject to the executive branch-wide standards of ethical conduct at 5 CFR part 2635, GSA's regulations at 5 CFR part 6701 which supplement the executive branch-wide standards, the regulations on employee responsibilities and conduct at 5 CFR part 735, and the executive branch financial disclosure regulations contained in 5 CFR part 2634, and GSA Order ADM 7900.9A, which can be obtained from the GSA Office of General Counsel.

Authority: 5 U.S.C. 7301.

[FR Doc. 96–27967 Filed 10–31–96; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 95–087–2]

Japanese Beetle; Domestic Quarantine and Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with two changes, an interim rule that amended the Japanese beetle quarantine and regulations by adding Minnesota and Wisconsin to the list of quarantined States and by providing greater specificity about what actions must be taken to prevent the spread of Japanese beetle by aircraft from regulated airports. This action was necessary to prevent the spread of Japanese beetle into noninfested areas of the United States. The interim rule also amended the regulations to allow carriers at regulated airports the option of performing some activities under a compliance agreement with the Animal and Plant Health Inspection Service, rather than in the presence of an inspector.

EFFECTIVE DATE: December 2, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald P. Milberg, Operations Officer, Program Support, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–5255.

SUPPLEMENTARY INFORMATION:

Background

The Japanese beetle feeds on fruits, vegetables, and ornamental plants and is capable of causing damage to over 300 potential hosts. The Japanese beetle quarantine and regulations, contained in 7 CFR 301.48 through 301.48–7 (referred to below as the regulations), quarantine certain States and restrict the interstate movement of aircraft from regulated airports in the quarantined States to prevent the spread of the Japanese beetle to the seven States listed in § 301.48(b) (Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington, referred to below as the protected States). Under § 301.48–4 of the regulations, a regulated article may move interstate from a regulated airport to any of the protected States only if certain conditions have been met.

In an interim rule effective June 20, 1996, and published in the Federal Register on June 25, 1996 (61 FR 32636–32641, Docket No. 95–087–1), the Animal and Plant Health Inspection Service (APHIS) amended the regulations to (1) add Minnesota and Wisconsin to the list of States quarantined for Japanese beetle; (2) provide greater specificity about what actions must be taken to ensure aircraft do not spread Japanese beetle from regulated airports; (3) allow carriers at regulated airports the option of performing some activities under a compliance agreement with APHIS, rather than in the presence of an inspector; and (4) amend the definition of ''regulated airport'' to include portions of airports, as well as entire airports. This action was necessary to help prevent the spread of Japanese beetle into the protected States.

We solicited comments concerning the interim rule for 60 days ending August 26, 1996. We received one comment by that date. The comment received was from a State government. The commenter was generally supportive of the interim rule but included three suggestions pertaining to content changes and one suggestion to delay publication of a final rule. We have carefully considered the suggestions made in this comment. They are discussed below.

The first suggestion was to leave the determination of what constitutes daylight hours up to local APHIS personnel at the regulated airports. (The interim rule specified that the regulatory provisions apply between the hours of 7:00 a.m. and 8:00 p.m. because Japanese beetles are active during daylight hours only.) The concern expressed was that operational problems could occur when determining airport regulation status along timeline divisions. For example, an aircraft at a regulated airport in the central time zone could require treatment at 7:00 p.m., whereas an aircraft at a nearby airport in the eastern time zone (8:00 p.m.) would not be subject to the same regulatory requirements.

We designed the regulations to prevent adult Japanese beetles from flying into aircraft destined for any of the protected States. Because of the Japanese beetle life cycle, the adult beetles are active in most parts of the United States only in the summer months during daylight hours. More specifically, adult Japanese beetles are generally active only when the air reaches a certain temperature. We believe the period of greatest flight activity occurs between the hours of 10:00 a.m. and 3:00 p.m. during the months of July through mid-September in most parts of the country. Because the hours of 7:00 a.m. to 8:00 p.m. are roughly the hours of daylight in many parts of the United States during the summer months, we established that timeframe as the period of regulatory activity to ensure we would cover any possible Japanese beetle flight activity.

We are not making any change to the regulations based on this comment because we are not aware of any operational problems that have occurred to date as a result of the 7:00 a.m. to 8:00 p.m. timeframe and, furthermore, we believe that having an established timeframe for regulatory activity will make conducting operations at the airports easier—not more difficult.

The second suggestion was to eliminate language concerning how to apply an approved pesticide in an aircraft (i.e., holding the pesticide at a 45-degree angle and aerating for 15 minutes). These instructions pertain to the application of the pesticide d-phenothrin. The concern was that d-phenothrin is not the only pesticide approved for use against Japanese beetle in aircraft and the language in the regulations should allow for use of any approved and effective treatment.

We agree with the reasons presented for this suggestion. Accordingly, we are removing the language in § 301.48–4(d)(4) that pertains to application of d-phenothrin.

The third suggestion was to eliminate the term ''tail swapping'' in the regulations because of concerns that this term is not commonly used and could be misconstrued.

We believe the term ''tail swapping'' is commonly used by the airline industry and, therefore, is appropriate for use in a regulation targeted at that industry. However, to ensure clarity, we are changing the wording in § 301.48–4(d)(6). As reworded, § 301.48–4(d)(6) will begin: ''When a designated aircraft is replaced with an alternate one just prior to departure (the procedure known as 'tail swapping'). * * *''

The final suggestion was to delay issuance of this final rule until the list of infested States used in the U.S./Canada Japanese Beetle Harmonization Plans has been finalized.

We are not taking any action in regard to this suggestion because this list, which is primarily used by noninfested States to regulate the movement of nursery stock from infested States, is constantly being updated. It will never be ''finalized,'' per se. Just as we added Minnesota and Wisconsin to the list of quarantined States in the interim rule, if we determine that a State other than those currently listed in § 301.48(a) is infested with Japanese beetles and needs to be quarantined, we will take action at that time to include that State in the list of quarantined States.

Therefore, based on the rationale set forth in the interim rule and in this document, we are adopting the provisions of the interim rule as a final rule, with the changes discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12778, and the National Environmental Policy Act.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0088.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, the interim rule amending 7 CFR part 301 which was published at 61 FR 32636–32641 on June 25, 1996, is adopted as a final rule with the following changes:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.48–4, paragraph (d)(4) and the first sentence of paragraph (d)(6) are revised to read as follows:

§ 301.48–4 Conditions governing the interstate movement of regulated articles from quarantined States.

* * * * *

(d) * * *

(4) Aircraft must be treated in accordance with the Treatment Manual no more than 1 hour before loading. Particular attention should be paid to the ball mat area and the holes around the main entrance. The aircraft must then be aerated under safeguard conditions as required by the Treatment Manual.

* * * * *

(6) When a designated aircraft is replaced with an alternate one just prior to departure (the procedure known as ''tail swapping''), the alternate aircraft must be inspected and all Japanese beetles must be removed. * * *

* * * * *

Done in Washington, DC, this 24th day of October 1996.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–27972 Filed 10–31–96; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–0936]

Bank Holding Companies and Change in Bank Control (Regulation Y)

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule with request for comments.

SUMMARY: Section 2208 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 amended the Bank Holding Company Act to eliminate the requirement that bank holding companies seek Board approval *before* engaging *de novo* in permissible nonbanking activities listed in Regulation Y if the holding company is well-capitalized and meets certain other criteria specified in the statute. Section 2208 also established an expedited procedure for well-capitalized bank holding companies that meet these criteria to obtain Board approval to acquire smaller companies that engage in any permissible nonbanking activities listed in Regulation Y as well as to engage in nonbanking activities that the Board has approved only by order. These changes are effective immediately.

Section 2208 provides that a bank holding company shall be considered ''well-capitalized'' if it meets the capital levels required by the Board. For purposes of determining the capital levels at which a bank holding company shall be considered ''well-capitalized'' under section 2208 and Regulation Y, the Board has adopted, as an interim rule, risk-based capital thresholds that are the same as the levels set for determining that a state member bank is well capitalized under the provisions established under section 38 of the Federal Deposit Insurance Act, and a modified leverage ratio. Because section 2208 became effective upon enactment on September 30, 1996, this definition is adopted effective immediately on an interim basis. The Board invites public comment on the definition of ''well-capitalized,'' including how this provision in section 2208 applies to foreign banking organizations. The Board will adjust the definition as appropriate in light of public comment.

DATES: Interim rule effective October 23, 1996; comments must be received by December 2, 1996.

ADDRESSES: Comments should refer to Docket No. R–0936, and may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments may also be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, and to the guard station in the Eccles Building courtyard on 20th Street, NW. (between Constitution Avenue and C Street) at any time. Comments received will be available for inspection in room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in section 261.8(a) of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202/452–3583), Deborah M. Awai, Senior Attorney (202/452–3594), Legal Division; Rhoger Pugh, Assistant

Director (202/728–5883), Norah M. Barger, Manager (202/452–2402), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC.

SUPPLEMENTARY INFORMATION: Section 2208 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104–208, 110 Stat. 3009) amended section 4 of the Bank Holding Company Act to provide that a well-capitalized bank holding company that meets certain criteria is no longer required to obtain *prior* Board approval to engage *de novo* in a nonbanking activity listed in Regulation Y. A bank holding company that meets the qualifications in section 2208 is required only to notify the Board within 10 business days after the activity has been started.[1]

Section 2208 also established an expedited procedure for well-capitalized bank holding companies that meet the criteria in section 2208 to obtain Board approval to acquire companies (other than an insured depository institution) that engage in any permissible nonbanking activities as well as to engage *de novo* in nonbanking activities that the Board has approved only by order.[2] Under the statutory change, a qualifying bank holding company must provide the Board with at least 12 business days advance notice of a proposed acquisition or of a proposal to engage in an activity approved only by order, and the Board may notify the bank holding company during that period that a full application is required.[3]

To qualify for this exemption and procedure, a bank holding company must be well-capitalized. Section 2208 provides that a bank holding company is ''well-capitalized'' for purposes of that section if the holding company meets the required capital levels for well-capitalized bank holding companies established by the Board. The Board's capital adequacy guidelines do not currently define a capital level at which a bank holding company would be considered to be ''well-capitalized'' for any purpose.

For purposes of section 2208 and the provisions of Regulation Y, the Board considers a bank holding company to be ''well-capitalized'' if:

1. The bank holding company, on a consolidated basis, maintains a total risk-based capital ratio of 10.0 percent or greater;

2. The bank holding company, on a consolidated basis, maintains a Tier 1 risk-based capital ratio of 6.0 percent or greater.

3. The bank holding company, on a consolidated basis, maintains either:

A. A Tier 1 leverage ratio of 4.0 percent or greater, or

B. If the bank holding company has a composite 1 rating under the BOPEC (or comparable) rating system or has implemented the risk-based capital measure for market risk, a Tier 1 leverage ratio of 3.0 percent or greater; and

4. The bank holding company is not subject to any written agreement, order, capital directive, or prompt corrective action directive issued by the Board to meet and maintain a specific capital level for any capital measure.

The risk-based ratios are the risk-based capital levels at which a state member bank is deemed to be well-capitalized for purposes of the provisions of the Federal Deposit Insurance Act that govern prompt corrective action. The Board believes it is desirable for bank holding companies also to maintain a minimum base of capital to total assets, but recognizes that the leverage ratio can be an inexact measure of capital adequacy for many bank holding companies, particularly for holding companies that engage in significant nonbanking activities. The leverage ratio can be particularly misleading for very large organizations that have significant trading portfolios and are extensively engaged in fee-generating off-balance sheet activity.

Accordingly, the Board requires a leverage ratio that is somewhat different than the ratio required for a ''well-capitalized'' bank.[4] Specifically, in order to be deemed well-capitalized for purposes of Regulation Y and the modifications to the application process, a bank holding company must maintain a minimum Tier 1 leverage ratio of 3 percent so long as the organization has a composite 1 BOPEC rating or has implemented the risk-based capital market risk measure set forth in the Board's capital adequacy guidelines.[5] All other bank holding companies would be subject to a 4 percent minimum Tier 1 leverage ratio. In calculating the various capital levels, a bank holding company should apply the definition of capital, assets, weighted risk assets, Tier 1 capital, leverage, and other capital terms as defined currently in the capital adequacy guidelines applicable to bank holding companies.[6]

The changes enacted by section 2208 will reduce regulatory burden on well-capitalized bank holding companies that meet the criteria of that section by eliminating the current statutory requirement for prior approval of proposals to engage *de novo* in nonbanking activities that the Board has approved by regulation, and by establishing a streamlined prior notice requirement for these companies to obtain approval to make small acquisitions of companies engaged in permissible nonbanking activities and to engage *de novo* in activities permitted by order. Because the provisions of section 2208 became effective on the date of enactment, which was September 30, 1996, and because the change to Regulation Y would establish a definition that is needed to identify

[1] The other criteria established by section 2208 require that 1) the lead insured depository institution controlled by the bank holding company and insured depository institutions that control at least 80 percent of the aggregate total risk-weighted assets of insured depository institutions controlled by the holding company be well-capitalized; 2) no insured depository institution controlled by the holding company be undercapitalized; 3) the bank holding company, its lead insured depository institution and insured depository institutions representing at least 90 percent of the aggregate total risk-weighted assets of insured depository institutions controlled by the bank holding company have received at least a composite 2 examination rating and a ''satisfactory'' rating for management at the most recent examination; 4) no insured depository institution controlled by the bank holding company have received a composite examination rating of 4 or 5 at the latest examination; and 5) no supervisory or enforcement action be pending against the bank holding company or any of its insured depository institutions.

[2] In addition to meeting the criteria described in footnote 1, an acquisition qualifies under the statute if the acquired assets or company represent less than 10 percent of the total risk-weighted assets of the acquiring bank holding company and the consideration paid for the assets or company does not exceed 15 percent of the consolidated Tier 1 capital of the acquiring bank holding company.

[3] By the terms of the statutory change, this expedited procedure is not available for acquisitions of savings associations or other insured depository institutions. Proposals that involve the acquisition of a savings association or other insured depository institution, or that do not otherwise meet the criteria established in section 2208 must receive prior System approval under the procedures currently set forth in Regulation Y.

[4] To be classified as ''well-capitalized,'' a state member bank must have a Tier 1 leverage ratio of at least 5 percent, in addition to the two risk-based capital ratios described above.

[5] The Board's current guidelines for determining that a banking organization is ''adequately capitalized'' set the minimum level of Tier 1 capital to total assets at 3 percent for organizations with a composite 1 BOPEC rating that also meet certain other conditions, and at 3 percent plus an additional cushion of 100 to 200 basis points for all other organizations.

[6] Capital Adequacy Guidelines for Bank Holding Companies: Risk-based Measure (12 CFR Part 225, Appendix A); and Capital Adequacy Guidelines for Bank Holding Companies: Tier 1 Leverage Measure (12 CFR Part 225, Appendix D).

bank holding companies that qualify for the regulatory relief contained in section 2208, the Board believes that there is good cause for adopting its definition of a ''well-capitalized'' bank holding company on an interim basis effective immediately.

The Board invites public comment on the definition of ''well-capitalized,'' including how this provision in section 2208 applies to foreign banking organizations. The Board will adjust the definition as appropriate in light of public comment.

Regulatory Flexibility Act Analysis

Pursuant to the Regulatory Flexibility Act, the Board is required to conduct an analysis of the effect, on small institutions, of the proposed revision to Regulation Y. As of December 31, 1995, the number of bank holding companies totalled 5,274.[7] The following chart provides a distribution, based on asset size, for those companies.

Asset size category (M=Million)	Number of bank holding companies	Percent of bank holding company assets (percent)
Less than $150M	3,954	[1] 5.5
Greater than $150M	1,320	94.5

[1] Bank holding companies with consolidated assets of less than $150 million are not required to file financial regulatory reports on a consolidated basis. Assets for this group are estimated based on reports filed by the parent companies and subsidiaries.

The Board does not believe that the interim rule would have a significant adverse economic impact on a substantial number of small entities. The rule would reduce regulatory burdens imposed by the Board's procedures on well-capitalized bank holding companies by eliminating or streamlining the notice requirements under section 4 of the Bank Holding Company Act. Elimination or streamlining of these procedures for well-capitalized bank holding companies is expected to have a particular benefit to small bank holding companies that qualify for this exemption by reducing the paperwork burden and processing time associated with regulatory filings, and the costs associated with complying with regulation. This will improve the ability of all bank holding companies, including small organizations, to conduct business on a more cost-efficient basis. The Board invites public comment on this subject.

Paperwork Reduction Act Analysis

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the interim rule under the authority delegated to the Board by the Office of Management and Budget. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–00171, 7100–0121, 7100–0134, 7100–0131, 7100–0119, as applicable; see below), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

This interim rule will eliminate one information collection requirement and substantially reduce another for any bank holding company that meets the proposed definition of a well-capitalized bank holding company and the other statutory requirements. The affected information requirements are found in 12 CFR 225.23 and 12 CFR 225.24. This information is required to evidence compliance with the requirements of the Bank Holding Company Act. The respondents are for-profit financial institutions and other corporations, including small businesses, and individuals. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, these information collections unless it displays a currently valid OMB control number. The OMB control numbers are indicated below.

The Board believes the interim rule will result in a reduction in burden by defining when a bank holding company is ''well-capitalized'' and, consequently, qualifies for the new statutory exemption from or streamlined notice procedures for obtaining prior approval for nonbanking proposals under section 4 of the Bank Holding Company Act.

Bank holding companies that qualify for the exemption from the prior approval requirement to engage *de novo* in permissible nonbanking activities and for the streamlined procedure for obtaining approval for proposals to acquire small nonbanking companies should benefit from a significant reduction in burden for respondents that file the Application for Prior Approval To Engage Directly or Indirectly in Certain Nonbanking Activities (FR Y–4; OMB No. 7100–0121). Approximately 360 respondents file the FR Y–4 annually to meet application requirements, and 114 respondents file to meet notification requirements. The current burden per response is 59.0 hours and 1.5 hours, respectively, for a total estimated annual burden of 21,529 hours. Under the proposed rule it is estimated that between 30 and 50 percent of these respondents would meet the criteria to qualify either for elimination or for the filing of a streamlined application, representing between 109 and 181 applications and between 34 and 57 notifications. The average number of hours per response for the required post-consummation notice is 0.5 hours and for the required streamlined notice is 1.5 hours. Therefore the total amount of annual burden is estimated to be between 11,121.5 and 15,261.5 hours. Based on an hourly cost of $50, the annual cost to the public under the proposed revision is estimated to be between $556,075 and $763,075, which represents an estimated cost reduction of between $313,375 and $520,375 from the current estimated annual cost to the public of $1,076,450 under the current rule.

All information contained in these collections of information are available to the public unless the respondent can substantiate that disclosure of certain information would result in substantial competitive harm or an unwarranted invasion of personal privacy or would otherwise qualify for an exemption under the Freedom of Information Act.

Comments are invited on: a. whether the proposed collections of information are necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility; b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collections, including the cost of compliance; c. ways to enhance the quality, utility, and clarity of the information to be collected; and d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding Companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Board amends 12 CFR Part 225 as follows:

[7] Financial top-tier domestic bank holding companies. Excludes middle-tier bank holding companies, and foreign bank holding companies that are not required to file a Y–9 report with the Federal Reserve System.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for Part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. In § 225.2, paragraph (q) is added to read as follows:

§ 225.2 Definitions.

* * * * *

(q) *Well-capitalized*—(1) *Bank holding company.* In the case of a bank holding company, *well-capitalized* means that:

(i) On a consolidated basis, the bank holding company maintains a total risk-based capital ratio of 10.0 percent or greater, as defined in Appendix A of this part;

(ii) On a consolidated basis, the bank holding company maintains a Tier 1 risk-based capital ratio of 6.0 percent or greater, as defined in Appendix A of this part;

(iii) On a consolidated basis, the bank holding company maintains either:

(A) A Tier 1 leverage ratio of 4.0 percent or greater; or

(B) If the bank holding company has a composite 1 rating under the BOPEC (or comparable) rating system or has implemented the risk-based capital measure for market risk, a Tier 1 leverage ratio of 3.0 percent or greater; and

(iv) The bank holding company is not subject to any written agreement, order, capital directive, or prompt corrective action directive issued by the Board to meet and maintain a specific capital level for any capital measure.

(2) *Insured depository institution.* In the case of an insured depository institution, *well-capitalized* means that the institution maintains at least the capital levels required to be *well-capitalized* under the capital adequacy regulations or guidelines applicable to the institution that have been adopted by the appropriate federal banking agency for the institution under section 38 of the Federal Deposit Insurance Act.

By order of the Board of Governors of the Federal Reserve System, October 23, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–27691 Filed 10–31–96; 8:45 am]

BILLING CODE 6210–01–P

12 CFR Part 263

[Docket No. R–0938]

Rules of Practice for Hearings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is amending its Rules of Practice for Hearings to include a section listing increases in the maximum amounts of each civil money penalty (CMP) under its jurisdiction. The Board is required to enact such regulation by the Debt Collection Improvements Act of 1996 (Debt Collection Act), which requires agencies to adjust their statutorily based civil money penalties to account for inflation.

EFFECTIVE DATE: October 24, 1996.

FOR FURTHER INFORMATION CONTACT: Alan E. Sorcher, Senior Attorney (202/452–3564), Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. For users of Telecommunication Device for the Deaf (TDD) *only*, please contact Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION: The Debt Collection Act[1] amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act), 28 U.S.C. 2461 *note*, to require each subject agency to enact regulations to adjust each civil money penalty provided by law within its jurisdiction for inflation in accordance with an inflation adjustment formula stated in section 5(b) of the Inflation Adjustment Act. Implementing regulations must be issued within 180 days of enactment of the Debt Collection Act, and at least once every four years thereafter.

The adjustment required is based on the percentage increase in the Consumer Price Index between June of the calendar year when the penalty amount was last set or adjusted and June of the calendar year preceding the adjustment. The statute also provides rules as to rounding off these adjustments, and limits the amount of the initial adjustment to no more than ten percent of the amount of the civil money penalty. The increases in penalty amounts apply only to violations which occur after the effective date of this rule.

Public Comment Not Required

This rule is not subject to the provisions of 5 U.S.C. 553 requiring notice, public participation, and deferred effective amendment. The Debt Collection Act provides Federal agencies with no discretion in the adjustment of CMPs to the rate of inflation, and it also requires the new regulation to take effect on October 23, 1996. Moreover, the regulation that the Board is adopting to implement the Debt Collection Act is ministerial, technical, and noncontroversial. For these reasons, the Board finds good cause to determine that public notice and comment for this new regulation is unnecessary, impractical, and contrary to the public interest, pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B). These same reasons also provide the Board with good cause to adopt an effective date for this regulation that is less than 30 days after the date of publication in the Federal Register, pursuant to the APA, 5 U.S.C. 553(d).

Regulatory Flexibility Act:

No significant impact.

Paperwork Reduction Act

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

List of Subjects in 12 CFR Part 263

Administrative practice and procedure, Claims, Crime, Equal Access to Justice, Federal Reserve System, Lawyers, Penalties.

For the reasons set forth in the preamble, the Board of Governors is amending 12 CFR Part 263 as follows:

PART 263—RULES OF PRACTICE FOR HEARINGS

1. The authority citation for 12 CFR Part 263 is revised to read as follows:

Authority: 5 U.S.C. 504; 12 U.S.C. 248, 324, 504, 505, 1817(j), 1818, 1828(c), 1831o, 1831p-1, 1847(b), 1847(d), 1884(b), 1972(2)(F), 3105, 3107, 3108, 3907, 3909; 15 U.S.C. 21, 78o-4,78o-5, 78u-2; and 28 U.S.C. 2461 note.

Subpart C—Rules and Procedures for Assessment and Collection of Civil Money Penalties

2. A new § 263.65 is added to subpart C to read as follows:

§ 263.65 Civil penalty inflation adjustments.

(a) *Inflation adjustments.* In accordance with the Federal Civil

[1] Pub.L. 104–134, section 31001(s), 110 Stat. 1321–358 (Apr. 26, 1996), codified at 28 U.S.C. 2461 *note*.

Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note), the Board has set forth in paragraph (b) of this section adjusted maximum penalty amounts for each civil money penalty provided by law within its jurisdiction. The adjusted civil penalty amounts provided in paragraph (b) of this section replace only the amounts published in the statutes authorizing the assessment of penalties. The authorizing statutes contain the complete provisions under which the Board may seek a civil money penalty. The increased penalty amounts apply only to violations occurring after October 24, 1996.

(b) *Maximum civil money penalties.* The maximum civil money penalties as set forth in the referenced statutory sections are adjusted as follows:

(1) 12 U.S.C. 324:

(i) Inadvertently late or misleading reports, *inter alia*—$2,000.

(ii) Other late or misleading reports, *inter alia*—$22,000.

(iii) Knowingly or recklessly false or misleading reports, *inter alia*—$1,100,000.

(2) 12 U.S.C. 504, 505, 1817(j)(16), 1818(i)(2) and 1972(F):

(i) First tier—$5,500.

(ii) Second tier—$27,500.

(iii) Third tier—$1,100,000.

(3) 12 U.S.C. 1832(c)—$1,100.

(4) 12 U.S.C. 1847(b)—$27,500.

(5) 12 U.S.C. 1847(d):

(i) First tier—$2,000.

(ii) Second tier—$22,000.

(iii) Third tier—$1,100,000.

(6) 12 U.S.C. 1884—$110.

(7) 12 U.S.C. 3909(d)—$1,100.

(8) 15 U.S.C. 78u-2:

(i) 15 U.S.C. 78u-2(b)(1)—$5,500 for a natural person and $55,000 for any other person.

(ii) 15 U.S.C. 78u-2(b)(2)—$55,000 for a natural person and $275,000 for any other person.

(iii) 15 U.S.C. 78u-2(b)(3)—$110,000 for a natural person and $550,000 for any other person.

(9) 42 U.S.C. 4012a(f)(5):

(i) For each violation—$350.

(ii) For the total amount of penalties assessed under 42 U.S.C 4012a(f)(5) against an institution or enterprise during any calendar year—$105,000.

By order of the Board of Governors of the Federal Reserve System, October 28, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–28017 Filed 10–31–96; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–128; Special Conditions No. 25–ANM–121]

Special Conditions: deHavilland DHC–8–400 Airplane; High-Intensity Radiated Fields

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued to the de Havilland Aircraft Company of Canada for the de Havilland DHC–8–400 airplane. This airplane will utilize new avionics/electronic systems that provide critical data to the flightcrew. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: December 2, 1996.

FOR FURTHER INFORMATION CONTACT: Tim Backman, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056, telephone (206) 227–2797 or facsimile (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

On January 31, 1995, the de Havilland Aircraft Company of Canada, Garratt Boulevard, Downsview, Ontario M3K1Y5, applied for an amendment to their Type Certificate No. A13NM to include their new model Dash 8 Series 400 (DHC–8–400), Model 401/402 airplane, which is a derivative of the DHC–8–300. The DHC–8–400 is a high wing, T-tail, twin engine, turbopropeller powered regional transport. Each engine will be capable of delivering 4830 shaft horsepower. The flight controls are manual, except for the tandem rudder which will be hydraulically powered. The airplane has a seating capacity of up to 78, and a maximum takeoff weight of 62,500 pounds.

Type Certification Basis

Under the provisions of 14 CFR § 21.101, deHavilland must show that the DHC–8–400 meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. A13NM, or the applicable regulations in effect on the date of application for the change of the Model 300. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A13NM include part 25, as amended by Amendments 25–1 through 25–51, and certain other later amended sections of part 25 that are not relevant to these special conditions. In addition, deHavilland has chosen to comply with the applicable regulations in effect on March 6, 1995; specifically part 25 as amended by Amendments 25–1 through 25–83. In addition to the applicable airworthiness regulations and special conditions, the DHC–8–400 must comply with the fuel vent and exhaust emission requirements of part 34, effective September 10, 1990, plus any amendments in effect at the time of certification; and the noise certification requirements of part 36, effective December 1, 1969, as amended by Amendment 36–1 through the amendment in effect at the time of certification. No exemptions are anticipated. These special conditions will form an additional part of the type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the DHC–8–400 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

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

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The DHC–8–400 airplane avionics enhancement will utilize electronic systems that perform critical functions,

including a digital Electronic Flight Instrument System (EFIS), attitude and heading reference systems (AHRS), and air data systems (ADS). These systems may be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Discussion

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

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the DHC–8–400, which require that new technology electrical and electronic systems, such as the EFIS, AHRS and ADS, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields

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

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

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

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

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

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

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
110 KHz–500 KHz	60	60
500 KHz–2000 KHz	70	70
2 MHz–30 MHz	200	200
30 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1000 MHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

As discussed above, these special conditions are applicable initially to the DHC–8–400 airplane. Should de Havilland apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well, under the provisions of § 21.101(a)(1).

Discussion of Comments

Notice of proposed special conditions No. SC–96–3–NM was published in the Federal Register on July 22, 1996 (61 FR 37844). No comments were received.

Conclusion

This action affects certain design features only on the DHC–8–400 airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the deHavilland DHC–8–400 series airplanes.

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

2. For the purpose of this special condition, the following definition applies:

Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on October 15, 1996.

Darrell M. Pederson,

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

[FR Doc. 96–28107 Filed 10–31–96; 8:45 am]

BILLING CODE 4910–13–M

Office of the Secretary

14 CFR Part 382

49 CFR Part 27

[Docket 46872 and 45657—Amendment #6]

RIN 2105–AB62

Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting From Federal Financial Assistance; Nondiscrimination on the Basis of Handicap in Air Travel

AGENCY: Office of the Secretary, Transportation.

ACTION: Final rule.

SUMMARY: The Department is amending its rules implementing section 504 of the Rehabilitation Act of 1973 and the Air Carrier Access Act of 1986 concerning the provision of equipment to facilitate the boarding by individuals with disabilities on small commuter aircraft. The rule requires air carriers and airports to work jointly to make lifts or other boarding devices available. The rule also harmonizes requirements relating to airport facilities in the Department's section 504 and Air Carrier Access Act regulations and clarifies provisions concerning communicable diseases.

EFFECTIVE DATE: This rule is effective December 2, 1996.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, S.W., Room 10424, Washington, D.C., 20590. (202) 366–9306 (voice); (202) 755–7687 (TDD); or Nancy Ebersole, Office of the Assistant Secretary for Transportation Policy, same street address, Room 9217, (202) 366–4864.

SUPPLEMENTARY INFORMATION:

Boarding Assistance

Background

In the Department's regulation implementing section 504 of the Rehabilitation Act of 1973, which went into effect in 1979, the Department requires Federally-assisted airports to play a role in boarding assistance for individuals with disabilities:

> Each operator at an airport receiving any Federal financial assistance shall assure that adequate assistance is provided for enplaning and deplaning handicapped persons. Boarding by level entry boarding platforms and by passenger lounges are the preferred methods for movement of handicapped persons between terminal buildings and aircraft at air carrier airports; however, where this is not practicable, operators at air carrier airport terminals shall assure that there are lifts, ramps, or other suitable devices not normally used for freight that are available for enplaning and deplaning handicapped passengers. (49 CFR 27.71(a)(2)(v)).

This provision does not necessarily require that an airport acquire its own lifts or other devices. Airports may comply if other parties at the airport (e.g., air carriers) have devices that can be used for this purpose.

Airlines' boarding assistance responsibilities are discussed in the Department's Air Carrier Access Act (ACAA) regulations. In 1990, when the Department published its ACAA rule (14 CFR Part 382), the Department knew that the rule did not address completely the issue of boarding assistance for individuals with disabilities—particularly those with mobility impairments—on some small commuter aircraft. Section 382.49(a) requires carriers to provide boarding assistance, including, ''as needed, the services [of] personnel and the use of ground wheelchairs, boarding wheelchairs, on-board wheelchairs . . . and ramps or mechanical lifts.'' Where level entry boarding platforms are not available, ''carriers shall use ramps, lifts, or other devices (not normally used for freight) for enplaning and deplaning handicapped individuals who need them'' (§ 382.39(a)(2)). However, the rule provides a partial exception to the boarding assistance requirement:

> In the event that the physical limitations of an aircraft with less than 30 passenger seats preclude the use of existing models of lifts, boarding chairs, or other feasible devices to enplane a handicapped person, carrier personnel are not required to carry the handicapped person onto the aircraft by hand. (§ 382.39(a)(4)).

The effect of this provision is that if there is no existing model of lift, boarding chair, or other device that will work with a particular aircraft having fewer than 30 seats, so that hand-carrying (i.e., having airline personnel physically pick up a passenger in their arms and carry the passenger on board) is the only means by which the passenger can board the aircraft, the carrier is not required to provide boarding assistance. The rationale for not requiring hand-carrying is sound: hand-carrying involves significant risks of injury to both airline personnel and passengers, and it is an undignified way of providing assistance. Moreover, in some models of aircraft, the stairs that are built into the door of the aircraft are not strong enough to accommodate two or three persons at a time, as either hand-carrying or the use of a boarding chair would require. The result of this exception, however, is that airlines may legally deny boarding to persons with mobility impairments in some situations. (For discussion of this provision and its background, see 55 FR 8033–8034; March 6, 1990.)

In an advance notice of proposed rulemaking (ANPRM) issued at the same time as the Department's Air Carrier Access Act rule (55 FR 8078; March 6, 1990), the Department asked for additional information and comment on the subject of lift devices for small commuter aircraft. In the ANPRM, the Department noted that, in 1990, the development of lift devices appeared not to have proceeded to the point where imposing requirements for them through regulation would have been justified. We received little information in response to this ANPRM. Subsequently, the Department learned that a number of manufacturers had developed and were attempting to market lift devices for small aircraft (at that time for prices in the $8,000–$10,000 range), and that some airlines had tested models of these lifts in a variety of operational conditions.

In June 1992, the Department held a workshop of parties interested in this issue, including representatives of commuter airlines, disability groups, and lift and aircraft manufacturers. The Department heard presentations from lift manufacturers concerning their devices and from some air carriers that had tested various devices with their aircraft. Department staff also conducted informal surveys of carriers that tested the lifts to determine how well carrier personnel believed the devices had worked with different types of commuter aircraft. From this information, it appeared to the Department that there were available several lift devices that can effectively facilitate boarding assistance for persons with mobility impairments on most small commuter aircraft in the 19–30 seat capacity range.

At the same time, none of the participants in the workshop appeared to suggest that the existing lift devices were designed to work, or could work, with some of the smallest aircraft (e.g., those under 19 passenger seats). Carriers also raised significant concerns about the compatibility of the lift devices with certain existing aircraft models in the 19–30 seat class. For example, while lifts could be extended to the door of the Fairchild Metro and Beech 1900 models, there would be less than a foot clearance between the lift and the propeller assembly, creating a risk of costly damage (e.g., one estimate was $250,000) to the aircraft, as well as the loss of passenger revenue for the two months the aircraft might spend in the shop. Some carrier participants also expressed concerns that, once a lift got a passenger to the aircraft door, it would be difficult or impossible in some models (e.g., the Jetstream, Metro and Beech 1900) to transfer the passenger via a 12-inch-wide boarding chair into the aisle and to a seat in the aircraft (e.g., because of narrow and very limited maneuvering room in some aircraft cabins).

One of the most important discussions at the workshop concerned the allocation of responsibility for obtaining and operating lifts. Generally, commuter carriers and airport operators each believed that the other should bear the primary responsibility and cost for ensuring accessibility to small commuter aircraft. For example, the Regional Airline Association (RAA) representatives at the June 1992 workshop asserted that their efforts to interest airports in sharing the cost of lift devices had generated little response. Carriers cited what they viewed as the greater financial resources of airports (e.g., airports could apply for FAA Airport Improvement Program (AIP) funds or passenger facility charge (PFC) revenues to help fund lifts); airports cited the traditional control of carriers over passenger boarding. Both were wary of potentially increased liability exposure from using lift devices to board passengers with disabilities, and they urged FAA to issue performance specifications for lifts. Disability group representatives were concerned that, in the absence of regulatory direction from the Department, there would be an impasse that would postpone unreasonably passengers' ability to use small commuter aircraft. Lift manufacturers were concerned that lengthy delays in resolving issues in this area could

undermine the fragile, but developing, market for their products.

In February 1993, the FAA issued an advisory circular concerning recommended specifications for such lifts. (FAA Advisory Circular 150/5200XX—''Guide Specification For Mobility Impaired Passenger Boarding Devices''). Subsequently, we learned that many lift models had been modified by their manufacturers to meet the FAA specifications.

The NPRM

In September 1993, the Department published an NPRM proposing that airlines and airports, working together, would obtain lift equipment needed to provide boarding assistance to small commuter aircraft. The rationale for this proposal was that the Department views airports and carriers as key parts of an inextricably intertwined air transportation system. No one can fly between Point A and Point B without using at least one carrier and at least two airports. To complete a trip, every passenger must be able to travel to the first airport, move through the first airport (including ticketing, baggage checking, and check-in, where necessary), use the interface provided by some combination of the airport and the carrier to enter the aircraft, get to his or her seat on the aircraft, fly to the second airport, and reverse the process at that end of the trip. What matters, from the passenger's point of view, is not which participant in the system is responsible for each part of the process, but that the entire process operates so that the passenger can successfully complete the trip.

The air travel system would never work for anyone unless airports and carriers worked together to get passengers from their place of origin to their destination. This is as true for passengers with disabilities as for anyone else. From the Department's point of view, airports and carriers have the responsibility of working together to ensure that passengers with disabilities can use commuter air service, which has become an increasingly important part of the air transportation system. Consequently, the Department proposed to amend both its Air Carrier Access Act regulations (which apply to carriers) and its section 504 regulations (which apply primarily to airports) to establish the joint responsibility of both carriers and airports to ensure that passengers with disabilities have the opportunity to use commuter air service.

The NPRM proposed to create identical requirements in the ACAA and section 504 rules, directing each Federal-aid commercial service airport and each carrier serving that airport to establish a written agreement that would provide for ensuring that lifts, ramps, or other suitable devices would be provided and used to ensure that passengers could enter and leave small commuter aircraft.

The written agreement between carriers and airports, which would not have to be submitted to DOT but which would be kept on file for DOT inspection, would have to be completed within nine months of the effective date of the rule. The agreement would call for full implementation of accessibility to small commuter aircraft at the airport no later than three years from the effective date of the rule. The proposed phase-in period was intended to permit an orderly acquisition process for equipment and to avoid increasing costs through a too-abrupt startup requirement. The NPRM also included a provision allowing carriers to seek a waiver from the requirement to use a lift or other device with a particular type of aircraft on the basis that use of the device would present an unacceptable risk of significant damage to the aircraft. The NPRM asked for comment on whether there should be an exception or waiver provided from the boarding assistance requirement when aircraft design limitations would prevent a passenger with a disability from getting to a non-exit row seat after the individual has entered the aircraft door.

Comments and DOT Responses

1. Responsibility for Obtaining Lifts

It was apparent from comments that airlines and airports continued to disagree over who should be responsible for providing lift devices. Four airports and an airport association said that airlines are traditionally responsible for assisting passenger boarding and for obtaining equipment used for this purpose. It is inappropriate to involve the airport in this activity, since it is airlines that work with aircraft manufacturers on design issues, one of these commenters said. Another suggested that it would violate nondiscrimination provisions of 14 CFR Part 152 for an airport to participate in obtaining lifts that some, but not all, carriers might use. Another remarked that even if airports participated in the funding of lifts, airlines should be responsible for operations and maintenance. Airports, carriers, and their associations commented that insufficient airport improvement program (AIP) funding may be available for lifts, especially at smaller airports, or that the priority assigned lifts for such funding was too low.

Airline associations, on the other hand, said that since airports could use AIP and passenger facility charge (PFC) funds for the purpose of paying for lifts, airports should pay for them. This was also true, they said, because the requirement for lifts was a matter of public policy that should be paid for by the public. One airline association and three other commenters suggested that DOT should subsidize lift purchases (one suggesting that not to do so constituted an ''unfunded mandate''), apparently beyond the level provided in the AIP program.

There was also considerable discussion in comments of how the proposed joint responsibility between carriers and airports might work. One disability group urged that the carrier-airport agreements have sufficient specificity to define how lifts would be shared and used. Carriers and their organizations said that carriers should control use of the lifts, and recommended advance notice requirements of 24 or 48 hours to avoid conflicting demands for lift use.

An airport asked that there be a ''good faith'' exception to the requirement to negotiate a joint agreement, so that if a party has negotiated in good faith it would not be sanctioned for failing to come to an agreement. Other commenters expressed doubts about the negotiation process. An airport doubted that airlines would even show up for the negotiation, while an airline association thought that airports are in a superior bargaining position and do not want to use AIP funds to benefit disabled passengers. A state agency asked how DOT would enforce the requirement to negotiate an agreement, while a lift manufacturer thought the regulation should include more detail on what items should be in the agreement.

Two commenters suggested that the rules could be different for different-sized airports (e.g., airports get lifts for small airports, airlines at large airports, and a 50/50 split at medium airports). Some airports, carriers, and their organizations suggested waiving the requirement at small airports (e.g., at which there were less than a threshold number of enplanements) or where there was an airport a disabled passenger could use within 50 miles, since this is within normal travel distance to airports for many passengers. Moreover, these comments said, many smaller airports receive small amounts of AIP funds, a fact that stretching out the compliance date would not change. Airports and carriers were also concerned that since few lift passengers would be expected at smaller airports, requiring lifts may not be cost-

effective. A larger number of comments, however, mostly from disability community commenters and lift manufacturers, opposed a small airport waiver, saying that a more sensible approach to reduce burdens on small airports would be to grant an extended compliance period for them, provide higher AIP priority for this purpose, or allow the use of boarding chairs at such places.

DOT Response

Who is responsible? Who pays? The Department does not believe that there is a good conceptual or practical alternative to requiring, as proposed in the NPRM, that carriers and airports share the responsibility and cost for ensuring the accessibility of the commuter air transportation system. As discussed above, the air travel system, from the point of view of passengers with disabilities, is an integrated whole in which airports, boarding systems, and aircraft must all be accessible for travel to be possible. Carrier and airport commenters each discussed, in some detail, why they shouldn't be responsible and why the other party should. The intractable fact remains that, absent contribution and cooperation from both parties, accessibility will not happen. In the context of a nondiscrimination statute, that result is unacceptable.

The Department points out that AIP and, in some cases, PFC funds are options that can assist in the purchase of lifts. It is not persuasive to assert that AIP funds are not available for this purpose because of other, purportedly higher priority, demands on the funds. Compliance with ACAA and 504 requirements—which means assuring that passengers with disabilities can move through terminals and onto aircraft—is no less important than carrying out other projects to improve airport services and facilities for all passengers. When it enacted the ACAA and 504, Congress implicitly determined that access for passengers is just as high a priority as access for everyone else. At the same time, given the intertwined nature of the air transportation system, it is reasonable to expect carriers to make a significant contribution to accessibility as well.

The Department is aware that airports and carriers disagree on a considerable number of issues. However, ongoing working relationships exist and will continue in the future. Airports and carriers must work together and find ways of agreeing on a wide variety of matters for the air transportation system to work. Consequently, the concept of airports and carriers negotiating to determine how accessibility will be provided is not something new and foreign. It is also far more consistent with the Administration's regulatory policy of avoiding dictating national, one-size-fits-all, solutions to issues that are better decided locally by the parties concerned.

The requirement to negotiate an agreement, like other parts of these rules, is enforced through existing mechanisms. For example, if an airline failed to comply with its obligations, the enforcement procedures of 14 CFR § 382.65(c) and (d) would apply. If an airport failed to comply, the procedures of 49 CFR Part 27, Subpart C, would apply.

The Department has paid close attention to the costs of boarding assistance requirements, which are described in the regulatory evaluation placed in the docket for the rulemaking. In particular, we would note that at least one lift model is available in the $15,000 range. In order to mitigate these costs, the Department is taking two principal steps. First, those commercial service airports with 2500—10,000 annual enplanements are exempt from the boarding assistance requirement. These airports account for only about 1 percent of all enplanements, so the exemption should not significantly damage the accessibility of the air travel system to the vast majority of passengers with disabilities. If boarding assistance equipment and services exist at such an airport, however, they would have to be made available to consenting passengers (except for hand-carrying, which is not required to be used). This is not a requirement to provide such equipment and services where they do not already exist; it is an ''if you have it, use it'' requirement. Second, the Department will phase in boarding assistance requirements depending on the size of the airport. This point is discussed below under the ''Time Frames'' heading.

It is important that boarding assistance equipment be maintained properly, so that it is available for use by passengers who need it. Consistent with provisions of existing ADA regulations, the rules will require carriers and airports to maintain this equipment in proper working order.

2. Aircraft-Related Issues

The NPRM recognized that lifts may not work well with all models of commuter aircraft, and asked whether waivers or exceptions for specific aircraft types that could be damaged by lifts was appropriate. Disability community commenters and lift manufacturers generally opposed this idea. A manufacturer said its product is compatible with all aircraft in the 19–30 seat range and that any compatibility problems could be worked out between the carrier and the manufacturer. Another manufacturer said it made ''adapters'' that would make its lifts usable with various aircraft models that otherwise could be damaged, such as the Fairchild Metro and Jetstream 31. (DOT staff contacted the manufacturer, learning that it had a design for the adapter but had not built a prototype. The manufacturer estimated that if it built the adapter, it would add about $3000 to the $56,000 price of its lift.) Other commenters made quite a different point—that in some operating conditions, such as boarding a seaplane from a floating platform or in severe winter weather in Alaska, it was doubtful that use of lifts would be feasible.

Carriers and their organizations requested exemptions for the Fairchild Metro and Beech 1900 models because of the potential damage problem. Also, airports, carriers, and their organizations sought exemptions for small airports and carriers with one-employee operations. The latter request was made on the basis that it can take two persons to provide boarding assistance to some passengers and extra personnel might have to be brought in to provide the assistance.

One disability group said that inexpensive modifications can be made to lifts to make them work with most aircraft. This commenter said that carriers should have a burden of proof to demonstrate that an aircraft cannot be accessed without violating established safety standards before a waiver would be warranted. Other commenters suggested that, on 24-hour notice, an alternative means of compliance should be provided (e.g., substituting a different aircraft), or that airports should have enough different sorts of lifts to service all aircraft that stop there.

About ten comments from carriers said that there were problems with some aircraft even if a lift could get a wheelchair-using passenger to the aircraft door. For example, turning radius limits, aisle widths of 12–14 inches, or other constraints or obstruction problems may make it difficult, particularly for large, heavy, or significantly mobility-impaired passengers, to proceed to a seat, or at least to a seat in which the passenger could sit consistent with the FAA's exit row seating rule. (Some disability community comments recommended modifying the exit row rule in small aircraft to avoid this latter problem.) Carrier comments suggested that

boarding assistance should be waived for these aircraft , since it would be a futile exercise. (Waiver requests went primarily to the Fairchild Metro, the Jetstream 31, and the Beech 1900 C and D, both on this ground and/or on the ground of potential aircraft damage.) In addition, carriers and some lift manufacturers said there should be an exception to the boarding assistance requirement for situations in which a passenger's size, weight, or lack of upper body strength made it impracticable to assist him or her through a low cabin doorway to a seat without risking injury to the passenger or carrier personnel. They also said there are no flight attendants on 19-seat aircraft to assist passengers with disabilities and insufficient ground crew to assist at many non-hub airports. One disability community commenter pointed out, however, that some individuals who cannot climb steps—and therefore need a lift to get into the aircraft—can walk a few steps and therefore proceed to a seat in these aircraft.

DOT Response

From comments and from its own review of various aircraft, the Department is aware of certain ''problem aircraft'' with which existing models of lifts do not work well. For instance, float planes, which land on water and often pick up passengers from docks or floating platforms, appear to be incompatible with lift use. The final rule will not require boarding assistance for float planes.

The Department is aware that there are locations in which inclement weather can sometimes make aircraft operations difficult. The Department does not believe that it is advisable to waive boarding assistance requirements in such places, however. Even airports that face difficult climate conditions enjoy substantial periods in which weather does not preclude aircraft or lift operations. It makes sense to require accessibility for those times. Consequently, while the Department does not intend the rule to require the operation of boarding assistance equipment when it would be unsafe due to bad weather, the rule will apply to airports in all parts of the country. We do not anticipate that this will be an overwhelming problem at most times and places. Weather that is sufficiently bad to preclude boarding assistance but not bad enough to preclude aircraft operations is not likely to occur on such a large percentage of days as would make a boarding assistance requirement futile. When weather is bad enough to preclude aircraft operations, the problem is obviously moot.

The Department is persuaded that it is not reasonable to impose boarding assistance requirements with respect to aircraft models in which a lift would create a significant risk of damage to the aircraft (e.g., by coming within less than a foot of the propeller assembly) or in which the internal configuration of the aircraft effectively precludes a passenger using a boarding or aisle chair from getting to a non-exit row seat. To the Department's knowledge, the following are the only aircraft models that would be exempt from boarding assistance requirements on this basis:

- *Fairchild Metro*—The major problem with accessing this aircraft via a lift is a propeller assembly that juts out almost on line with the passenger entrance door. Even if a lift is able to access the door at an angle, there would be only 4–11 inches of space between the lift and the propeller assembly. This presents a high risk of costly damage to the aircraft (e.g., according to carriers, up to an estimated $250,000 plus lost revenue from the approximately two months of repair time) if lifts are deployed with only slight imprecision. In addition, the four foot-high doorway, 12-inch aisle, and high platform on which seats are located present nearly insurmountable barriers to access for non-ambulatory passengers to non-exit row seats.
- *Jetstream 31*—Some lifts cannot access this aircraft because of a curvature of the aircraft doorsill that prevents lifts from interfacing with the aircraft door without damaging the aircraft. Other lifts can interface with the aircraft; however, the low door makes passenger boarding from the lift a very awkward procedure (e.g., a passenger may have to be tilted backward to a nearly supine position to enter the aircraft). The more serious problem, however, is enabling a passenger to get from the aircraft door to a non-exit row seat. To get to the aircraft aisle from the door requires a passenger in a boarding chair to make a 45-degree turn in the aisle (which is possible only for a passenger with a 12.5 inch width or less). This aircraft has a 13-inch aisle, but seats overhang the aisle, making it impossible for even a 12-inch wide boarding aisle to access more than one non-exit row seat. If a passenger is able to get to this seat, the passenger must have good upper body strength and the help of two carrier personnel to be transferred from the chair and lifted over the back of the seat.
- *Beach 1900 (C and D models)*—A cabin configuration similar to that of the Jetstream 31 presents very significant barriers to providing access to non-exit row seats for non-ambulatory passengers. The four-foot high aircraft door makes it necessary to tilt a boarding chair to a nearly supine position, with the carrier personnel assisting the boarding having to bend over while maneuvering the chair through the door. A 12-inch chair cannot fit down the aircraft aisle, and does not allow the maneuvering room necessary for an independent transfer. Passengers must have good upper body strength and assistance from two carrier personnel to rotate and swing their bodies into a seat located behind the chair (or must crawl down the aisle to a seat).

The rule includes exceptions from boarding assistance requirements for these three aircraft models. If there are other aircraft that have similar difficulties, the rule gives the Department of Transportation discretion to add to the list. It should be emphasized that air carriers are not authorized to exempt other aircraft from boarding assistance services on their own initiative.

It should be noted that there may be situations in which the ability of a passenger to use a boarding chair to get to a non-exit row seat may vary with the passenger's size and weight. For example, a very large, heavy passenger may not be able to fit into the boarding chairs used on narrow-aisle commuter aircraft, or may not be able to walk through a narrow aisle to a seat, while a smaller passenger does not have the same problem. If, for this reason, the passenger cannot get to a seat he or she can use, providing boarding assistance is a futile gesture that the carrier is not required to make. On the other hand, a passenger who cannot climb steps—and therefore needs a lift to board—may be able to walk a few steps to a seat. In such a situation, providing boarding assistance is not a futile gesture, and the rule requires carriers to provide it. If a passenger with a disability asserts that he or she can walk the needed distance from the aircraft door to a non-exit row seat, the carrier must provide the boarding assistance and allow the passenger to attempt to reach the seat.

Passengers who use lifts to access commuter aircraft need to know, in advance, whether lift service is available. Passengers are unlikely to be aware which aircraft model their flight will use. Consequently, the Department is amending the information section of the ACAA rule to direct carriers to tell passengers who request the information or who note that they use a wheelchair for boarding whether the aircraft model scheduled to be used for a particular flight is one on which boarding assistance is available. This information would include notice of the availability of boarding assistance at boarding, departure, and intermediate points. In addition, carriers should make such information routinely available on all media through which they make information available to the general public (e.g., 800 numbers, reservation systems, published schedules). The Department emphasizes the critical need for this information to be conveyed accurately and promptly, because, in its

absence, the travel plans of individuals with disabilities are likely to be disrupted. Airlines and their agents *must* ensure that this function is performed. Like other violations of the Air Carrier Access Act, failure to comply with this information provision can subject regulated parties to enforcement action, including civil penalties.

Consideration of issues concerning aircraft design for accessibility is beyond the scope of this rulemaking. We note, however, that some older models of commuter aircraft that present some of these problems appear to be gradually being phased out of the commuter fleet. The 1996 FAA commuter safety standards are likely to accelerate the elimination of some older 19-seat models from the fleet. The exit row rule is part of an FAA safety rule separate from Part 382. Consideration of changes in that rule related to seat availability in small commuter aircraft are also beyond the scope of this rulemaking.

The Department does not believe, given the way aircraft are used and scheduled by carriers, that it would be practicable to require more accessible models of aircraft to be designated or substituted for flights that passengers with disabilities want to use, even on advance notice.

3. Boarding Assistance Methods

The NPRM proposed that boarding assistance should be provided using ''suitable devices (not normally used for freight)'' but that ''hand-carrying'' (i.e., picking up a passenger's body in the arms of airline personnel) would never be required. There was general agreement among commenters that hand-carrying was a bad idea, for both safety and dignity reasons. Some disability community commenters did say, however, that it should be permitted in an emergency or when a lift was not available or inoperative, at least with the consent of the passenger.

The NPRM, like the present rule, did not exclude boarding chairs, used to carry passengers up airstairs, from the scope of ''suitable devices'' that could be used to provide boarding assistance. It did ask for comment on whether the use of boarding chairs was appropriate for this purpose. Several commenters (including lift manufacturers, disability community commenters, and an airline) said that boarding chairs should be used for this purpose only when a lift is inoperable or when there is an emergency. For most disability community commenters, using a boarding chair in this way is tantamount to hand-carrying and therefore strongly disfavored. (One commenter noted that the use of boarding chairs for vertical access, which it regarded as objectionable, should be distinguished from the use of aisle or transfer chairs on board the lift or aircraft, which are needed to assist many passengers to their seats.) On the other hand, many other commenters (including airlines and their groups, airports, and one disability group) advocated permitting the continued use of boarding chairs when it was more cost-effective to do so (e.g., at an airport with few enplanements), when it would avoid delay (e.g., when an airport's lift was being used elsewhere), or when a lift was broken. These commenters said allowing the use of boarding chairs in at least some situations would provide greater flexibility to all concerned.

DOT Response

The main point of this regulation is to ensure that, in as many situations as possible, passengers with disabilities be able to travel by air, with safety and dignity. Having airline personnel carry a passenger up stairs in a boarding chair increases risk of injury both to passengers and airline personnel, and it can often be an undignified and frightening experience for passengers. Consequently, the rule does not permit this practice.

This does not mean that boarding chairs and/or aisle chairs cannot be used in the boarding assistance process. Indeed, their use is necessary to get the passenger to a seat from a lift. Nor does it mean that carrier personnel are relieved of their obligation, as part of the boarding assistance process, to assist passengers in transferring from their own wheelchair to a boarding or aisle chair, and then from that device to an aircraft seat. It just means that, under normal circumstances on 19–30 seat aircraft, carrier personnel may not lift passengers in boarding chairs up stairs as the means of effecting the level change needed for boarding. Boarding stairs are not ''suitable devices'' for this purpose on 19–30 seat aircraft.

In abnormal circumstances (e.g., if a lift breaks down and needs to be repaired) or with respect to aircraft that are exempt from the boarding assistance requirement, the carrier would use whatever means are available (including boarding chairs but not hand-carrying) to provide boarding assistance. The use of alternative means is conditioned on the passenger's consent. This is not a requirement to create a means of boarding assistance where none exists or is feasible. It simply means that if a practicable alternative means of providing assistance in fact exists in a particular situation, carriers are to use it. In an emergency evacuation situation, the carrier would obviously do whatever is needed to deal with the emergency, regardless of other considerations.

There is apparent unanimity that hand-carrying (in the sense of bodily picking up a passenger for purposes of a level change, as distinct from providing assistance using a boarding or aisle chair or assisting in the transfer of a passenger) is a bad idea. The final rule specifically provides that this practice is never required (other than when necessary for an emergency evacuation).

The Department notes that the requirements of this amendment concern boarding assistance only for 19–30 seat commuter aircraft. The existing provisions of Part 382 concerning boarding assistance for larger aircraft (*see* § 382.39(a) (1)–(3)) remain in effect, without change. Under these requirements, airlines may carry passengers up airstairs in boarding chairs. Airstairs used with larger aircraft are more likely to have sufficient weight-bearing capacity for this type of boarding assistance, and many of the lift models designed for 19–30 seat aircraft do not work with larger aircraft. While the Department believes that use of lifts for boarding is preferable for larger as well as smaller aircraft, changes in the methods of boarding assistance used for the larger aircraft are outside the scope of this rulemaking.

4. Time Frames

The NPRM contained two time frames. First, it proposed 9 months from the effective date of the rule for carriers and airports to complete agreements to provide lifts. Second, it proposed 3 years from the effective date of the rule as the implementation date for lift service under the agreements.

With respect to the time period for the agreements, airline associations, airlines and some airports suggested a year, principally because they believed it would take that time to work out the multiple agreements necessary under the NPRM. Lift manufacturers and disability groups, on the other hand, favored shorter time frames (e.g., 2–6 months), principally because many years have passed since the ACAA regulations have been in place, lifts have been available for some time, further delay would work a financial hardship on manufacturers, and airlines and airports have had a long time to prepare to provide boarding assistance. Given the accessibility needs of passengers, these commenters did not believe that a longer negotiation period was warranted. An airport association,

an airport, and an airline favored the proposed 9-month period.

There was a similar variety of views with respect to the implementation date for the agreements. Disability groups and equipment manufacturers favored a 1 or 1½-year implementation period, rather than the three-year period proposed in the NPRM, but supported extensions of up to five years for small airports, as opposed to waivers. These commenters said that lifts are available, that airports and airlines have had a long time to prepare to provide boarding assistance, and that equipment costs were small compared to other costs regularly incurred by airlines and airports. One disability group said that boarding chairs should be required to provide access immediately.

On the other hand, an airline association and some state and local transportation agencies favored the proposed 3-year period. Many of these commenters added that the rule should be flexible, with provisions for granting relief from the deadline if factors such as funding delays or the inability of manufacturers to meet demand prevented parties from complying on time. One airline association said the 3-year period should start to run from the date of the agreement, rather than the effective date of the rule, because manufacturers would not be able to meet the demand otherwise.

Two disability agencies said that implementation should be required as soon as practicable, with three years being the outside limit. Two commenters, an airline and an individual, favored a two-year period. Two lift manufacturers suggested a staggered implementation schedule, with 12–15 months for larger airports, two years for medium-size airports, and three years for small airports. They expressed the concern that, absent such a schedule, acquisition of lifts would be back-loaded at the end of the implementation period.

DOT Response

The Department's task is to find a good balance between the need to implement accessibility as soon as possible and the need to give parties a reasonable amount of time to do the work needed to accomplish this objective. With respect to the time to conclude agreements, the Department believes that the NPRM proposal of 9 months is a good middle ground between these two considerations, as well as between the concerns expressed by different groups of commenters.

With respect to implementation time, the Department will require the agreements to be carried out as soon as practicable, as is the typical practice in disability regulations requiring modifications to facilities or practices (e.g., program accessibility changes required under the Department of Justice ADA Title II regulation). The maximum time for implementation will be two years for large and medium hubs (1.2 million or more annual enplanements), three years for small hubs (250,000–1.2 million annual enplanements), and four years for non-hub primary airports (10,000–250,000 annual enplanements). This phase-in will result in accessibility at the airports carrying the greatest number of passengers sooner (hubs handle 97–98 percent of total enplanements), while reducing costs and burdens at the smaller airports. Again, these time frames represent what the Department believes to be a good balance among the policy considerations and commenter concerns involved.

5. Other issues

The NPRM raised the question of whether use of lifts would create schedule disruptions or delays, particularly when multiple demands on lift use might be made. Commenters had a number of thoughts on this point. An airline association said that it takes 10–15 minutes to get a lift to a given aircraft and board a disabled passenger, possibly interfering with the 5–20 minute turnaround time many carriers try to achieve, leading the group to request a 48-hour advance notice requirement for assistance. Another airline association and an airline also supported the idea of advance notice for boarding assistance, to avoid or help deal with conflicting demands for lift service. Two airlines and an airport expressed concern about delays, particularly at hub airports where there might be multiple demands for assistance, but one of these airlines noted it had no accurate data on the time needed to complete a boarding using a lift. However, airline commenters generally said that boarding passengers in chairs was faster and more cost-effective than using lifts.

Two commenters noted that airlines encounter flight delays for a variety of reasons, and thought that assisted boardings would not significantly add to this problem, given their relative infrequency. A lift manufacturer said an actual boarding with its lift took just 3–5 minutes, faster, it said, than using a boarding chair. Another manufacturer and a state agency noted that, under an FAA advisory circular for lift devices, lift boardings are to be accomplished in six minutes or less, which would also be unlikely to create significant delays. Several disability community commenters also expressed doubts that delays would be a significant problem, saying there was no data to support the idea that a problem would exist.

The NPRM also asked about what, if any, training requirements there should be for personnel who provide boarding assistance. Two airline associations and two airlines said that no additional training requirements—beyond the general training requirement provided in the existing ACAA rule—was warranted. Airlines already have a vested interest in making sure their personnel perform their duties safely and effectively, one of the associations added. Three equipment manufacturers also opposed additional training requirements, one noting that the FAA advisory circular already called for training for lift operators, one asserting that the training required by the FAA circular was too lengthy, and the other expressing concern about the cost of training to manufacturers.

A larger group of commenters, including disability groups, individuals, and state and local agencies, supported more specific training requirements. Four of these specified that sensitivity training should be required. A disability group said DOT should strenuously monitor training, since they saw poorly trained employees as one of the biggest problems that passengers with disabilities encounter. An airport supported training but suggested that it should be provided by manufacturers and carriers (unless the airport actually operated the lift).

Three commenters suggested that the use of lifts should be required for aircraft with fewer than 19 seats, if the lifts work with the particular aircraft. One of these commenters noted two small aircraft models with which lifts would work. An airport suggested that this requirement would make sense only in cases where there was an accessible means of deboarding at the destination point. Several disability community commenters said that, whatever the final requirements, allowing denied boardings was not acceptable. Lift manufacturers emphasized their products were available.

DOT Response

The final rule, like the NPRM, requires boarding assistance under the agreement required by this amendment only for 19–30 seat aircraft. There may be some situations in which the same boarding assistance equipment can be used to provide access to larger or smaller aircraft. Where this is the case, the Department recommends that carriers and airports use it for this

purpose, in preference to denying transportation on smaller aircraft or using less desirable means of boarding assistance for larger aircraft.

The general ACAA requirement of training to proficiency (including refresher training, as needed, to maintain proficiency) in matters affecting transportation of passengers with disabilities applies to boarding assistance as well as other activities (*see* § 382.61(a); to the extent that airport personnel are involved in boarding assistance at a given airport, a similar requirement extends to airports through the amendment to 49 CFR Part 27). While training is clearly important for all aspects of transportation accessibility, the Department does not believe, as a general matter, that a separate training requirement specifically focused on boarding assistance is needed. We note that § 382.61 requires refresher training, as appropriate to the duties of each employee, to ensure that proficiency is maintained. Because, in the absence of means of boarding assistance, some commuter carriers may have served few persons with mobility impairments, carrier employees trained previously may not have maintained proficiency in boarding assistance and other matters necessary to proper service to such passengers. Where this is the case, the training requirements of the ACAA call for bringing relevant personnel up to proficiency in all these matters.

There is one exception. The training requirements of § 382.61(a) apply only to carriers who operate aircraft with more than 19 seats. Carriers who operate aircraft with 19 seats, but do not operate larger aircraft, are not covered by this requirement. Consequently, this rule will require any carriers falling into this category to provide training to proficiency in boarding assistance for those personnel who perform boarding assistance duties. This amendment does not require such carriers to carry out other training responsibilities under § 382.61(a), although it is intended that employees of these carriers receive refresher training as needed to maintain proficiency in boarding assistance services.

The information provided by commenters concerning the time required for assisted boarding varied considerably. Even given the lengthier scenarios, however, it is not reasonable to conclude—absent a massively larger demand for assisted boardings than any commenters have anticipated—that significant systemic schedule disruption is likely to occur. As some commenters pointed out, individual flights are delayed for a variety of reasons—weather, mechanical problems, air traffic congestion, waiting for passengers from incoming connecting flights, etc.—on a routine basis. No one likes these delays, but it seems fanciful to suggest that delays from lift boardings of disabled passengers will make a significant difference in the overall pattern of delayed flights, or have a measurable effect on a carrier's overall on-time performance record.

The Department is not persuaded that this concern warrants adding a 48-hour advance notice requirement for boarding assistance. Obviously, passengers may wish to inform carriers of their plans in advance to attempt to make their arrangements as smooth as possible. However, as in the case of passengers who are traveling with electric wheelchairs, we believe it is reasonable for airlines to have some reasonable amount of time to provide the service in question. Consequently, carriers will be permitted to require that an individual needing lift service check in at least an hour before scheduled departure.

Airport Facility Requirements

Background/NPRM

The Department's current section 504 and ACAA provisions concerning airport facilities differ in a number of details. This NPRM proposed to make changes to harmonize the two sets of requirements. The Department published a notice of proposed rulemaking for section 504 and an advance notice of proposed rulemaking under the ACAA that would have harmonized the two provisions in 1990, at the same time as it published its ACAA final rule. The Department received very few comments in response to those notices, and many of the specific points raised by the commenters have been overtaken by the enactment of the Americans with Disabilities Act (ADA).

The NPRM proposed to add requirements in the ACAA and section 504 rules for a ''program accessible'' path from the beginning of a passenger's encounter with the airport facility to the aircraft door, with emphasis on the means of moving between the gate and the aircraft. This is a particular concern with respect to commuter aircraft, which typically do not use loading bridges, and passengers often have to descend from the gate level to the tarmac level to board the aircraft. The proposal suggested that meeting Title III or Title II ADA standards was an appropriate requirement for airports and airlines under the ACAA and section 504, respectively.

Because ADA facility accessibility standards say little specifically about airports, the Department proposed to retain, with some modifications, the airport-specific requirements of the current ACAA and 504 rules. The NPRM sought comment on whether doing so would be confusing or duplicative. The NPRM repeated the existing language of the ACAA regulation concerning telecommunication devices for the deaf (TDDs), saying that at least one TDD shall be placed in each terminal. The NPRM asked for comment on how this requirement should be interpreted and implemented.

Comments

Two issues predominated in commenters' discussion of this portion of the proposal: the idea of an accessible path through the airport and the placement of TDDs. A disability group objected to the accessible path proposal on the basis that it fell short of what was required by the ADA and ACAA. This commenter also said that such steps as using a boarding chair to carry a passenger down steps from the gate level to the tarmac was not a proper part of an accessible path. A state agency said that using program accessibility approaches other than facility modification had saved the commenter a substantial amount of money. Three disability community commenters said that the ADA accessibility guidelines (ADAAGs) should apply to an accessible path through airports. An airport association and an individual suggested that airports should have five years to implement an accessible path. An airport supported the accessible path concept, as long as the rule made clear that boarding assistance was the airlines' job. An individual said that airports should have a disability specialist available to assist passengers. A state agency noted that there were some inconsistencies between the ADAAGs and the ACAA provisions that the NPRM proposed to retain, and also pointed to inconsistencies between the ADAAGs and the Uniform Federal Accessibility Standard (UFAS), which public entities could choose to use under Title II of the ADA.

With respect to TDDs (one commenter suggested using the term ''TTYs'' instead), two commenters suggested requiring improved signage to direct passengers to where the instruments were located. A number of commenters asked for more specificity in the definition of ''terminal,'' to avoid differing interpretations. A disability agency suggested simply using the ADAAG standard for placement of these

phones, while a TDD manufacturer supported specifying a number of specific locations in terminals where TDDs would have to be placed. (This manufacturer quoted a $995 price for a vandal-resistant public unit.) An airline favored keeping the existing standard, to avoid confusion between ADA and ACAA requirements.

DOT Response

The Department believes that the simplest and best solution to the issue of airport accessibility standards is to make applicable to airports (through section 504) and airlines (through the ACAA) the requirements applicable to other public facilities and public accommodations of Titles II and III of the ADA, respectively. This means that there will be one common standard for airport access, under which airports and airlines will be subject to the same obligations as other transportation facilities and places of public accommodation. Special airport-related standards that, as some commenters pointed out, could cause confusion will be eliminated.

This approach is consistent with the relationship among disability statutes that Congress intended. Air carriers' terminal facilities appear not to be subject to direct ADA coverage. Under the Department of Justice (DOJ) rules implementing Title III of the ADA, airport terminals are not viewed as a place of public accommodation. The reason is that places of public accommodation include only those terminals used for the provision of ''designated'' or ''specified'' public transportation, and transportation by aircraft does not constitute ''designated'' or ''specified'' public transportation. Congress excluded transportation by aircraft from these ADA provisions because Congress had already subjected carriers to the ACAA, and it did not want to impose duplicative requirements.

The language and legislative history of the ADA, however, reveal no Congressional intent that carriers' facilities be subject to any different substantive requirements from those affecting places of public accommodation. It is clear that carriers have an ACAA obligation with respect to airport facilities. In defining the standard by which carriers' compliance with this obligation is judged, the Department believes it makes sense to refer to the ADA standard for public accommodations. Consequently, the final rule provides that carriers, with respect to terminal facilities and services, would be deemed to comply with their ACAA obligations if they meet the requirements spelled out for places of public accommodation in Department of Justice Title III ADA rules.

Under Department of Justice regulations implementing Title II of the ADA (28 CFR Part 35), ''title II applies to everything and anything a public entity does * * * All governmental activities of public entities are covered.'' (56 FR 35696; July 26, 1991). Public airport authorities are public entities for purposes of Title II; consequently, their activities and facilities appear subject to the requirements of DOJ Title II rules. It has long been clear that airport authorities that receive DOT financial assistance are subject to section 504 of the Rehabilitation Act of 1973, as amended. In amending the Department's section 504 rule provision concerning DOT-assisted airports, it makes sense to refer to ADA standards. (Congress, in enacting the ADA, made clear that it intended for consistent substantive standards to apply under both statutes.) Therefore, under the final rule, the basic standard for judging whether a public airport authority complies with section 504 is compliance with the DOJ rules for Title II of the ADA.

Obviously, there are some portions of airports at which airport operators' section 504 obligations and the ACAA obligations of carriers overlap. The Department believes that these overlaps can be treated in the same manner as the relationships between public entity landlords and private entity tenants discussed in the Department of Justice ADA regulations. This means, of course, that airports and airlines will have to work out accessibility issues and relationships at the local level.

This approach means that there will not be special requirements in the DOT rules concerning such issues as placement of TDDs and inter-terminal transportation. Inter-terminal transportation will be subject to the DOT ADA regulations affecting transportation services generally. (*Intra*-terminal transportation, as a service provided by airlines and/or airports, is subject to the same Title II or Title III requirements as any other service. There are no ADAAG standards applicable to the design or construction of intra-terminal vehicles, such as the electric carts used in many airports.) Placement of TDDs will be subject to the same standards affecting public facilities and places of public accommodation under the ADA. Consequently, the issue concerning the definition of ''terminal'' for TDD placement purposes becomes moot.

We point out that not only the general terminal areas, but also some areas open to part of the traveling public (e.g., the airline ''clubs'' providing special accommodations in terminals to frequent fliers or persons who pay a fee to the airlines) are subject to the accessibility requirements of this rule. These are spaces that, in Title III terms, would be places of public accommodation, and it is unlikely that most would fall within the limited ''private club'' exception to the ADA, as defined in the Department of Justice Title III rules. One implication of this coverage is that, if telephone service is provided to ''members'' within the club space, then TDD requirements would apply to the ''club.'' It would not be consistent with the rules for the carrier to refer the passenger to a TDD phone in the general passenger area of the terminal, since the whole point of the club is to provide a refuge from the noise and bustle of the terminal.

The rule provides that the Americans with Disability Act Accessibility Guidelines (ADAAGs) will be the standard by which airport facility accessibility will be judged. The ADAAGs include a provision (10.4.1) dealing with new construction at airports. This provision applies directly to new construction and alterations at airports. It is also the standard for modifying facilities to meet accessibility requirements for existing facilities, under the ''program accessibility'' (see 28 CFR § 35.150) or ''barrier removal'' (see 28 CFR § 36.304–305) provisions of the Department of Justice Title II and Title III rules.

The Department is aware that, for the present, public entities subject to Title II of the ADA can choose between compliance with the ADAAGs and compliance with the Uniform Federal Accessibility Standards (UFAS), which differ in some particulars from the ADAAGs. The Department of Justice, DOT, and the Architectural and Transportation Barriers Compliance Board (Access Board) have proposed applying the ADAAGs as the exclusive standards for Title II entities. Rather than further amend the ADA and ACAA rules after this ADA rule change goes into effect, we believe it is more sensible to use the ADAAGs as the standard for airport accessibility at this time. We regard the ADAAGs as the pre-eminent accessibility standard at this time, and its use will also avoid any inconsistency between the standards applicable to airlines and airports under this rule.

Given the application of ADA requirements and standards to airport facilities, the only point on which the Department believes it is necessary to spell out an additional specific requirement concerns an ''accessible

path'' for level changes between gate and aircraft boarding areas. The Department clearly interprets ADA requirements as applying to the path an individual must take between the entrance to the airport and the means of boarding the aircraft, specifically including the way a passenger moves between the gate and the aircraft. This is important because, in many cases, the gate area will be on an upstairs level of an airport, while aircraft—particularly small commuter aircraft—are boarded from the tarmac. The basic idea is that a key aspect of airports' and carriers' program—getting someone through the airport and onto an aircraft—must be accessible to individuals with disabilities, including those using wheelchairs.

Communicable Diseases

Background

Section 382.51 of the existing ACAA rule provides that a carrier may not refuse transportation to a passenger, require the person to provide a medical certificate, or impose other conditions or restrictions on passengers, on the basis that the passenger has a communicable disease, except

> with respect to an individual who has a communicable disease or infection which has been determined by the U.S. Surgeon General, the Centers for Disease Control, or other Federal public health authority knowledgeable about the disease or infection, to be transmissible to other persons in the normal course of flight.

This provision was originally designed in response to a number of incidents in the 1980s in which persons with AIDS had been denied transportation or otherwise discriminated against by air carriers, apparently because of fear of, or misinformation about, HIV infection and how it is transmitted. It subsequently became apparent to the Department that this provision of the rule needed clarification. Given the absence of definitive guidance from the Surgeon General, the Centers for Disease Control, or the Public Health Service, (which the Department has unsuccessfully sought), the closest approach to medical guidance the Department has been able to find is a Food and Drug Administration (FDA) regulation listing several diseases (e.g., infectious tuberculosis, several viral hemmoragic fevers) appropriate for travel restrictions. The Department issued guidance based on this FDA list, stating that since other diseases have not been named by Federal public health authorities, carriers may not deny or restrict transportation of persons with other diseases.

Carrier medical personnel expressed the concern that this guidance is too restrictive, leading to potential conflicts between the rule and their normal, prudent medical judgment. They have cited persons in the infectious stages of chicken pox or measles as persons who it may be appropriate to restrict, to protect the health of other passengers. In response to their concern, an airline association requested that the Department withdraw the guidance in question. In addition, it has been pointed out that, read literally, the current regulatory provision could be construed to allow carriers to exclude persons with illnesses that are clearly communicable by airborne transmission or casual contact but which are not serious for most persons, such as the common cold (the Department would not construe the rule in this fashion, however).

The Department based its NPRM proposal on three principles:

> (1) It is reasonable for carriers to impose restrictions on transportation only of persons with diseases that are readily communicable, in the normal course of flights, by airborne transmission or casual contact. (For example, restrictions could not be imposed on persons because they were infected with HIV.)
>
> (2) It is reasonable for carriers to impose restrictions on transportation only of persons with diseases that normally have serious consequences for the health of persons who catch the disease. (For example, restrictions could not be imposed on persons because they have a common cold.)
>
> (3) Carriers should impose restrictions on persons for reasons relating to communicable diseases only with the advice and concurrence of a physician. (That is, airline personnel such as pilots, flight attendants, or gate agents could not make unilateral decisions to impose restrictions on passengers.)

NPRM

The Department proposed rewriting the current § 382.51(b) to reflect these three principles. The NPRM proposed two methods carriers could use to implement these principles. First, when faced with someone who may have a contagious disease that may make travel inadvisable, the carrier can obtain a specific recommendation from a physician. Second, the carrier, together with its medical staff or consultants, could devise a list of diseases that can affect travel, consistent with the three principles. The list would include information on the stages of various diseases during which travel would be contraindicated. The list would be made part of the carrier's regular information base for employees (e.g., manuals, computer reservation system instructions). The NPRM suggested that carriers, to promote consistency, should coordinate a single, unified list, so the same diseases have the same consequences on all airlines.

Under the proposal, in cases where there is no dispute between the carrier and a passenger over the fact that a passenger has a disease on the list at a point in time when it is contagious, the passenger could be denied transportation until a later time without the carrier having to obtain a recommendation from a physician in the particular case. However, if the passenger denied that he or she has a disease on the list, or acknowledges having the disease but insists that it is not at the stage which the list describes as infectious, then the carrier employee would have to consult a physician.

In addition, the proposed amendment stated that airlines would have to impose the least restrictive alternative in communicable disease situations (e.g., should not deny transportation when requiring a medical certificate is sufficient); would allow a passenger to travel at his or her original fare if travel is postponed as the result of having a communicable disease; and would provide, on request, a written explanation of any restrictions that are imposed for reasons relating to communicable diseases.

Comments

One airline and a number of disability community commenters supported the NPRM proposal. One disability group suggested adopting the Department of Justice's ''direct threat'' standard (from DOJ's ADA Title III rule), including its requirement that there be an individualized assessment, based on reasonable judgment that relies on current medical knowledge or the best objective evidence available, to ascertain the nature, duration, and severity of the risk, as well as mitigation measures that could apply. Providing the passenger a face mask was one mitigating measure suggested by two commenters. Another such group recommended that the carrier should be required to consider the recommendations of the passenger's treating physician, while a carrier said that the passenger's personal physician should certify that the individual can fly safely.

With respect to the idea of a list of communicable diseases, airlines and their associations had a variety of comments. One airline wanted DOT to create the list. Other airlines wanted a Federal health agency to create a list, said the medical community's input

should be obtained, that there should be flexibility to add new diseases to the list, and that there should be uniformity in any such list given that passengers often use more than one carrier for a trip. Two carriers said that airlines, which do not have extensive medical staffs, should not be assigned the task off creating a list. For the same reason, one association said that an industry group should be formed to compile the list. Another association questioned the utility of such a list, since new diseases appear from time to time, and reliance on a list would be a disincentive to considering individual circumstances.

With respect to the idea of consultation with a physician, two carriers objected that it was impractical to seek medical advice in each case, and that airline personnel should have the discretion to deny boarding. An airline association suggested that qualified medical personnel other than a physician should be permitted to make the determination involved, since physicians might not be available in a timely fashion.

Other comments included a request by an airline association that diseases transmissible by casual contact, as well as by airborne means, should be a ground for restricting travel, a suggestion by the same group that any ability to travel at a later date be limited to 60 days, and a request by a disability organization that carriers be required to reimburse passengers for expenses incurred because of a carrier's decision to postpone travel.

DOT Response

The Department has considered the comments on this issue carefully, recognizing the difficulty that carriers and passengers can have in making judgments about when it may be inappropriate for a passenger to travel because of illness. Based on comments, the Department's discussions with Federal health officials over a period of several years, and the lack of expertise within the Department, we have decided that it is not feasible for us to compile a list of diseases that would warrant a denial of transportation or to ask carriers to do so. Consequently, we are not adopting the portion of the proposal concerning lists.

With respect to the criteria for making decisions on these issues, the Department believes the best available model is the ''direct threat'' language in the Department of Justice's Title III ADA regulation. The DOJ language reads as follows:

> Direct threat means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services. In determining whether an individual poses a direct threat to the health or safety of others, a public accommodation must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the actual injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk. 28 CFR § 36.208).

This is well-established language that gives due regard to both nondiscrimination on the basis of disability and the need of a public accommodation to make reasoned judgments to protect the health and safety of other persons. Consequently, the final rule adapts this language to the context of air travel.

This approach is compatible with the Department's purposes in publishing its NPRM. For example, a communicable disease that is not readily transmissible by airborne means or by casual contact is unlikely to pose a direct threat; nor would a disease that, if communicated by these means, does not pose a significant health threat to the general passenger population. AIDS, on one hand, and the common cold, on the other, are examples of communicable diseases that would not generally pose direct threats. Making medical judgments cannot be entrusted to personnel without medical training. Consequently, it is unlikely that a ''direct threat'' finding could be made about a communicable disease that did not rest on a medical determination by a physician or nurse.

This direct threat concept dovetails with the requirement that the airline find the least restrictive means of addressing an identified risk. It is not consistent with this provision to deny transportation to someone if a medical certificate, or a face mask, or seating the individual a few rows away from other passengers on a half-full flight, or some other action will be sufficient to mitigate the risk to other passengers involved to the point where the individual can travel without endangering others.

While it would be useful for an airline concerned about a passenger's condition to consult with the passenger's physician, we do not believe that it is necessary to mandate such consultation in the regulation. Such consultation occurs in many cases now; certainly it would be a reasonable part of the process needed to make a direct threat determination. Nor do we believe it would be appropriate to require carriers to compensate passengers whose travel is delayed for medical reasons under this section. Denial of service by a carrier under these circumstances does not constitute improper conduct that should result in compensation. We note that the NPRM already covered diseases spread by casual contact as well as airborne means, and the final rule retains this point. Finally, we agree with the comment that someone whose travel is postponed for this reason should not have perpetual right to make the trip. We think that a 90-day limit could fairly be imposed by the carrier.

The FAA is conducting research into cabin air quality issues, which, beginning next year, will include research into the risk of passengers and crews contracting infectious diseases. In addition, there is a multiagency working group under the auspices of the Committee on International Science, Engineering, and Technology Policy of President Clinton's National Science and Technology Council. This group is reviewing the U.S. role in detecting, reporting, and responding to outbreaks of new and re-emerging infectious diseases. To the extent that research or recommendations from these or other sources provides additional information bearing on policies affecting airline transportation of individuals with communicable diseases, the Department can take account of it in future rulemaking.

Other Issues

In both the ACAA and section 504 rules, the NPRM proposed updating terminology (e.g., changing ''handicapped person'' to ''individual with disabilities'') consistent with practice under the ADA. The proposed section 504 amendment would also make two administrative additions, requiring the submittal of transition plans by any airports which had not already done so and specifically applying nondiscrimination on the basis of disability requirements to subsidized Essential Air Service (EAS) carriers. Unlike most carriers, who do not receive Federal assistance, these carriers have been covered under the existing section 504 rule, but they have not been mentioned specifically, since Part 27 was promulgated before the Essential Air Service program came under DOT jurisdiction in January 1985. This administrative addition does not create any new obligations for subsidized EAS carriers.

One airline commented that airlines should not have to change the terminology in their compliance manuals if the rule's terms change. We agree, and we are not imposing such a requirement. There were not any other

comments on these proposals, which the Department will adopt as proposed.

The NPRM asked for comment on three other issues—seating accommodations for persons with disabilities, provisions concerning collapsible electric wheelchairs, and matters relating to the use of oxygen by passengers. These issues are addressed in a separate supplemental notice of proposed rulemaking in today's Federal Register.

Withdrawal of 1990 Supplemental Notice of Proposed Rulemaking

In the March 6, 1990, issue of Federal Register in which the Department published the original 1990 Air Carrier Access Act final rule, the Department also published a supplemental notice of proposed rulemaking (SNPRM; 55 FR 8076; RIN 2105–AB61). The Department is withdrawing this SNPRM at this time.

The SNPRM concerned three subjects: airport transportation systems, standards for boarding chairs, and substitute service when boarding assistance is not available for small commuter aircraft. These matters have been overtaken by the present rulemaking, which applies ADA standards to airport transportation systems and requires boarding assistance, using lifts rather than boarding chairs, for small commuter aircraft. The withdrawal is an administrative action that will remove from the Department's regulatory agenda an item pertaining to an NPRM on which no further action is anticipated.

Guidance Concerning Service Animals in Air Transportation

The Department receives frequent questions about the transportation of service animals by airlines. On July 26, 1996, the Department of Justice issued Americans with Disabilities Act guidance concerning the access of service animals to places of public accommodation. The following guidance is based on the DOJ issuance, with adaptations to the context of air transportation and answers to questions the Department has been asked.

The Department of Transportation's rules protecting the rights of air travelers with disabilities require air carriers to permit passengers to fly with their service animals. The Air Carrier Access Act (ACAA) rules say the following:

Carriers shall permit dogs and other service animals used by individuals with disabilities to accompany the person on a flight.

(1) Carriers shall accept as evidence that an animal is a service animal identification cards, other written documentation, presence of harnesses or markings on harnesses, tags or the credible verbal assurances of the qualified individual with disabilities using the animal.

(2) Carriers shall permit a service animal to accompany a qualified individual with disabilities in any seat in which the person sits, unless the animal obstructs an aisle or other area that must remain unobstructed in order to facilitate an emergency evacuation.

(14 CFR § 382.55(a))

If a service animal cannot be accommodated at the seat location of the qualified individual with disabilities whom the animal is accompanying . . . the carrier shall offer the passenger the opportunity to move with the animal to a seat location, if present on the aircraft, where the animal can be accommodated, as an alternative to requiring that the animal travel with checked baggage.

(14 CFR § 382.37(c))

The questions and answers below are intended to help carriers and passengers understand how to respond to service animal issues.

1. Q: What is a service animal?

A: Under the ACAA, a service animal is any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability. If the animal meets this definition, it is considered a service animal regardless of whether it has been licensed or certified by a state or local government.

2. Q: What work do service animals perform?

A: Service animals perform some of the tasks and functions that the individual with a disability cannot perform for him or herself. Guide dogs that help blind individuals are the type of service animal most people are familiar with. But there are service animals that assist persons with other types of disabilities in their day-to-day activities. Some examples include—

- Alerting persons with hearing impairments to sounds.
- Pulling wheelchairs or carrying and picking up things for persons with mobility impairments.
- Assisting persons with mobility impairments with balance.

An animal that does not perform identifiable tasks or functions for an individual with a disability probably is not a service animal. However, it is not essential that the animal perform the functions for the individual while he or she is traveling on the aircraft. The functions can be ones that the animal performs for the individual at his or her destination.

3. Q: What must an airline do when an individual with a disability using a service animal seeks to travel?

A: The service animal must be permitted to accompany the passenger with a disability on the flight. The animal must be allowed to accompany the individual in any seat the individual uses, except where the animal would obstruct an aisle or other area required by Federal Aviation Administration safety rules to remain unobstructed for emergency evacuation purposes. Service animals are typically trained to curl up under seats, which should reduce the likelihood of such an obstruction.

If such an obstruction would occur, the animal (and passenger, if possible) should be relocated to some other place in the cabin where it will not create such an obstruction. If there is no space in the cabin that will accommodate the animal without causing such an obstruction, then the animal is not permitted to travel in the cabin.

To accommodate service animals, airlines are not required to ask other passengers to relinquish space that they would normally use. For example, the passenger sitting next to an individual traveling with a service animal would not need to allow the space under the seat in front of him or her to be used to accommodate the animal.

4. Q: Is a service animal a pet?

A: A service animal is not a pet. A service animal is a working animal that performs important functions for an individual with a disability. The individual with a disability has been trained in the use of the service animal and is responsible for all handling of the animal. Consequently, carrier personnel and other passengers should not attempt to pet, play with, direct, or in any way distract service animals.

It is also important to realize that a pet is not a service animal. Many people enjoy the companionship of animals. But this relationship between an individual and an animal, standing alone, is not sufficient to cause an animal to be regarded as a service animal.

5. Q: How do the requirements of the ACAA rule concerning service animals relate to an airline's rules about carrying pets?

A: Airlines may have whatever policy they choose concerning pets, consistent with U.S. Department of Agriculture animal welfare rules. For example, they can refuse to carry any pets. They can carry pets only in containers stowed in the cargo compartment. They can allow small pets in carriers that fit under the

seat. Since service animals are not pets, the ACAA requires airlines to modify their pets policies to allow service animals to accompany persons with a disability in the cabin. When an animal is determined by the airline not to be a service animal, then the airline would apply to the animal the same policy that applies to pets.

In any situation in which the airline determines that an animal is not a service animal, the airline must continue to give the passenger the opportunity to travel without having the service animal in the cabin. It is not appropriate to deny transportation to a passenger because the passenger's animal is determined not to be a service animal.

6. Q: How can I tell if an animal really is a service animal and not just a pet?

A: Some, but not all, service animals, wear special collars or harnesses. For example, guide dogs used by persons with vision impairments typically wear harnesses that enhance their ability to guide the visually impaired person. Some, but not all, service animals are licensed and certified and have identification papers.

If airline employees are not certain that an animal is a service animal, they may ask the person who has the animal if it is a service animal required because of a disability. However, an individual who is planning to travel by air is not necessarily going to be carrying around documentation of his or her medical condition or disability. Therefore, while such documentation may be requested as a means of verifying that the animal is a service animal, it *generally* may not be required as a condition of permitting an individual to travel with his or her service animal. (See Question 9 for a situation in which documentation may be required.) Likewise, while a number of states have programs to certify service animals, airline employees may not insist on proof of state certification before permitting the service animal to accompany the person with a disability.

7. Q: What are ''credible'' verbal assurances that an animal is a service animal?

A: In the absence of documentation or other obvious evidence that an animal is a service animal, the only information available to airline employees about the animal may be what a passenger says about his or her disability and the use of the animal. Airline employees may exercise their judgment concerning whether the passenger's statements about the training and functions of the animal make it reasonable to think that the animal is a service animal.

The factors discussed in this guidance (e.g., the nature of the individual's disability, the training the animal is said to have received, its ability to behave properly in public places, the functions it is said to perform for the individual) can be used in evaluating the credibility of the passenger's statements. An airline complaints resolution official (CRO), whom the Department's ACAA rules require to be available at each airport that the airline serves, is a resource that passengers and airline employees can use to resolve difficult cases.

8. Q: What about unusual or multiple animals?

A: Most people are familiar with the use of dogs as service animals. On some occasions, however, individuals may ask to be accompanied in an aircraft cabin by other kinds of animals. For example, in a few cases, monkeys have been trained to provide services to persons with severe mobility impairments. There have been cases of passengers requesting to be accompanied by reptiles or rodents. In addition, some passengers have asked to travel with more than one animal at a time.

In evaluating these situations, airline employees should keep in mind some of the important characteristics of service animals. Service animals are trained to perform specific functions for an indivudal with a disability, and they are trained to behave properly in public places. Service animals are generally trained to work on a one-to-one basis with an individual with a disability. Airline employees may inquire about these matters and may use their judgment about whether, in light of these factors, a particular animal is a service animal, as distinct from a pet that a passenger wants to bring on board.

9. Q: How should airline employees respond to a claim that being accompanied by an animal is necessary for the emotional well-being of an individual with a mental or emotional disability?

A: Many people receive emotional support from being near an animal. The assertion of a passenger that an animal remaining in his or her company is a needed accommodation to a disability, however, may often be difficult to verify or to distinguish from the situation of any person who is fond of a pet. In addition, the animal may not, in such a situation, perform any visible function. For these reasons, it is reasonable for airline employees to request appropriate documentation of the individual's disability and the medical or theraputic necessity of the passnger's traveling with the animal. Moreover, the animal, like any service animal, must be trained to behave properly in a public setting.

10. Q: What about service animals that are not accompanying a passenger with a disability?

Sometimes, an animal that is trained to work with people with disabilities may travel by air but not be accompanied by an individual with a disability for whom the animal performs service animal functions. For example, a non-disabled handler may transport a ''therapy dog'' to a location, such as a rehabilitation center, where it will perform services for individuals with physical or mental disabilities.

The Department's Air Carrier Access Act regulation intended to assist passengers with disabilities by ensuring that they can travel with the service animals that perform functions for them. When a service animal is not accompanying a passenger with a disability, the rule's rationale for permitting the animal to travel in the cabin does not apply. While the animal may be traveling to a location where it will perform valuable services to other people, it would be subject to the airline's general policies with respect to the carriage of animals.

11. Q: What if an animal acts out of control?

A: Service animals are trained to behave properly in public settings. For example, a properly trained service animal will remain at its owner's feet. It does not run freely around an aircraft or airport gate area, bark or growl repeatedly at other persons on the aircraft, bite or jump on people, or urinate or defecate in the cabin or gate area. An animal that engages in such disruptive behavior shows that it has not been successfully trained to function as a service animal in public settings. Therefore, airlines are not required to treat it as a service animal, even if the animal is one that performs an assistive function for a passenger with a disability. However, airline personnel should consider available means of mitigating the effect of an animal's behavior that are acceptable to the individual with a disability (e.g., muzzling a dog that barks frequently) that would permit the animal to travel in the cabin.

While an airline is not required to permit an animal to travel in the cabin if it engages in disruptive behavior, or other behavior that poses a direct threat to the health or safety of persons on the aircraft, airline employees may not make assumptions about how a

particular animal is likely to behave based on past experience with other animals. Each situation must be considered individually. Airline employees may inquire, however, about whether a particular animal has been trained to behave properly in a public setting.

12. Q: Can airlines charge a maintenance or cleaning fee for customers who bring service animals onto aircraft?

A: No. The ACAA prohibits special charges, such as deposits or surcharges, for accommodations required to be made to passengers' disabilities. This is true even if such charges are routinely required to transport pets.

However, an airline can charge passengers with disabilities if a service animal causes damage, so long as it is the regular practice of the airline to charge non-disabled passengers for the same types of damages. For example, the airline can charge passengers with a disability for the cost of repairing or cleaning seats damaged by a service animal if it is the airline's policy to charge when non-disabled passengers cause similar damage.

13. Q: Are airlines responsible for the animal while a person with a disability is on the aircraft?

A. No. The care and supervision of a service animal is solely the responsibility of its owner. The individual with a disability has been trained in the use of the service animal and is responsible for all handling of the animal. The airline is not required to provide care or food or special facilities for the animal.

Regulatory Analyses and Notices

This is not a significant rule under Executive Order 12866. It is a significant rule under the Department's Regulatory Policies and Procedures. A regulatory evaluation that examines the projected costs and impacts of the lift requirements in the rule has been placed in the docket. Briefly, the Department estimates that equipment and operational costs of the lift requirement (net present value over 20 years) will range between $18.6 and $51.8 million. In terms of benefits, the analysis suggests that an additional 450,000 trips to mobility-impaired travelers could result from the availability of lift devices, resulting in a net present value profit to carriers of $48 million over 20 years. There are, in addition, non-quantifiable benefits (e.g., greater travel opportunities for passengers, greater dignity in the boarding process). The airport accessibility provisions of the rule are not projected to have significant costs.

We note that Federally-assisted airports have been subject to very similar requirements under section 504 since the first publication of 49 CFR Part 27 in 1979. Airlines have been subject to very similar requirements since the first publication of 14 CFR Part 382 in 1990. New costs related to moving to ADA-based standards should not be great, and are limited in any case by the readily achievable/program accessibility provisions made applicable to airlines and airports, respectively.

The Department certifies that this rule, if adopted, would not have a significant economic effect on a substantial number of small entities. There are not a substantial number of small air carriers covered by this rule, particularly given the exclusion of ''problem aircraft'' and aircraft with fewer than 19 seats from boarding assistance requirement. These aircraft are heavily represented among the smallest air carriers. The smallest airports are excluded from the boarding assistance rule altogether; other small airports will have costs reduced by the 4-year phase-in for them. For all airports, terminal accessibility requirements are not expected to be costly. They are very similar to existing requirements, and they include provisions ensuring that unduly burdensome changes are not required. Consequently, the Department does not anticipate a significant economic effect on small airports.

The Department has determined that there would not be sufficient Federalism impacts to warrant the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 382 and 49 CFR Part 27

Aviation, Handicapped.

Issued this 8th day of October, 1996, at Washington, D.C.

Federico Peña,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department amends 14 CFR Part 382 and 49 CFR Part 27 as follows:

1. The authority citation for 14 CFR Part 382 is revised to read as follows:

Authority: 49 U.S.C. 41702, 47105, and 41712.

2. In 14 CFR Part 382, including the title thereof, the word ''handicap'' is revised to read ''disability'' wherever it occurs. The term ''handicapped individual'' is revised to read ''individual with a disability'' wherever it occurs. The term ''handicapped individuals'' is revised to read ''individuals with a disability'' whenever it occurs. The term ''qualified handicapped individual'' is revised to read ''qualified individual with a disability'' wherever it occurs. The term ''qualified handicapped individuals'' is revised to read ''qualified individuals with a disability'' wherever it occurs.

3. In 14 CFR Part 382, § 382.23 is revised to read as follows:

§ 382.23 Airport facilities.

(a) This section applies to all terminal facilities and services owned, leased, or operated on any basis by an air carrier at a commercial service airport, including parking and ground transportation facilities.

(b) Air carriers shall ensure that the terminal facilities and services subject to this section shall be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Air carriers shall be deemed to comply with this Air Carrier Access Act obligation if they meet requirements applying to places of public accommodation under Department of Justice (DOJ) regulations implementing Title III of the Americans with Disabilities Act (ADA).

(c) The carrier shall ensure that there is an accessible path between the gate and the area from which aircraft are boarded.

(d) Systems of inter-terminal transportation, including, but not limited to, shuttle vehicles and people movers, shall comply with applicable requirements of the Department of Transportation's ADA rule.

(e) The Americans with Disabilities Act Accessibility Guidelines (ADAAGs), including section 10.4 concerning airport facilities, shall be the standard for accessibility under this section.

(f) Contracts or leases between carriers and airport operators concerning the use of airport facilities shall set forth the respective responsibilities of the parties for the provision of accessible facilities and services to individuals with disabilities as required by this part for carriers and applicable section 504 and ADA rules of the Department of Transportation and Department of Justice for airport operators.

4. In paragraph (a)(2) of § 382.39 of 14 CFR Part 382, in the first sentence thereof, the word ''suitable'' is added before the word ''devices'' and two sentences are added at the end of the paragraph reading as follows.

§ 382.49 Provision of services and equipment.

* * * * *

(a) * * *

(2) * * * In no case shall carrier personnel be required to hand-carry a passenger in order to provide boarding assistance (i.e., directly to pick up the passenger's body in the arms of one or more carrier personnel to effect a level change the passenger needs to enter or leave the aircraft). Requirements for providing boarding assistance to commuter aircraft with fewer than 30 seats are found in § 382.40.

* * * * *

§ 382.39 [Amended]

5. In § 382.39 of 14 CFR Part 382, paragraph (a)(4) is removed.

6. A new § 382.40 is added, to read as follows:

§ 382.40 Boarding assistance for small aircraft.

(a) Paragraphs (b) and (c) of this section apply to air carriers conducting passenger operations with aircraft having 19–30 seat capacity at airports with 10,000 or more annual enplanements.

(b) Carriers shall, in cooperation with the airports they serve, provide boarding assistance to individuals with disabilities using mechanical lifts, ramps, or other suitable devices that do not require employees to lift or carry passengers up stairs.

(c) (1) Each carrier shall negotiate in good faith with the airport operator at each airport concerning the acquisition and use of boarding assistance devices. The carrier(s) and the airport operator shall, by no later than September 2, 1997, sign a written agreement allocating responsibility for meeting the boarding assistance requirements of this section between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.

(2) The agreement shall provide that all actions necessary to ensure accessible boarding for passengers with disabilities are completed as soon as practicable, but no later than December 2, 1998 at large and medium commercial service hub airports (those with 1,200,000 or more annual enplanements); December 2, 1999 for small commercial service hub airports (those with between 250,000 and 1,199,999 annual enplanements); or December 4, 2000 for non-hub commercial service primary airports (those with between 10,000 and 249,999 annual enplanements) . All air carriers and airport operators involved are jointly responsible for the timely and complete implementation of the agreement.

(3) Under the agreement, carriers may require that passengers wishing to receive boarding assistance requiring the use of a lift for a flight using a 19–30 seat aircraft check in for the flight one hour before the scheduled departure time for the flight. If the passenger checks in after this time, the carrier shall nonetheless provide the boarding assistance by lift if it can do so by making a reasonable effort, without delaying the flight.

(4) Boarding assistance under the agreement is not required in the following situations:

(i) Access to aircraft with a capacity of fewer than 19 or more than 30 seats;

(ii) Access to float planes;

(iii) Access to the following 19-seat capacity aircraft models: the Fairchild Metro, the Jetstream 31, and the Beech 1900 (C and D models);

(iv) Access to any other 19-seat aircraft model determined by the Department of Transportation to be unsuitable for boarding assistance by lift on the basis of a significant risk of serious damage to the aircraft or the presence of internal barriers that preclude passengers who use a boarding or aisle chair to reach a non-exit row seat.

(5) When boarding assistance is not required to be provided under paragraph (c)(4) of this section, or cannot be provided as required by paragraphs (b) and (c) of this section for reasons beyond the control of the parties to the agreement (e.g., because of mechanical problems with a lift), boarding assistance shall be provided by any available means to which the passenger consents, except hand-carrying as defined in § 382.39(a)(2) of this part.

(6) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.

(d)(1) The training of carrier personnel required by § 382.61 shall include, for those personnel involved in providing boarding assistance, training to proficiency in the use of the boarding assistance equipment used by the carrier and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers.

(2) Carriers who do not operate aircraft with more than a 19-seat capacity shall ensure that those personnel involved in providing boarding assistance are trained to proficiency in the use of the boarding assistance equipment used by the carrier and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers.

7. In § 382.45 of 14 CFR Part 382, paragraph (a)(2) is revised to read as follows:

§ 382.45 Passenger information.

(a) * * *

(2) Any limitations on the ability of the aircraft to accommodate qualified individuals with disabilities, including limitations on the availability of boarding assistance to the aircraft, with respect to the departure and destination points and any intermediate stops. The carrier shall provide this information to any passenger who states that he or she uses a wheelchair for boarding, even if the passenger does not explicitly request the information.

* * * * *

8. In § 382.51 of 14 CFR Part 382, paragraph (b) is revised to read as follows:

§ 382.51 Communicable diseases.

* * * * *

(b)(1) The carrier may take the actions listed in paragraph (a) of this section with respect to an individual who has a communicable disease or infection only if the individual's condition poses a direct threat to the health or safety of others.

(2) For purposes of this section, a direct threat means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

(3) In determining whether an individual poses a direct threat to the health or safety of others, a carrier must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; that the potential harm to the health and safety of others will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

(4) In taking actions authorized under this paragraph, carriers shall select the alternative, consistent with the safety and health of other persons, that is least restrictive from the point of view of the passenger with the communicable disease. For example, the carrier shall not refuse to provide transportation to an individual if provision of a medical certificate or reasonable modifications to practices, policies, or procedures will mitigate the risk of communication of the disease to others to an extent that would permit the individual to travel.

(5) If an action authorized under this paragraph results in the postponement of a passenger's travel, the carrier shall permit the passenger to travel at a later time (up to 90 days from the date of the postponed travel) at the fare that would

have applied to the passenger's originally scheduled trip without penalty or, at the passenger's discretion, provide a refund for any unused flights, including return flights.

(6) Upon the passenger's request, the carrier shall provide to the passenger a written explanation of any action taken under this paragraph within 10 days of the request.

* * * * *

9. The authority citation for 49 CFR Part 27 is revised to read as follows:

Authority: Sec. 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); sec. 16 (a) and (d) of the Federal Transit Act of 1964, as amended (49 U.S.C. 5310 (a) and (f); sec. 165(b) of the Federal-Aid Highway Act of 1973, as amended (23 U.S.C. 142 nt.).

10. In 49 CFR Part 27, including the title thereof, the word ''handicap'' is revised to read ''disability'' wherever it occurs. The term ''handicapped individual'' is revised to read ''individual with a disability'' wherever it occurs. The term ''handicapped individuals'' is revised to read ''individuals with a disability'' wherever it occurs. The term ''qualified handicapped individuals'' is revised to read ''qualified individuals with a disability'' wherever it occurs.

11. In § 27.5 of 49 CFR Part 27, the definition of ''Air Carrier Airport'' is removed, and a new definition of ''Commercial Service Airport'' is added in the appropriate alphabetical placement, to read as follows:

§ 27.5 Definitions.

* * * * *

Commercial service airport means an airport that is defined as a commercial service airport for purposes of the Federal Aviation Administration's Airport Improvement Program and that enplanes annually 2500 or more passengers and receives scheduled passenger service of aircraft.

* * * * *

12. Section 27.71 of 49 CFR Part 27 is revised to read as follows:

§ 27.71 Airport facilities.

(a) This section applies to all terminal facilities and services owned, leased, or operated on any basis by a recipient of DOT financial assistance at a commercial service airport, including parking and ground transportation facilities.

(b) Airport operators shall ensure that the terminal facilities and services subject to this section shall be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Airport operators shall be deemed to comply with this section 504 obligation if they meet requirements applying to state and local government programs and facilities under Department of Justice (DOJ) regulations implementing Title II of the Americans with Disabilities Act (ADA).

(c) The airport shall ensure that there is an accessible path between the gate and the area from which aircraft are boarded.

(d) Systems of inter-terminal transportation, including, but not limited to, shuttle vehicles and people movers, shall comply with applicable requirements of the Department of Transportation's ADA rules.

(e) The Americans with Disabilities Act Accessibility Guidelines (ADAAGs), including section 10.4 concerning airport facilities, shall be the standard for accessibility under this section.

(f) Contracts or leases between carriers and airport operators concerning the use of airport facilities shall set forth the respective responsibilities of the parties for the provision of accessible facilities and services to individuals with disabilities as required by this part and applicable ADA rules of the Department of Transportation and Department of Justice for airport operators and applicable Air Carrier Access Act rules (49 CFR part 382) for carriers.

(g) If an airport operator who receives Federal financial assistance for an existing airport facility has not already done so, the recipient shall submit a transition plan meeting the requirements of § 27.65(d) of this part to the FAA no later than March 3, 1997.

13. A new § 27.72 is added to 49 CFR Part 27, to read as follows:

§ 27.72 Boarding assistance for small aircraft.

(a) Paragraphs (b) and (c) of this section apply to airports with 10,000 or more annual enplanements.

(b) Airports shall, in cooperation with carriers serving the airports, provide boarding assistance to individuals with disabilities using mechanical lifts, ramps, or other devices that do not require employees to lift or carry passengers up stairs.

(c)(1) Each airport operator shall negotiate in good faith with each carrier serving the airport concerning the acquisition and use of boarding assistance devices. The airport operator and the carrier(s) shall, by no later than September 2, 1997, sign a written agreement allocating responsibility for meeting the boarding assistance requirements of this section between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.

(2) The agreement shall provide that all actions necessary to ensure accessible boarding for passengers with disabilities are completed as soon as practicable, but no later than December 2, 1998 rule at large and medium commercial service hub airports (those with 1,200,000 or more annual enplanements); December 2, 1999 rule for small commercial service hub airports (those with between 250,000 and 1,199,999 annual enplanements); or December 4, 2000 rule for non-hub commercial service primary airports (those with between 10,000 and 249,999 annual enplanements). All air carriers and airport operators involved are jointly responsible for the timely and complete implementation of the agreement.

(3) Boarding assistance under the agreement is not required in the following situations:

(i) Access to aircraft with a capacity of fewer than 19 or more than 30 seats;

(ii) Access to float planes;

(iii) Access to the following 19-seat capacity aircraft models: the Fairchild Metro, the Jetstream 31, and the Beech 1900 (C and D models);

(iv) Access to any other 19-seat aircraft model determined by the Department of Transportation to be unsuitable for boarding assistance by lift on the basis of a significant risk of serious damage to the aircraft or the presence of internal barriers that preclude passengers who use a boarding or aisle chair to reach a non-exit row seat.

(4) When boarding assistance is not required to be provided under paragraph (c)(4) of this section, or cannot be provided as required by paragraphs (b) and (c) of this section for reasons beyond the control of the parties to the agreement (e.g., because of mechanical problems with a lift), boarding assistance shall be provided by any available means to which the passenger consents, except hand-carrying as defined in § 382.39(a)(2) of this part.

(5) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.

(d) In the event that airport personnel are involved in providing boarding assistance, the airport shall ensure that they are trained to proficiency in the use of the boarding assistance equipment used at the airport and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers.

14. A new § 27.77 is added to 49 CFR Part 27, to read as follows:

§ 27.77 Recipients of Essential Air Service subsidies.

Any air carrier receiving Federal financial assistance from the Department of Transportation under the Essential Air Service program shall, as a condition of receiving such assistance, comply with applicable requirements of this part and applicable section 504 and ACAA rules of the Department of Transportation.

[FR Doc. 96–28084 Filed 10–31–96; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 679

[Docket No. 960717195–6280–02; I.D. 070196E]

RIN 0648–AI95

Fisheries of the Exclusive Economic Zone Off Alaska; North Pacific Fisheries Research Plan; Interim Groundfish Observer Program

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

ACTION: Final rule; technical amendment.

SUMMARY: NMFS issues a final rule to implement Amendment 47 to the Fishery Management Plan for Groundfish of the Gulf of Alaska, Amendment 47 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (Groundfish FMPs), Amendment 6 to the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area (Crab FMP), and a technical amendment to clarify existing regulations that the observer coverage requirements for catcher vessels participating in the community development quota (CDQ) fisheries are in addition to the observer coverage requirements for the open access groundfish fisheries. This action also repeals regulations implementing the North Pacific Fisheries Research Plan (Research Plan). This action is necessary to respond to the North Pacific Fishery Management Council's (Council) recommendation to repeal the Research Plan and implement Amendments 47 and 47 to the Groundfish FMPs to establish mandatory groundfish observer coverage requirements through 1997. Amendment 6 to the Crab FMP removes reference to the Research Plan. This action establishes an Interim Groundfish Observer Program until a long-term program that addresses concerns about observer data integrity, equitable distribution of observer coverage costs, and observer compensation and working conditions is recommended by the Council and implemented by NMFS.

EFFECTIVE DATE: January 1, 1997.

ADDRESSES: Copies of Amendments 47, 47, and 6 and the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for the amendments may be obtained from the North Pacific Fishery Management Council, Suite 306, 605 West 4th Avenue, Anchorage, AK 99501–2252; telephone: 907–271–2809. Send comments regarding burden estimates or any other aspect of the data requirements, including suggestions for reducing the burdens to NMFS and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503, Attn: NOAA Desk Officer.

Copies of the information regarding observer qualifications, observer training/briefing requirements, and NMFS' selection criteria for observer contractors are available from the Observer Program Office, Alaska Fisheries Science Center, Building 4, 7600 Sand Point Way Northeast, Seattle, WA 98115, telephone: 206–526–4197.

FOR FURTHER INFORMATION CONTACT: Kim S. Rivera, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The U.S. groundfish fisheries of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands management area (BSAI) in the exclusive economic zone are managed by NMFS under the Groundfish FMPs. The FMPs were prepared by the Council under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*; Magnuson Act) and are implemented by regulations for the U.S. fisheries off Alaska at 50 CFR part 679. General regulations that also pertain to U.S. fisheries are codified at 50 CFR part 600. The Crab FMP delegates management of the crab resources in the BSAI to the State of Alaska (State) with Federal oversight. Regulations necessary to carry out the Crab FMP appear at 50 CFR part 679.

This action implements regulations authorized under Amendments 47 and 47 to the Groundfish FMPs and Amendment 6 to the Crab FMP. These amendments were approved by NMFS on October 3, 1996, and authorize the repeal of the Research Plan and the establishment of an Interim Groundfish Observer Program for 1997.

A full description of and background information on the repeal of the Research Plan and the establishment of an Interim Groundfish Observer Program and its specific elements may be found in the preamble to the proposed rule published in the Federal Register on August 2, 1996 (61 FR 40380), and in the EA/RIR prepared for this action.

Existing observer coverage requirements under Amendment 1 to the Research Plan are scheduled to expire on December 31, 1996. At its April 1996 meeting, the Council adopted an Interim Groundfish Observer Program that would supersede the Research Plan and authorize mandatory groundfish observer coverage requirements through 1997. The Interim Groundfish Observer Program will extend 1996 groundfish observer coverage requirements through 1997, unless superseded by a long-term program that addresses concerns about observer data integrity, equitable distribution of observer coverage costs, observer compensation and working conditions, and other concerns raised by the Council. Under this action, observer coverage requirements for the BSAI king and Tanner crab fisheries will no longer be specified in Federal regulations. Observer coverage requirements for the crab fisheries will revert back to a Category 3 measure in the Crab FMP and will be specified by the Alaska Board of Fisheries.

Except for the minor changes noted below, the elements of the Interim Groundfish Observer Program as provided in the preamble of the proposed rule are unchanged in this rule. Three elements of the Interim Groundfish Observer Program will not be codified in regulation: (1) Observer qualifications, (2) observer training/briefing requirements, and (3) NMFS' selection criteria for observer contractors. These elements were also provided in the preamble of the proposed rule and are unchanged in the final rule. They are available upon request (see **ADDRESSES**). Although they will not be codified, they are viewed as a part of the program. Prior to proposing future changes to these three elements, NMFS will publish a document in the Federal Register describing the proposed change(s) and providing an opportunity for public comment.

Removal of Interim Final Rule To Authorize the Refund of Research Plan Fees

This action also serves as the final rule for the interim final rule that established a refund procedure for the Research Plan fee assessments collected in 1995 (61 FR 13782, March 28, 1996). Over $5.8 million in collected Research Plan fees and earned interest were refunded to processors in May 1996. Because all funds in the North Pacific Fishery Observer Fund have been returned, the regulations implemented by the interim final rule are no longer necessary and are removed by this final rule.

Technical Amendment

This action also implements a technical amendment to clarify existing regulations that the observer coverage requirements for catcher vessels participating in the CDQ pollock fisheries set forth at § 679.32(c) are in addition to the observer coverage requirements for vessels participating in the open access groundfish fisheries as set forth at § 679.50. It was never NMFS' intent to reduce the observer coverage in the open access groundfish fisheries because of required observer coverage obtained for the CDQ pollock fishery. The additional responsibilities and duties associated with monitoring the CDQ pollock harvest necessitated an additional observer to share in the increased work burden. The observer data collected in a CDQ fishery are specific to that management regime and are not meant to replace the observer data that are collected in the open access fishery. Observer coverage that a vessel operator obtains to participate in CDQ fisheries does not fulfill its observer coverage requirements for open access groundfish fisheries.

Response to Comments

No written comments were received on the interim final rule that invited comments through April 29, 1996. Public comment on the proposed rule was invited through September 16, 1996. A public hearing teleconference on the repeal of the Research Plan was held August 19, 1996, and no oral comments were received. One letter of no comment from the U.S. Fish and Wildlife Service and one letter containing comments were received within the comment period for the proposed rule. A summary of the written comments and NMFS' response follow:

Comment 1. The requirement that qualified observers must have a statistics course is not necessary. A familiarity with random sampling is pertinent to an observer applicant's suitability to the job, but this experience can be gained in field biology or even laboratory biology work as well as in statistics course work. This requirement could force observer contractors to refrain from hiring persons well prepared for work as an observer.

Response. NMFS disagrees. NMFS believes that statistical course work will provide an observer with the conceptual statistical skills/background necessary to achieve program goals relating to sampling and estimation. To maintain the integrity of observer data used for quota-monitoring and other fishery management purposes, observers must employ appropriate sampling techniques and understand the consequences of failure to do so. Formal training in statistics is necessary to provide this understanding.

NMFS requires prospective observers to have a bachelor's degree or higher from an accredited college or university with a major in one of the natural sciences. It is unlikely that an individual could fulfill this degree requirement without taking a statistics course.

Comment 2. While the other insurance provisions that contractors would be required to carry (at § 679.50(i)(2)(xiv)(E)) protect observers, Contractual General Liability (CGL) insurance protects vessels, making its presence in this rulemaking peculiar. An observer injured on a vessel that hasn't elected to pay for CGL coverage has no fewer rights and no less protection than an observer injured on a vessel that has elected to pay for it. Should an observer bring a suit against a vessel that pays for CGL protection, then the contractor's insurance company steps in to defend the vessel. If an observer brings a suit against a vessel that doesn't pay for CGL protection, then the vessel's insurance company defends the vessel. Either way, the observer can bring suit. As an option to the proposed CGL coverage, NMFS should consider the alternative of requiring a contractor to have the ability to carry this coverage if a vessel requests it.

If NMFS' intent is to force contractors to carry this coverage for all vessels, the industry should be made aware that they will be forced to pay for this coverage. Costs presently range from $12–20 per day, depending on vessel size and gear type, though these rates might change if all vessels were forced to participate.

Response. CGL insurance was recommended by the Council-appointed Insurance Technical Committee (ITC), which represents industry, observer, and observer contractor interests. The ITC's objective was to address the insurance coverage needs of vessels required to carry observers as well as the insurance needs of observers and to formulate a standardized insurance coverage package. CGL coverage is a necessary part of a comprehensive standard package because it addresses insurance needs of an affected group, the vessel operators required to carry observers. NMFS concurs with the ITC recommendation, therefore, the inclusion of CGL coverage is appropriate. The associated costs of the insurance coverage package were understood to be borne by the affected industry.

Comment 3. Proposed regulations at § 679.7(g)(2) prohibit interference with the sampling procedure employed by an observer. These regulations would require modifications to incline belts, bin openings, and other physical characteristics of factories that hamper effective sampling and would have a positive impact on observers if NMFS really intends to require such modifications. Vessel owners are likely to see any attempt to force the redesign of their processing areas as a sort of outrageous and expensive interference with the way they do business. If the regulations prove so unpopular with industry that NMFS declines to follow through, there will be a corresponding negative impact on observer morale.

Response. NMFS agrees that observer sampling of species and size composition would be improved if a prohibition against physical, mechanical, or other sorting that interferes with or biases the sampling procedure employed by an observer is enforced. NMFS intends to enforce this prohibition. Enforcement of this prohibition requires adequate evidence and proof that the observer's sampling procedure was interfered with or biased by physical, mechanical, or other sorting or discarding of catch before sampling. If inclined belts, constrained bin openings, or other physical structures result in sorting of catch *after* an observer has had an opportunity to sample, then no violation has occurred. If some physical or mechanical aspect of the processing operation results in interference or biasing of the observer's sampling procedure, then NMFS would take action.

Comment 4. The proposed rule does not change a regulation that requires vessel operators to provide observers with accommodations ''that are equivalent to those provided for officers, engineers, foremen, deck-bosses or other management level personnel of the

vessel.'' The commenter believes that NMFS has not enforced this regulation and suggests that NMFS revise the regulation to a standard it is willing to enforce. Observers who expect improved accommodations based on their common sense reading of this regulation have been disappointed. Observer morale would be better served if NMFS would say what the agency really means; the regulation could also then apply to all vessels, regardless of their size or gear type.

Response. NMFS believes the current regulation has contributed to the improvement of observer accommodations on vessels. Prior to regulations implementing the Research Plan (59 FR 46126; September 6, 1994) and requiring these ''management level'' accommodations for the first time, observers were subject to accommodations that crew members would not be subjected to. To reiterate a response to a comment provided on the Research Plan final rule, the intent of this regulation is to require a vessel operator to treat the observer with respect. The observer should not be provided with accommodations less than those provided for management personnel. At this time, NMFS has not developed a performance standard for accommodations that could be applied to all vessels, regardless of their size or gear type.

Comment 5. NMFS proposes that, if a person has been employed as a paid crew member or employee in a North Pacific fishery, they may not serve as an observer during the 12 consecutive months immediately following their employment in the fishery. This 12-month ''cooling off'' period following work in industry is unnecessary in that it is not a safeguard against conflict of interest; rather, it seems more a punishment. Because it is unnecessary, it places an unfair restriction on observers, whose right to work should be infringed upon only with good reason. Instead, the appearance of conflict of interest can be avoided by prohibiting an observer employed previously by a fishing company to work as an observer on that company's vessels or in that company's plants.

Response. NMFS disagrees. Observers play a critical role in fisheries management, and they, and the data they collect, must be above reproach. Any conflict of interest, perceived or real, because of employment as a crew member or employee in a North Pacific fishery in the past 12 months must be avoided. NMFS chose a 12-month period as being a reasonable amount of time to indicate a person's commitment to the observer profession. NMFS will avoid certifying persons as observers whose employment vacillated between the two fields.

Comment 6. The appearance of a conflict of interest would exist if an observer lines up work aboard one of his/her assigned vessels or plants while still under contract with an observer contractor. NMFS should restrict such activity.

Response. NMFS agrees and is adding a regulation at § 679.50(h)(2)(i)(A)(*5*) that states observers may not solicit or accept employment as a crew member or an employee of a vessel or shoreside processor in a North Pacific fishery while they are under contract with an observer contractor.

Comment 7. As proposed, § 679.50(i)(2)(v)(B) states that a deployment *to a vessel or a shoreside processor* cannot exceed 90 days without approval from the Observer Program Office. This could be misconstrued to allow a contractor to deploy an observer for hundreds of days without seeking approval from NMFS, so long as that observer didn't stay more than 90 days on any one assignment.

Response. NMFS agrees and has revised paragraph (B) to clearly indicate that a deployment cannot exceed ninety days without approval from the Observer Program Office. NMFS' intent is that an observer return to port after a 90-day period for debriefing.

Comment 8. Proposed regulations at § 679.50(i)(2)(v)(B) provide an observer contractor with flexibility in placing observers in certain situations with approval from the Observer Program Office. NMFS should expand this flexibility to apply in all three of the guidelines for observer placement set out under § 679.50(i)(2)(v). For instance, situations occur where vessels are operating for 95–105 days. If a contractor were held to the proposed maximum of ninety-day observer deployments, each vessel in that situation would require two separate observers. Justifiable situations such as these warrant NMFS making reasonable exceptions to the guidelines.

Response. NMFS agrees. In certain situations, flexibility is warranted when it will not jeopardize Observer Program objectives and the observer can successfully complete his or her duties. Regulations at § 679.50(i)(2)(v) have been revised to allow increased flexibility with respect to observer deployments with approval from the Observer Program Office.

Comment 9. As proposed, § 679.50(i)(2)(v)(A) states that observers must not be deployed on the same vessel for more than 90 days in a 12-month period. This guideline should address shoreside processors also. Reasons do not exist for treating vessels any differently from shoreside processors, especially given the attempt to strengthen observer conflict of interest standards evident elsewhere in the proposed regulations.

Response. NMFS agrees and has revised the regulation at § 679.50(i)(2)(v)(A) to indicate that observers must not be deployed on the same vessel or at the same shoreside processor more than 90 days in a 12-month period.

Comment 10. Though NMFS does not directly employ observers, it often places itself in the role of an observer's employer. NMFS evaluates observer performance, and NMFS can, in effect, fire observers for failing to perform. An employer is expected not only to make clear to its employees what is expected of them, but also to inform them when their work is falling short in ways that could jeopardize their continued employment. The proposed decertification process at § 679.50(j) does not require NMFS to live up to this second basic responsibility, even though NMFS has the opportunity to complete a performance evaluation on observers in the field. NMFS should be more accountable for the direction it gives, or doesn't give, to its observers.

Response. NMFS reiterates that it certifies observers only. NMFS does not employ observers. Observers are trained through an intensive NMFS or NMFS-approved training program that includes detailed information on observer duties and the myriad of methods to be used to successfully complete observer assignments. NMFS reviews both the data collected and the sampling procedures employed by an observer at a mid-cruise review and at debriefing. NMFS makes every attempt and effort to assist an observer with any problems and questions the observer has regarding his or her deployment. Nevertheless, NMFS has overall responsibility for data quality and NMFS reserves the right to decertify observers for failure to perform required duties satisfactorily or for violations of conflict of interest or conduct standards.

Changes in the Final Rule from the Proposed Rule

This final rule has been revised from the proposed rule in the following ways:

1. Definitions at § 679.50(j)(3) relating to the decertification process have been moved to § 679.2. Other minor and non-substantive revisions also were made in several places to maintain consistency with the regulatory format of the recently consolidated regulations governing the fisheries in Federal waters

off Alaska (50 CFR part 679, 61 FR 31228, June 19, 1996).

2. Regulations at § 679.50(a) will cross-reference CDQ observer coverage requirements at § 679.32(c) to clarify NMFS' intent that observer coverage requirements for catcher vessels participating in the CDQ pollock fisheries are in addition to the observer coverage requirements set forth at § 679.50.

3. In § 679.50(f)(1)(iii)(B) and § 679.50(f)(2)(iii)(B), the following changes have been made:

a. The reference to the motherships or shoreside processors required to have specified communication equipment has been simplified to reference those motherships or shoreside processors required to have an additional observer as required at paragraph (c)(1)(iii) or (d)(3) of this section. This change allows for the removal of redundant language.

b. The communication equipment requirements of motherships or shoreside processors that are required to carry a second observer has been subdivided into two components. Paragraph (*1*) contains hardware and software components and paragraph (*2*) contains the NMFS-supplied software component. These changes are necessary to accommodate an ongoing, but separate, development of hardware and NMFS-supplied software requirements necessary to support submission of observer or industry reports from processors to NMFS.

4. In response to public comment, an addition to the observer conflict of interest standards in the proposed rule was made at § 679.50(h)(2)(i)(A)(*5*) to indicate that observers may not solicit or accept employment as a crew member or an employee of a vessel or shoreside processor in a North Pacific fishery while they are under contract with an observer contractor.

5. In § 679.50(i)(2)(v), the following changes have been made:

a. In response to public comment, the proposed rule at § 679.50(i)(2)(v) was revised to require placement of observers according to the specified guidelines unless alternative arrangements are approved by the Observer Program Office.

b. In response to public comment, § 679.50(i)(2)(v)(A) was revised to indicate that observers must not be deployed on the same vessel or at the same shoreside processor for more than 90 days in a 12-month period.

c. In response to public comment, § 679.50(i)(2)(v)(B) was revised to clearly indicate that a deployment cannot exceed 90 days.

6. The information that NMFS collects from observer contractors at § 679.50(i)(2)(xiv) has been amended to include the following items that inadvertently were not included in the proposed regulations: A copy of each person's application for observer employment, observer's briefing location, date of each observer's physical examination, name of any observer who has been excused by NMFS from a briefing, the date the observer was excused, and the name of the NMFS staff person granting the excuse.

7. Proposed regulations at § 679.50(j)(5)(i)(C) and (j)(6)(i)(B) were combined into a new paragraph at (j)(4)(iii). This change allows for the removal of redundant language.

Revisions to Paperwork Reduction Act (PRA) References in 15 CFR 902.1(b).

Section 3507(c)(B)(i) of the PRA requires that agencies inventory and display a current control number assigned by the Director, OMB, for each agency information collection. Section 902.1(b) identifies the location of NOAA regulations for which OMB approval numbers have been issued. Because this final rule revises recordkeeping and reporting requirements, 15 CFR 902.1(b) is revised to: (1) Remove control number 0648–0280 that was approved for Research Plan information collection and is no longer necessary, (2) retain control number 0648–0307 under § 679.50 as it pertains to the already approved electronic transmission of observer data, and (3) reference correctly the new control number 0648–0318.

Under NOAA Administrative Order 205–11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated, to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the Federal Register.

Due to a reorganization in NMFS, the title, ''Director of the Alaska Region'' has been changed to ''Administrator of the Alaska Region''. The change has not yet been made in the regulations; consequently, this rule uses the term 'Director'.

Classification

The Director, Alaska Region, NMFS, has determined that Amendments 47, 47, and 6 are necessary for the conservation and management of the groundfish fisheries of the BSAI and the GOA and that they are consistent with the Magnuson Act and other applicable laws.

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

NMFS prepared an FRFA as part of the RIR, which describes the impact this rule is expected to have on small entities. Based on that analysis, it was determined that this rule could have a significant economic impact on a substantial number of small entities. Observer costs are based on whether an observer is aboard a vessel and on overall coverage needs. Higher costs are borne by those vessels and shoreside processors that require higher levels of coverage. For individual vessels, the impact would increase as the percentage of observer costs relative to total exvessel value of catch increases. In 1995, about 400 vessels carried observers; of these vessels about 280 were catcher vessels. About one half of the catcher vessels equal to or greater than 60 ft (18.3 m) LOA but less than 125 ft (38.1 m) LOA paid observer costs that were equal to or less than 1 percent of the exvessel value of catch. About 20 percent of vessels incurred observer costs that ranged from 2 to almost 8 percent of the exvessel value of catch. This proportion represents cost increases from Research Plan costs that were limited to 2 percent of the exvessel value of catch. For motherships and shoreside processors, the impact also would increase as the percentage of observer costs relative to total exvessel value of processed catch increases. In 1995, about 26 motherships and shoreside processors carried observers. About 35 percent of these processors incurred observer costs that ranged from 1 to 7 percent of the exvessel value of catch received and processed from catcher vessels. This proportion represents cost increases from the processor's portion of Research Plan costs that were limited to 1 percent of the exvessel value of catch. The Research Plan represented an alternative to this rule which could minimize the economic impact on some small entities. But for reasons already explained elsewhere (interim final rule at 61 FR 13782, March 28, 1996; and a notice of availability of an FMP amendment at 61 FR 36702, July 12, 1996), this rule repeals the Research Plan. No comments were received on the initial IRFA. Copies of the EA/RIR/FRFA can be obtained from NMFS (see **ADDRESSES**).

This rule contains a new collection-of-information requirement subject to the PRA. The collection of this information has been approved by OMB (OMB control number 0648–0318). The new information requirement consists of certification applications for new observer contractors, reports submitted by observer contractors to NMFS that would be used by NMFS to facilitate Observer Program Office operations and

to monitor the ongoing requirements of a certified observer contractor, and appeals of suspension and/or decertification from observers and observer contractors. The annual public reporting burden for this collection of information is estimated to be: 60 hours per certification application (a contractor would apply every 3 years); 3 minutes per certificate of insurance; 7 minutes per training/briefing registration; 2 minutes per notification of observer physical examination; 2 hours per physical examination; 7 minutes per projected observer assignment; 7 minutes per weekly deployment/logistics report; 7 minutes per debriefing registration; 15 minutes per copies of 5 contracts; 2 hours per report of observer harassment, observer safety concerns, or observer performance problems; 80 hours per suspension/decertification appeal by an observer contractor (projected to occur only once in 5 years); and 4 hours per suspension/decertification appeal by an observer, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This rule contains requirements for electronic transmission of observer data by vessels and shoreside processors receiving pollock harvested in the catcher vessel operational area. This information collection already was approved by OMB (OMB control number 0648–0307). Send comments regarding burden estimates or any other aspect of the data requirements, including suggestions for reducing the burdens, to NMFS and OMB (see **ADDRESSES**).

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

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: October 24, 1996.

Gary Matlock,

Acting Assistant Administrator, National Marine Fisheries Service.

For the reasons set out in the preamble, and under the authority of 16 U.S.C. 773 *et seq.* and 16 U.S.C. 1801 *et seq.*, 15 CFR chapter IX and 50 CFR chapter VI are amended as follows:

15 CFR CHAPTER IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, paragraph (b), the table is amended by removing in the left column under 50 CFR, the entries ''679.51'' and ''679.52'' and by removing in the right column the control numbers in corresponding positions; and by revising the following entry to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
* * * * *	
50 CFR	.....
* * * * *	
679.50	0307, 0318
* * * * *	
50 CFR Chapter VI	.....

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

3. The authority citation for part 679 continues to read as follows:

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

4. In § 679.1, paragraph (f) is revised to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(f) *Groundfish Observer Program* (Applicable through December 31, 1997). Regulations in this part govern elements of the Groundfish Observer Program for the BSAI groundfish and GOA groundfish fisheries under the Council's authority (see subpart E of this part).

* * * * *

5. In § 679.2, the following definitions are removed: ''Bimonthly'', paragraphs (3) and (4) of ''Catcher vessel'', ''Exvessel price'', ''Fee percentage'', ''Research Plan'', ''Research Plan fisheries'', ''Retained catch'', and ''Standard exvessel price''.

a. In § 679.2, the following definitions are added in alphabetical order to read as follows: ''Adequate evidence'', ''Affiliates'', ''Briefing'', ''Civil judgment'', ''Conviction'', ''Debriefing'', ''Decertification'', ''Decertification official'', ''Deployment'', ''Direct financial interest'', ''Indictment'', ''Legal proceedings'', ''NMFS investigator'', ''North Pacific fishery'', ''Observer contractor'', ''Observer Program Office'', ''Preponderance of the evidence'', ''Suspending official'', and ''Suspension''.

b. In § 679.2, the following definitions are revised: ''Buying station'', paragraph (3) of ''Catcher/processor'', paragraph (1) of ''Catcher vessel'', ''Fishing day'', paragraph (3) of ''Fishing trip'', paragraph (2) of ''Mothership'', ''Observed or observed data'', ''Observer'', ''Processor'', ''Round weight or round-weight equivalent'', and ''Shoreside processor''.

§ 679.2 Definitions.

* * * * *

Adequate evidence, for purposes of subpart E of this part, means information sufficient to support the reasonable belief that a particular act or omission has occurred.

* * * * *

Affiliates, for purposes of subpart E of this part, means business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third party controls or has the power to control both. Indicators of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the decertification, suspension, or proposed decertification of an observer contractor that has the same or similar management, ownership, or principal employees as the observer contractor that was decertified, suspended, or proposed for decertification.

* * * * *

Briefing means a short (usually 2–4 day) training session that observers must complete to fulfill certification requirements.

Buying station means a person or vessel that receives unprocessed groundfish from a vessel for delivery at a different location to a shoreside processor or mothership and that does not process those fish.

* * * * *

Catcher/processor * * *

(3) With respect to subpart E of this part, a processor vessel that is used for, or equipped to be used for, catching fish and processing that fish.

Catcher vessel * * *

(1) With respect to groundfish recordkeeping and reporting and subpart E of this part, a vessel that is used for catching fish and that does not process fish on board.

* * * * *

Civil judgment, for purposes of subpart E of this part, means a judgment or finding of a civil offense by any court of competent jurisdiction.

* * * * *

Conviction, for purposes of subpart E of this part, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

* * * * *

Debriefing means the post-deployment process that includes a one-on-one interview with NMFS staff, a NMFS preliminary data review, observer completion of all data corrections noted, observer preparation of affidavits and reports, and completion of tasks related to biological specimens or special projects.

Decertification, as used in § 679.50(j), means action taken by a decertifying official under § 679.50(j)(7) to revoke indefinitely certification of observers or observer contractors under this section; an observer or observer contractor whose certification is so revoked is decertified.

Decertifying official, for purposes of subpart E of this part, means a designee authorized by the Regional Director to impose decertification.

Deployment means the period between an observer's arrival at the point of embarkation and the date the observer disembarks for travel to debriefing.

Direct financial interest means any source of income to, or capital investment or other interest held by, an individual, partnership, or corporation or an individual's spouse, immediate family member or parent that could be influenced by performance or non-performance of observer or observer contractor duties.

* * * * *

Fishing day means a 24-hour period, from 0001 hours A.l.t. through 2400 hours A.l.t., in which fishing gear is retrieved and groundfish are retained. Days during which a vessel only delivers unsorted codends to a processor are not fishing days.

* * * * *

Fishing trip * * *

(3) With respect to subpart E of this part, one of the following time periods:

(i) For a vessel used to process groundfish or a catcher vessel used to deliver groundfish to a mothership, a weekly reporting period during which one or more fishing days occur.

(ii) For a catcher vessel used to deliver groundfish to other than a mothership, the time period during which one or more fishing days occur that starts on the day when fishing gear is first deployed and ends on the day the vessel offloads groundfish, returns to an Alaskan port, or leaves the EEZ off Alaska and adjacent waters of the State of Alaska.

* * * * *

Indictment, for purposes of subpart E of this part, means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense must be given the same effect as an indictment.

* * * * *

Legal proceedings, for purposes of subpart E of this part, means any civil judicial proceeding to which the Government is a party or any criminal proceeding. The term includes appeals from such proceedings.

* * * * *

Mothership * * *

(2) With respect to subpart E of this part, a processor vessel that receives and processes groundfish from other vessels and is not used for, or equipped to be used for, catching groundfish.

* * * * *

NMFS investigator, for purposes of subpart E of this part, means a designee authorized by the Regional Director to conduct investigations under this section.

* * * * *

North Pacific fishery means any commercial fishery in state or Federal waters off Alaska.

Observed or observed data refers to data collected by observers (see § 679.21(f)(7) and subpart E of this part).

Observer means any individual that is awarded NMFS certification to serve as an observer under this part, is employed by an observer contractor for the purpose of providing observer services to vessels or shoreside processors under this part, and is acting within the scope of his/her employment.

Observer contractor means any person that is awarded NMFS certification to provide observer services to vessels and shoreside processors under subpart E and who contracts with observers to provide these services.

Observer Program Office means the administrative office of the Groundfish Observer Program located at Alaska Fisheries Science Center (see **ADDRESSES**, part 600).

* * * * *

Preponderance of the evidence, for purposes of subpart E of this part, means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

* * * * *

Processor means any shoreside processor, catcher/processor, mothership, any person who receives groundfish from fishermen for commercial purposes, any fisherman who transfers groundfish outside of the United States, and any fisherman who sells fish directly to a restaurant or to an individual for use as bait or personal consumption.

* * * * *

Round weight or round-weight equivalent, for purposes of this part, means the weight of groundfish calculated by dividing the weight of the primary product made from that groundfish by the PRR for that primary product as listed in Table 3 of this part, or, if not listed, the weight of groundfish calculated by dividing the weight of a primary product by the standard PRR as determined using the best available evidence on a case-by-case basis.

* * * * *

Shoreside processor means any person or vessel that receives unprocessed groundfish, except catcher/processors, motherships, buying stations, restaurants, or persons receiving groundfish for personal consumption or bait.

* * * * *

Suspending official, for purposes of subpart E of this part, means a designee authorized by the Regional Director to impose suspension.

Suspension, as used in § 679.50, means action taken by a suspending official under § 679.50(j) to suspend certification of observers or observer contractors temporarily until a final decision is made with respect to decertification.

* * * * *

6. In § 679.4, paragraph (g) is removed and paragraphs (f)(1)(i), (f)(1)(ii), and (f)(2)(ii) are revised to read as follows:

§ 679.4 Permits.

* * * * *

(f) *Federal Processor permit*—(1) *General*—(i) *Applicability.* In addition to the permit and licensing

requirements in paragraphs (b) and (d) of this section, and except as provided in paragraph (f)(1)(ii) of this section, a processor of groundfish must have a Federal processor permit issued by the Regional Director.

(ii) *Exception.* Any fisherman who transfers groundfish outside the United States, or any fisherman who sells groundfish directly to a restaurant or to an individual for use as bait or for personal consumption is not required to have a Federal processor permit.

* * * * *

(2) * * *

(ii) The fishery or fisheries for which the permit is requested.

* * * * *

7. In § 679.5, paragraph (a)(2) is revised to read as follows:

§ 679.5 Recordkeeping and reporting.

(a) * * *

(2) *Applicability, Federal processor permit.* Any processor that retains groundfish is responsible for complying with the applicable recordkeeping and reporting requirements of this section.

* * * * *

8. In § 679.7, paragraph (b)(1) is removed, paragraphs (b)(2) through (b)(4) are redesignated as paragraphs (b)(1) through (b)(3) respectively, paragraph (f)(14) is removed, paragraphs (f)(15) and (f)(16) are redesignated as paragraphs (f)(14) and (f)(15) respectively, paragraphs (g)(5) through (g)(7) are removed, paragraphs (g)(3), (g)(4), (g)(8), and (g)(9) are redesignated as paragraphs (g)(4), (g)(5), (g)(6), and (g)(7) respectively, a new paragraph (g)(3) is added, and paragraphs (a)(3), (g)(2), and newly redesignated paragraph (g)(7) are revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(3) *Groundfish Observer Program.* Fish for or process groundfish except in compliance with the terms of the Groundfish Observer Program as provided by subpart E of this part.

* * * * *

(g) *Groundfish Observer Program.*

* * *

(2) Interfere with or bias the sampling procedure employed by an observer, including physical, mechanical, or other sorting or discarding of catch before sampling.

(3) Tamper with, destroy, or discard an observer's collected samples, equipment, records, photographic film, papers, or personal effects without the express consent of the observer.

* * * * *

(7) Require, pressure, coerce, or threaten an observer to perform duties normally performed by crew members, including, but not limited to, cooking, washing dishes, standing watch, vessel maintenance, assisting with the setting or retrieval of gear, or any duties associated with the processing of fish, from sorting the catch to the storage of the finished product.

9. In § 679.21, paragraph (c)(3) is revised to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(c) * * *

(3) *Exemption.* Motherships and shoreside processors that are not required to obtain observer coverage during a month under § 679.50(c) and (d) are not required to retain salmon.

* * * * *

10. Subpart E is revised to read as follows:

Subpart E—Groundfish Observer Program

§ 679.50 Groundfish Observer Program applicable through December 31, 1997.

(a) *General.* Operators of vessels possessing a Federal fisheries permit under § 679.4(b)(1) and processors that possess a Federal processor permit under § 679.4(f)(1), must comply with this section. The owner of a fishing vessel subject to this part or a processor subject to this part must ensure that the operator or manager complies with this section and is jointly and severally liable for such compliance. Observer coverage requirements specified under this section are in addition to observer coverage requirements specified at § 679.32(c) for vessel operators and processors participating in CDQ fisheries.

(b) *Purpose.* The purpose of the Groundfish Observer Program is to allow observers to collect Alaska fisheries data deemed by the Regional Director to be necessary and appropriate for management, compliance monitoring, and research of groundfish fisheries and for the conservation of marine resources or their environment.

(c) *Observer requirements for vessels.* (1) Observer coverage is required as follows:

(i) A mothership of any length that processes 1,000 mt or more in round weight or round-weight equivalent of groundfish during a calendar month is required to have an observer aboard the vessel each day it receives or processes groundfish during that month.

(ii) A mothership of any length that processes from 500 mt to 1,000 mt in round weight or round-weight equivalent of groundfish during a calendar month is required to have an observer aboard the vessel at least 30 percent of the days it receives or processes groundfish during that month.

(iii) Each mothership that receives pollock harvested by catcher vessels in the catcher vessel operational area during the second pollock season that starts on September 1 under § 679.23(e)(2) is required to have a second observer aboard, in addition to the observer required under paragraphs (c)(1) (i) and (ii) of this section, for each day of the second pollock season until the chum salmon savings area is closed under § 679.21(e)(7)(vi), or October 15, whichever occurs first.

(iv) A catcher/processor or catcher vessel 125 ft (38.1 m) LOA or longer must carry an observer during 100 percent of its fishing days except for a vessel fishing for groundfish with pot gear as provided in paragraph (c)(1)(vii) of this section.

(v) A catcher/processor or catcher vessel equal to or greater than 60 ft (18.3 m) LOA, but less than 125 ft (38.1 m) LOA, that participates for more than 3 fishing days in a directed fishery for groundfish in a calendar quarter must carry an observer during at least 30 percent of its fishing days in that calendar quarter and at all times during at least one fishing trip in that calendar quarter for each of the groundfish fishery categories defined under paragraph (c)(2) of this section in which the vessel participates.

(vi) A catcher/processor or catcher vessel fishing with hook-and-line gear that is required to carry an observer under paragraph (c)(1)(v) of this section must carry an observer at all times during at least one fishing trip in the Eastern Regulatory Area of the GOA during each calendar quarter in which the vessel participates in a directed fishery for groundfish in the Eastern Regulatory Area.

(vii) A catcher/processor or catcher vessel equal to or greater than 60 ft (18.3 m) LOA fishing with pot gear that participates for more than 3 fishing days in a directed fishery for groundfish in a calendar quarter must carry an observer during at least 30 percent of its fishing days in that calendar quarter and at all times during at least one fishing trip in a calendar quarter for each of the groundfish fishery categories defined under paragraph (c)(2) of this section in which the vessel participates.

(2) *Groundfish fishery categories requiring separate coverage.* Directed fishing for groundfish, during any fishing trip, that results:

(i) *Pollock fishery.* In a retained catch of pollock that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (c)(2).

(ii) *Pacific cod fishery.* In a retained catch of Pacific cod that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (c)(2).

(iii) *Sablefish fishery.* In a retained catch of sablefish that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (c)(2).

(iv) *Rockfish fishery.* In a retained aggregate catch of rockfish of the genera *Sebastes* and *Sebastolobus* that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (c)(2).

(v) *Flatfish fishery.* In a retained aggregate catch of all flatfish species, except Pacific halibut, that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (c)(2).

(vi) *Other species fishery.* In a retained catch of groundfish that does not qualify as a pollock, Pacific cod, sablefish, rockfish, or flatfish fishery as defined under paragraphs (c)(2) (i) through (v) of this section.

(3) *Assignment of vessels to fisheries.* At the end of any fishing trip, a vessel's retained catch of groundfish species or species groups for which a TAC has been specified under § 679.20, in round weight or round-weight equivalent, will determine to which fishery category listed under paragraph (c)(2) of this section the vessel is assigned.

(i) *Catcher/processors.* A catcher/processor will be assigned to a fishery category based on the retained groundfish catch composition reported on the vessel's weekly production report submitted to the Regional Director under § 679.5(i).

(ii) *Catcher vessel delivery in Federal waters.* A catcher vessel that delivers to a mothership in Federal waters will be assigned to a fishery category based on the retained groundfish catch composition reported on the weekly production report submitted to the Regional Director for that week by the mothership under § 679.5(i).

(iii) *Catcher vessel delivery in Alaska State waters.* A catcher vessel that delivers groundfish to a shoreside processor or to a mothership processor vessel in Alaska State waters will be assigned to a fishery category based on the retained groundfish catch composition reported on one or more ADF&G fish tickets as required under Alaska Statutes at A.S. 16.05.690.

(d) *Observer requirements for shoreside processors.* Observer coverage is required as follows. A shoreside processor that:

(1) Processes 1,000 mt or more in round weight or round weight equivalent of groundfish during a calendar month is required to have an observer present at the facility each day it receives or processes groundfish during that month.

(2) Processes 500 mt to 1,000 mt in round weight or round-weight equivalent of groundfish during a calendar month is required to have an observer present at the facility at least 30 percent of the days it receives or processes groundfish during that month.

(3) Offloads pollock at more than one location on the same dock and has distinct and separate equipment at each location to process those pollock and that receives pollock harvested by catcher vessels in the catcher vessel operational area during the second pollock season that starts on September 1, under § 679.23(e)(2), is required to have an observer, in addition to the observer required under paragraphs (d)(1) and (2) of this section, at each location where pollock is offloaded, for each day of the second pollock season until the chum salmon savings area is closed under § 679.21(e)(7)(vi), or October 15, whichever occurs first.

(e) *Inseason adjustments in observer coverage requirements.*

(1) The Regional Director may adjust the observer coverage requirements set out under paragraphs (c) and (d) of this section at any time to improve the accuracy, reliability, and availability of observer data, so long as the changes are based on one or more of the following:

(i) A finding that fishing methods, times, or areas, or catch or bycatch composition for a specific fishery or fleet component have changed significantly, or are likely to change significantly.

(ii) A finding that such modifications are necessary to improve data availability or quality in order to meet specific fishery management objectives.

(2) *Procedure.* Observer coverage requirements may be adjusted in accordance with § 679.25(c). NMFS must publish changes in observer coverage requirements in the Federal Register, with the reasons for the changes and any special instructions to vessels or shoreside processors required to carry observers, at least 10 calendar days prior to their effective date.

(f) *Responsibilities*—(1) *Vessel responsibilities.* An operator of a vessel required to carry one or more observers must:

(i) *Accommodations and food.* Provide, at no cost to observers or the United States, accommodations and food on the vessel for the observer or observers that are equivalent to those provided for officers, engineers, foremen, deck-bosses or other management level personnel of the vessel.

(ii) *Safe conditions.* (A) Maintain safe conditions on the vessel for the protection of observers including adherence to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel.

(B) Have on board:

(*1*) A valid Commercial Fishing Vessel Safety Decal issued within the past 2 years that certifies compliance with regulations found in 33 CFR Chapter I and 46 CFR Chapter I;

(*2*) A certificate of compliance issued pursuant to 46 CFR 28.710; or

(*3*) A valid certificate of inspection pursuant to 46 U.S.C. 3311.

(iii) *Transmission of data.* Facilitate transmission of observer data by:

(A) *Observer use of equipment.* Allowing observers to use the vessel's communication equipment and personnel, on request, for the entry, transmission, and receipt of work-related messages, at no cost to the observers or the United States.

(B) *Communication equipment requirements*—(*1*) *Hardware and software.* Ensuring that each mothership that is required to have a second observer aboard under paragraph (c)(1)(iii) of this section, is equipped with INMARSAT Standard A satellite communication capabilities and cc:Mail remote. The operator of each mothership shall also make available for the observers' use the following equipment compatible therewith and having the ability to operate the NMFS-supplied data entry software program: A personal computer with a 486 or greater capacity processing chip, a DOS 3.0, or a successor version of DOS with 10 megabytes free hard disk storage, and 8 megabytes RAM.

(*2*) *NMFS-supplied Software.* Ensuring that each mothership that is required to have a second observer aboard under paragraph (c)(iii) of this section, obtains the data entry software provided by the Regional Director for use by the observer.

(C) *Functional and operational equipment.* Ensuring that the communication equipment that is on motherships as specified at paragraph

(f)(1)(iii)(B) of this section, and that is used by observers to enter and transmit data, is fully functional and operational.

(iv) *Vessel position.* Allow observers access to, and the use of, the vessel's navigation equipment and personnel, on request, to determine the vessel's position.

(v) *Access.* Allow observers free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(vi) *Prior notification.* Notify observers at least 15 minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer, unless the observers specifically request not to be notified.

(vii) *Records.* Allow observers to inspect and copy the vessel's DFL, DCPL, product transfer forms, any other logbook or document required by regulations, printouts or tallies of scale weights, scale calibration records, bin sensor readouts, and production records.

(viii) *Assistance.* Provide all other reasonable assistance to enable observers to carry out their duties, including, but not limited to:

(A) Measuring decks, codends, and holding bins.

(B) Providing the observers with a safe work area adjacent to the sample collection site.

(C) Collecting bycatch when requested by the observers.

(D) Collecting and carrying baskets of fish when requested by observers.

(E) Allowing observers to determine the sex of fish when this procedure will not decrease the value of a significant portion of the catch.

(ix) *Transfer at sea.* (A) Ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours, under safe conditions, and with the agreement of observers involved.

(B) Notify observers at least 3 hours before observers are transferred, such that the observers can collect personal belongings, equipment, and scientific samples.

(C) Provide a safe pilot ladder and conduct the transfer to ensure the safety of observers during transfers.

(D) Provide an experienced crew member to assist observers in the small boat or raft in which any transfer is made.

(2) *Shoreside processor responsibilities.* A manager of a shoreside processor must do the following:

(i) *Safe conditions.* Maintain safe conditions at the shoreside processing facility for the protection of observers by adhering to all applicable rules, regulations, or statutes pertaining to safe operation and maintenance of the processing facility.

(ii) *Operations information.* Notify the observers, as requested, of the planned facility operations and expected receipt of groundfish prior to receipt of those fish.

(iii) *Transmission of data.* Facilitate transmission of observer data by:

(A) *Observer use of equipment.* Allowing observers to use the shoreside processor's communication equipment and personnel, on request, for the entry, transmission, and receipt of work-related messages, at no cost to the observers or the United States.

(B) *Communication equipment requirements—(1) Hardware and software.* Ensuring that each shoreside processor that is required to have an additional observer under paragraph (d)(3) of this section, makes available to the observer the following equipment or equipment compatible therewith: A personal computer with a 486 or greater capacity processing chip with at least a 9600-baud modem and a telephone line. The personal computer must be equipped with a mouse, Windows version 3.1, or a program having the ability to operate the NMFS-supplied data entry software program, 10 megabytes free hard disk storage, and 8 megabytes RAM.

(*2*) *NMFS-supplied software.* Ensuring that each shoreside processor that is required to have an additional observer under paragraph (d)(3) of this section, obtains the data entry software provided by the Regional Director for use by the observer.

(C) *Functional and operational equipment.* Ensuring that the communication equipment that is in the shoreside processor as specified at paragraph (f)(2)(iii)(B) of this section and that is used by observers to transmit data is fully functional and operational.

(iv) *Access.* Allow observers free and unobstructed access to the shoreside processor's holding bins, processing areas, freezer spaces, weight scales, warehouses, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(v) *Document access.* Allow observers to inspect and copy the shoreside processor's DCPL, product transfer forms, any other logbook or document required by regulations; printouts or tallies of scale weights; scale calibration records; bin sensor readouts; and production records.

(vi) *Assistance.* Provide all other reasonable assistance to enable the observer to carry out his or her duties, including, but not limited to:

(A) Assisting the observer in moving and weighing totes of fish.

(B) Cooperating with product recovery tests.

(C) Providing a secure place to store baskets of sampling gear.

(g) *Procurement of observer services.* Owners of vessels or shoreside processors required to carry observers under paragraphs (c) and (d) of this section must arrange for observer services from an observer contractor or contractors. A list of observer contractors is available upon request from the Observer Program Office.

(h) *Certification and decertification of observers*—(1) *Certification of observers*—(i) *Requirements.* NMFS will certify individuals who:

(A) Meet education and/or experience standards available from the Observer Program Office.

(B) Have successfully completed a NMFS-approved observer training and/or briefing as prescribed by NMFS and available from the Observer Program Office.

(C) Have not been suspended or decertified under paragraph (j) of this section.

(ii) *Term.* An observer's certification expires upon completion of a deployment. Observers can be decertified or suspended by NMFS under paragraph (j) of this section.

(2) *Standards of observer conduct*—(i) *Conflict of interest.*

(A) Observers:

(*1*) May not have a direct financial interest, other than the provision of observer services, in a North Pacific fishery, including, but not limited to, vessels or shoreside facilities involved in the catching or processing of the products of the fishery, concerns selling supplies or services to these vessels or shoreside facilities, or concerns purchasing raw or processed products from these vessels or shoreside facilities.

(*2*) May not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

(*3*) May not serve as observers on any vessel or at any shoreside facility owned or operated by a person who previously employed the observers.

(*4*) May not serve as observers during the 12 consecutive months immediately following the last day of the observer's employment in a North Pacific fishery.

(*5*) May not solicit or accept employment as a crew member or an employee of a vessel or shoreside processor in a North Pacific fishery while under contract with an observer contractor.

(B) Provisions for remuneration of observers under this section do not constitute a conflict of interest under this paragraph (h)(2).

(ii) *Standards of behavior.* Observers must avoid any behavior that could adversely affect the confidence of the public in the integrity of the Observer Program or of the government, including but not limited to the following:

(A) Observers must diligently perform their assigned duties.

(B) Observers must accurately record their sampling data, write complete reports, and report honestly any suspected violations of regulations relevant to conservation of marine resources or their environment that are observed.

(C) Observers must not disclose collected data and observations made on board the vessel or in the processing facility to any person except the owner or operator of the observed vessel or processing facility, an authorized officer, or NMFS.

(D) Observers must refrain from engaging in any illegal actions or any other activities that would reflect negatively on their image as professional scientists, on other observers, or on the Observer Program as a whole. This includes, but is not limited to:

(*1*) Engaging in excessive drinking of alcoholic beverages;

(*2*) Engaging in the use or distribution of illegal drugs; or

(*3*) Becoming physically or emotionally involved with vessel or processing facility personnel.

(i) *Certification and decertification of observer contractors*—(1) *Certification of observer contractors*—(i) *Application.* An applicant seeking to become an observer contractor must submit an application to the Regional Director describing the applicant's ability to carry out the responsibilities and duties of an observer contractor as set out in paragraph (i)(2) of this section and the arrangements and methods to be used. Observer contractors certified prior to January 1, 1997, are exempt from submitting an application.

(ii) *Selection.* The Regional Director may select one or more observer contractors based on the information submitted by applicants under paragraph (i)(1)(i) of this section and on other selection criteria that are available from the Observer Program Office.

(iii) *Term.* Observer contractors will be certified through December 31, 1997. Observer contractors can be decertified or suspended by NMFS under paragraph (j) of this section.

(2) *Responsibilities and duties of observer contractors* include but are not limited to the following:

(i) Recruiting, evaluating, and hiring qualified candidates to serve as observers, including minorities and women.

(ii) Ensuring that only observers provide observer services.

(iii) Providing observers as requested by vessels and processors to fulfill requirements under paragraphs (c) and (d) of this section.

(iv) Providing observers' salary, benefits and personnel services in a timely manner.

(v) Providing all logistics to place and maintain the observers aboard the fishing vessels or at the site of the processing facility. This includes all travel arrangements, lodging and per diem, and any other services required to place observers aboard vessels or at processing facilities. Unless alternative arrangements are approved by the Observer Program Office:

(A) Observers must not be deployed on the same vessel or at the same shoreside processor for more than 90 days in a 12-month period.

(B) A deployment cannot exceed 90 days.

(C) A deployment cannot include assignments to more than four vessels and/or shoreside processors.

(vi) Supplying alternate observers or prospective observers if one or more observers or prospective observers are not approved by NMFS, fail to successfully complete observer training or briefing, are injured and must be replaced, or resign prior to completion of duties.

(vii) Maintaining communications with observers at sea and shoreside facilities. Each observer contractor must have an employee responsible for observer activities on call 24 hours a day to handle emergencies involving observers, or problems concerning observer logistics, whenever observers are at sea, stationed at shoreside facilities, in transit, or in port awaiting boarding.

(viii) In cooperation with vessel or processing facility owners, ensuring that all observers' in-season catch messages and other required transmissions between observers and NMFS are delivered to NMFS within a time specified by the Regional Director.

(ix) Ensuring that observers complete mid-deployment data reviews when required.

(x) Ensuring that observers complete debriefing as soon as possible after the completion of their deployment and at locations specified by the Regional Director.

(xi) Ensuring all data, reports, and biological samples from observer deployments are complete and submitted to NMFS at the time of the debriefing interview.

(xii) Ensuring that all sampling and safety gear are returned to the Observer Program Office and that any gear and equipment lost or damaged by observers is replaced according to NMFS requirements.

(xiii) Monitoring observers' performance to ensure satisfactory execution of duties by observers and observer conformance with NMFS' standards of observer conduct under paragraph (h)(2) of this section.

(xiv) Providing the following information to the Observer Program Office by electronic transmission (e-mail) or by fax.

(A) Observer training registration consisting of a list of individuals to be hired upon approval by NMFS and a copy of each person's academic transcripts, resume, and application for observer employment. The list must include the person's name and sex. The person's social security number is requested. Observer briefing registration consisting of a list of the observer's name, requested briefing class date, and briefing location. If the Observer Program Office has excused an observer from attending a briefing, the briefing registration must also include the names of observers excused from briefing, the date the observer was excused, and the name of the NMFS staff person granting the excuse. This information must be submitted to the Observer Program Office at least 5 working days prior to the beginning of a scheduled observer certification training or briefing session.

(B) Projected observer assignments that include the observer's name; vessel or shoreside processor assignment, type, and code; port of embarkation; target species; and area of fishing. This information must be submitted to the Observer Program Office prior to the completion of the training or briefing session.

(C) Observer deployment/logistics reports that include the observer's name, cruise number, current vessel or shoreside processor assignment and code, embarkation date, and estimated and actual disembarkation dates. This information must be submitted weekly

as directed by the Observer Program Office.

(D) Observer debriefing registration that includes the observer's name, cruise number, vessel or shoreside processor name(s), and requested debriefing date.

(E) Copies of ''certificates of insurance'' that name the NMFS Observer Program Task Leader as a ''certificate holder''. The certificates of insurance shall verify the following coverage provisions and state that the insurance company will notify the certificate holder if insurance coverage is changed or cancelled:

(*1*) Maritime Liability to cover ''seamen's'' claims under the Merchant Marine Act (Jones Act) and General Maritime Law ($1 million minimum).

(*2*) Coverage under the U.S. Longshore and Harbor Workers' Compensation Act ($1 million minimum).

(*3*) States Workers' Compensation as required.

(*4*) Contractual General Liability.

(F) Notification that, based upon a physical examination during the 12 months prior to an observer's deployment, an examining physician has certified that an observer does not have any health problems or conditions that would jeopardize the observer's safety or the safety of others while deployed, or prevent the observer from performing his or her duties satisfactorily, and that prior to examination, the certifying physician was made aware of the dangerous, remote and rigorous nature of the work. This information, including the date of the physical examination, must be submitted prior to the completion of the training or briefing session.

(G) A copy of each type of signed and valid contract an observer contractor has with those entities requiring observer services under paragraphs (c) and (d) of this section and with observers. Copies of contracts with specific entities requiring observer services or with specific observers must be submitted to the Observer Program Office upon request.

(H) Reports of observer harassment, concerns about vessel or processor safety, or observer performance problems must be submitted within 24 hours after the observer contractor becomes aware of the problem.

(3) *Conflict of interest.* Observer contractors:

(i) Must not have a direct financial interest, other than the provision of observer services, in a North Pacific fishery, including, but not limited to, vessels or shoreside facilities involved in the catching or processing of the products of the fishery, concerns selling supplies or services to these vessels or shoreside facilities, or concerns purchasing raw or processed products from these vessels or shoreside facilities.

(ii) Must assign observers without regard to any preference by representatives of vessels and shoreside facilities based on observer race, gender, age, religion, or sexual orientation.

(iii) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of observer contractors.

(j) *Suspension and Decertification Process—(1) Applicability.* This paragraph (j) sets forth the procedures for suspension and decertification of observers and observer contractors under this section.

(2) *Policy.* (i) NMFS must certify responsible and qualified observers and observer contractors only. Suspension and decertification are discretionary actions that, taken in accordance with this section, are appropriate means to effectuate this policy.

(ii) The serious nature of suspension and decertification requires that these actions be taken only in the public interest for the promotion of fishery conservation and management and not for purposes of punishment. NMFS may impose suspension or decertification only for the causes and in accordance with the procedures set forth in this section.

(iii) In addition to suspension and decertification, observers and observer contractors who violate provisions of this part may be subject to penalties, fines, and other sanctions as authorized by law.

(3) *Public availability of suspension or decertification records.* Public availability of suspension or decertification records will depend upon the provisions of the Freedom of Information Act and other applicable law.

(4) *Effect and timing of suspension or decertification.* (i) Observers or observer contractors decertified or suspended must not provide services prescribed by this section to vessels and shoreside processors.

(ii) Suspension and decertification actions may be combined and imposed simultaneously.

(iii) Suspension or decertification of observer contractors includes all divisions or other organizational elements of observer contractors, unless the suspension or decertification decision is limited by its terms to specific divisions or organizational elements. The suspending or decertifying official may, at his or her sole discretion, include any affiliates of observer contractors if they are specifically named and given written notice of the suspension or proposed decertification and an opportunity to respond under paragraph (j)(5)(iii)(B) or (j)(6)(iii)(C) of this section.

(5) *Suspension*—(i) *General.* (A) The suspending official may, in the public interest, suspend observers or observer contractors for any of the causes in paragraph (j)(5)(ii) of this section, using the procedures in paragraph (j)(5)(iii) of this section.

(B) Suspension may be imposed on the basis of adequate evidence, pending the completion of investigation or legal proceedings, when NMFS determines that immediate action is necessary. In assessing the adequacy of the evidence, the suspending official should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.

(ii) *Causes for suspension.* The suspending official may suspend observers or observer contractors:

(A) Upon a determination, based upon adequate evidence, that observers or observer contractors committed any acts or omissions constituting a cause for decertification under paragraph (j)(6)(ii) of this section; or

(B) Upon indictment for any of the causes for decertification in (j)(6)(ii)(A)(*1*) or (j)(6)(ii)(B)(*1*) of this section.

(iii) *Procedures*—(A) *Review.* The suspending official must review all available evidence and must promptly determine whether or not to proceed with suspension. The suspending official may refer the matter to the NMFS investigator for further investigation, or to the decertifying officer.

(B) *Notice of suspension.* When observers or observer contractors and any specifically named affiliates are suspended, they must be immediately advised personally or by certified mail, return receipt requested, at the last known residence or place of business:

(*1*) That they have been suspended and that the suspension is based on an indictment or other adequate evidence that observers or observer contractors have committed acts or omissions constituting grounds for suspension under (j)(5)(ii) of this section. Such acts or omissions may be described in terms sufficient to place observers or observer

contractors on notice without disclosing NMFS' evidence.

(*2*) That the suspension is for a temporary period pending the completion of an investigation and such decertification proceedings as may ensue.

(*3*) Of the cause(s) relied upon under paragraph (j)(5)(ii) of this section for imposing suspension.

(*4*) Of the effect of the suspension.

(*5*) That, within 30 days after receipt of the notice, the observers or observer contractors may submit, in writing, documentary evidence and argument in opposition to the suspension, including any additional specific documentary evidence that raises a genuine dispute over the material facts.

(*6*) That additional proceedings to determine disputed material facts may be conducted unless:

(*i*) The action is based on an indictment; or

(*ii*) A determination is made, on the basis of NOAA General Counsel advice, that the substantial interests of the government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(C) *Dispute.* For suspensions not based on an indictment, if NMFS determines that the observers' or observer contractors' submission in opposition raises a genuine dispute over facts material to the suspension and if no determination has been made, on the basis of NOAA General Counsel advice, that substantial interests of the government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced, the suspending official:

(*1*) Must afford observers or observer contractors an opportunity to submit additional documentary evidence upon a showing that such documentary evidence was unavailable during the 30-day period following receipt of the notice of suspension.

(*2*) May, at his or her sole discretion, afford observers or observer contractors an opportunity to appear in person, present witnesses, and confront any person NMFS presents. The suspending official must make an audio tape of the proceedings and make a copy available at cost to observers or observer contractors upon request, unless observers or observer contractors and NMFS, by mutual agreement, waive the requirement for an audio tape.

(D) *Suspending official's decision.* (*1*) The suspending official's decision must be based on all the information in the administrative record, including any submission made by observers or observer contractors on action based on an indictment:

(*i*) In which observers or observer contractors' submissions do not raise a genuine dispute over material facts; or

(*ii*) In which additional proceedings to determine disputed material facts have been denied on the basis of NOAA General Counsel advice.

(*2*) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact must be prepared. The suspending official must base the decision on the facts as found, together with any information and argument submitted by observers or observer contractors and any other information in the administrative record.

(*3*) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part.

(*4*) The suspending official's decision must be made after the conclusion of the proceedings with respect to disputed facts.

(*5*) Prompt written notice of the suspending official's decision to affirm, modify, or terminate the notice of suspension issued under this paragraph (j)(5) must be served on observers or observer contractors and any affiliates involved, personally or by certified mail, return receipt requested, at the last known residence or place of business.

(E) *Period of suspension.* (*1*) Suspension is for a temporary period pending the completion of any investigation and any ensuing legal proceedings or decertification proceedings, including any administrative review under paragraph (j)(7) of this section, unless sooner terminated by the suspending official or as provided under this paragraph (j). If suspension is in effect, the decertifying official will expedite any related decertification proceedings.

(*2*) If legal proceedings or decertification proceedings are not initiated within 12 months after the date of the suspension notice, the suspension must be terminated.

(F) *Scope of suspension for observer contractors.* The scope of suspension must be the same as that for decertification under paragraph (j)(6)(v), except that the procedures set out under paragraph (j)(5) must be used in imposing suspension.

(6) *Decertification*—(i) *General.* The decertifying official may, in the public interest, decertify observers or observer contractors for any of the causes in paragraph (j)(6)(ii) of this section using the procedures in paragraph (j)(6)(iii) of this section. The existence of a cause for decertification does not necessarily require that observers or observer contractors be decertified; the seriousness of the acts or omissions and any mitigating factors should be considered in making any decertification decision. The existence or nonexistence of any mitigating factors is not necessarily determinative of an observers' or observer contractors' present fitness. Accordingly, if a cause for decertification exists, observers or observer contractors have the burden of demonstrating, to the satisfaction of the decertifying official, present fitness and that decertification is not necessary.

(ii) *Causes for decertification*—(A) *Observers.* (*1*) The decertifying official may decertify observers for a conviction of or civil judgment for the following:

(*i*) Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the duties of observers as prescribed by NMFS;

(*ii*) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

(*iii*) Commission of any other offense indicating a lack of integrity or honesty that seriously and directly affects the present fitness of observers.

(*2*) The decertifying official may decertify observers, based upon a preponderance of the evidence, upon a determination that observers have:

(*i*) Failed to satisfactorily perform the duties of observers as prescribed by NMFS; or

(*ii*) Failed to abide by the standards of conduct for observers as prescribed under paragraph (h)(2) of this section.

(B) *Observer contractors.* (*1*) The decertifying official may decertify observer contractors for a conviction of or civil judgment for the following:

(*i*) Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the responsibilities and duties of observer contractors as prescribed under paragraph (i)(2) of this section;

(*ii*) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

(*iii*) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present fitness of observer contractors.

(*2*) The decertifying official may decertify observer contractors, based upon a preponderance of the evidence,

upon a determination that observer contractors have:

(*i*) Failed to satisfactorily perform the responsibilities and duties of observer contractors as prescribed under paragraph (i)(2) of this section; or

(*ii*) A conflict of interest as set out under paragraph (i)(3) of this section.

(iii) *Procedures*—(A) *Investigation and referral.* NMFS personnel must promptly report to the NMFS investigator matters appropriate for further investigation. The NMFS investigator must investigate matters so referred and submit the investigative material to the decertifying official or, if appropriate, to the suspending official.

(B) *Review.* The decertifying official must review all available evidence and must promptly determine whether or not to proceed with decertification. The decertifying official may refer the matter to the NMFS investigator for further investigation or, if appropriate, to the suspending official.

(C) *Notice of proposed decertification.* If the decertifying official determines to proceed with decertification, he or she must serve a notice of proposed decertification upon observers or observer contractors and any specifically named affiliates, personally or by certified mail, return receipt requested, at the last known residence or place of business, advising:

(*1*) That decertification is being considered.

(*2*) Of the reasons for the proposed decertification in terms sufficient to put observers or observer contractors on notice of the conduct or transaction(s) upon which it is based.

(*3*) Of the cause(s) relied upon under paragraph (j)(6)(ii) of this section for proposing decertification.

(*4*) That, within 30 days after receipt of the notice, observers or observer contractors may submit, in writing, documentary evidence and argument in opposition to the proposed decertification, including any additional specific documentary evidence that raises a genuine dispute over the material facts.

(*5*) Of NMFS' procedures governing decertification decision making.

(*6*) Of the effect of the issuance of the notice of proposed decertification.

(*7*) Of the potential effect of an actual decertification.

(D) *Dispute.* In actions not based upon a conviction or civil judgment, if it is found that observers' or observer contractors' submissions raise a genuine dispute over facts material to the proposed decertification, the decertifying official:

(*1*) Must afford observers or observer contractors an opportunity to submit additional documentary evidence upon a showing that such documentary evidence was unavailable during the 30-day period following receipt of the notice of proposed decertification.

(*2*) May, at his or her sole discretion, afford observers or observer contractors an opportunity to appear in person, present witnesses, and confront any person NMFS presents. The decertifying official must make an audio tape of the proceedings and make a copy available at cost to observers or observer contractors upon request, unless observers or observer contractors and NMFS, by mutual agreement, waive the requirement for an audio tape.

(E) *Decertifying official's decision.* (*1*) In actions based upon a conviction or judgment, or in which there is no genuine dispute over material facts, the decertifying official must make a decision on the basis of all the information in the administrative record, including any submission made by observers or observer contractors. The decision must be made after receipt of any timely information and argument submitted by observers or observer contractors.

(*2*) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact must be prepared. The decertifying official must base the decision on the facts as found, together with any information and argument submitted by observers or observer contractors and any other information in the administrative record.

(*3*) The decertifying official may refer matters involving disputed material facts to another official for findings of fact. The decertifying official may reject any such findings, in whole or in part.

(*4*) The decertifying official's decision must be made after the conclusion of the proceedings with respect to disputed facts.

(*5*) In any action in which the proposed decertification is not based upon a conviction or civil judgment, the cause for decertification may be established by a preponderance of the evidence.

(F) *Notice of decertifying official's decision.* (*1*) If the decertifying official decides to impose decertification, observers or observer contractors and any affiliates involved must be given prompt notice personally or by certified mail, return receipt requested, at the last known residence or place of business. Such notice must:

(*i*) Refer to the notice of proposed decertification.

(*ii*) Specify the reasons for decertification.

(*iii*) Advise that the decertification is effective immediately, unless the decertifying official determines that there is a compelling reason for maintaining certification for a specified period under conditions and restrictions necessary and appropriate to protect the public interest or promote fishery conservation and management and states the reasons in the notice.

(*2*) If decertification is not imposed, the decertifying official must promptly notify observers or observer contractors and any affiliates involved, by certified mail, return receipt requested, at the last known residence or place of business.

(iv) *Period of decertification.* (A) Decertification must be in force indefinitely or until rescinded.

(B) The decertifying official may rescind decertification, upon observers' or observer contractors' request, supported by documentation, for reasons such as:

(*1*) Newly discovered material evidence;

(*2*) Reversal of the conviction or civil judgment upon which the decertification was based;

(*3*) Bona fide change in ownership or management;

(*4*) Elimination of other causes for which the decertification was imposed; or

(*5*) Other reasons the decertifying official deems appropriate.

(v) *Scope of decertification.* (A) The improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with observer contractors may be imputed to the observer contractors when the conduct occurred in connection with the performance of duties for or on behalf of observer contractors, or with observer contractors' knowledge, approval, or acquiescence. Observer contractors' acceptance of the benefits derived from the conduct must be evidence of such knowledge, approval, or acquiescence.

(B) The improper conduct of observer contractors may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with observer contractors who participated in, knew of, or had reason to know of the observer contractors' conduct.

(7) *Administrative review of suspension or decertification.*

(i) Observers or observer contractors may petition for review of a suspension decision issued under paragraph (j)(5)(iii) of this section or a decertification decision issued under paragraph (j)(6)(iii) of this section within 30 days after the date the decision was served. The petition must

be addressed to the appeals officer identified in the notice of suspension or decertification. Any petitioned suspension will remain in effect pending the appeals officer's written decision to affirm, modify or terminate the suspension.

(ii) Administrative review is discretionary. Petitions for discretionary review may be filed only upon one or more of the following grounds:

(A) A finding of material fact is clearly erroneous based upon the administrative record;

(B) A substantial and important question of policy or discretion is involved; or

(C) A prejudicial error has occurred.

(iii) If the appeals officer declines review based on the written petition, observers or observer contractors must be immediately advised of the decision to decline review personally or by certified mail, return receipt requested, at the last known residence or place of business.

(iv) If the appeals officer grants review based on the written petition, he or she may request further written explanation from observers, observer contractors, or the decertifying officer or suspending officer. The appeals officer will then render a written decision to affirm, modify, or terminate the suspension or decertification or return the matter to the suspending or decertifying official for further findings. The appeals officer must base the decision on the administrative records compiled under paragraphs (j)(5) or (i)(7) of this section, as appropriate. The appeals officer will serve the decision on observers or observer contractors and any affiliates involved, personally or by certified mail, return receipt requested, at the last known residence or place of business.

(v) An appeals officer's decision imposing suspension, or decertification or an unpetitioned suspending, or decertifying official's decision is the final administrative decision of the U.S. Department of Commerce.

(k) *Release of observer data to the public*—(1) *Summary of weekly data*. The following information collected by observers for each catcher processor and catcher vessel during any weekly reporting period may be made available to the public:

(i) Vessel name and Federal permit number.

(ii) Number of chinook salmon and ''other salmon'' observed.

(iii) The ratio of total round weight of halibut or Pacific herring to the total round weight of groundfish in sampled catch.

(iv) The ratio of number of king crab or *C. bairdi* Tanner crab to the total round weight of groundfish in sampled hauls.

(v) The number of observed trawl hauls or fixed gear sets.

(vi) The number of trawl hauls that were basket sampled.

(vii) The total weight of basket samples taken from sampled trawl hauls.

(2) *Haul-specific data.* (i) The information listed in paragraphs (k)(2)(i)(A) through (M) of this section and collected by observers from observed hauls on board vessels using trawl gear to participate in a directed fishery for groundfish other than rockfish, Greenland turbot, or Atka mackerel may be made available to the public:

(A) Date.

(B) Time of day gear is deployed.

(C) Latitude and longitude at beginning of haul.

(D) Bottom depth.

(E) Fishing depth of trawl.

(F) The ratio of the number of chinook salmon to the total round weight of groundfish.

(G) The ratio of the number of other salmon to the total round weight of groundfish.

(H) The ratio of total round weight of halibut to the total round weight of groundfish.

(I) The ratio of total round weight of herring to the total round weight of groundfish.

(J) The ratio of the number of king crab to the total round weight of groundfish.

(K) The ratio of the number of C. *bairdi* Tanner crab to the total round weight of groundfish.

(L) Sea surface temperature (where available).

(M) Sea temperature at fishing depth of trawl (where available).

(ii) The identity of the vessels from which the data in paragraph (k)(2)(i) of this section are collected will not be released.

(3) *Competitive harm*. In exceptional circumstances, the owners and operators of vessels may provide to the Regional Director written justification at the time observer data are submitted, or within a reasonable time thereafter, that disclosure of the information listed in paragraphs (k) (1) and (2) of this section could reasonably be expected to cause substantial competitive harm. The determination whether to disclose the information will be made pursuant to 15 CFR 4.7.

PART 679—[AMENDED]

11. In part 679, remove ''NMFS-certified'' wherever it occurs.

[FR Doc. 96–27891 Filed 10–31–96; 8:45 am]

BILLING CODE 3510–22–W

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

[Public Notice 2455]

Documentation of Nonimmigrants and Immigrants Under the Immigration and Nationality Act, as Amended—Place of Application

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Final rule.

SUMMARY: This final rule amends the regulation by allowing the Deputy Assistant Secretary to designate the geographical areas over which consular offices have jurisdiction to process nonimmigrant visas. Consequently, an alien may now be authorized to apply at any nonimmigrant visa issuing office within the territory of the country of the alien's residence.

EFFECTIVE DATE: The effective date of this final rule is December 2, 1996.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Legislation and Regulations Division, 202–663–1204.

SUPPLEMENTARY INFORMATION: Current Department of State regulations concerning the place of application for aliens seeking issuance of a nonimmigrant visa require that the applicant apply for a visa at the consular office in the consular district in which the alien resides (or in the case of a resident of Taiwan, at the American Institute in Taiwan) unless

(1) the alien is physically present in the United States and can apply to the Visa Office for the issuance or reissuance of a visa under 22 CFR 41.111(b); or

(2) the consular officer in a country where the alien is physically present has agreed to accept the alien's visa application either as a matter of discretion or at the direction of the Department.

This new regulation introduces greater flexibility in designating the jurisdictional consular office for nonimmigrant processing. To address resource reductions in some countries, the Department needs flexibility in managing its visa workload and has centralized and consolidated visa services in specific consular offices. The consolidation process may accord a consular office nonimmigrant visa processing jurisdiction over a geographical area which may not exactly comport with consular districts defined by the Secretary of State

pursuant to the authority granted the Secretary under section 514 of the Foreign Service Act of 1946. As the management of available resources requires flexibility, this rule grants the Deputy Assistant Secretary the ability to best manage such resources by designating the geographical area for which each consular office possesses jurisdiction to process nonimmigrant visa applications. The list of services for each consular office, including the providing of nonimmigrant visa processing services, continues to be published in Appendix C of Part IV of Volume 9 of the Foreign Affairs Manual.

It should be noted that pursuant to the authority granted the Deputy Assistant Secretary, the Deputy Assistant Secretary may determine that aliens resident in a country in which there is more than one consular office processing nonimmigrant visas may apply for nonimmigrant visa issuance at a designated post or at any of those NIV processing consular offices in that country.

Final Rule

As the amendments to the regulation provide a benefit to aliens by facilitating the visa application process, the Department has determined that it is unnecessary to publish a proposed rule or to solicit comments from the public.

This final rule is not expected to have a ''significant economic impact'' on a substantial number of small entities, because it is inapplicable. This rule imposes no reporting or recordkeeping action from the public requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act requirements. This rule has been reviewed as required by E.O. 12988 and certified to be in compliance therewith. This rule is exempted from E.O. 12866 but has been reviewed to ensure consistency therewith.

List of Subjects in 22 CFR Part 41

Aliens, Applications, Nonimmigrants, Passports and visas.

In view of the foregoing, title 22 of the Code of Federal Regulations part 41 is amended to read as follows:

PART 41—[AMENDED]

1. The authority citation for Part 40 continues to read as follows:

Authority: 8 U.S.C. 1104.

2. Sec. 41.101 is amended by revising paragraph (a) to read as follows:

§ 41.101 Place of application.

(a) *Application for regular visa made at jurisdictional consular office of alien's residence or physical presence.* (1) An alien applying for a nonimmigrant visa shall make application at a consular office having jurisdiction over the alien's place of residence, or if the alien is a resident of Taiwan, at the American Institute in Taiwan, unless—

(i) the alien is physically present in the United States and is entitled to apply for issuance or reissuance of a visa under the provisions of § 41.111(b); or

(ii) a consular office having jurisdiction over the area in which the alien is physically present but not resident has agreed, as a matter of discretion or at the direction of the Department, to accept the alien's application.

(2) The Deputy Assistant Secretary of State to the Visa Office is authorized to designate the geographical area for which each consular office possesses jurisdiction to process nonimmigrant visa applications.

Dated: October 11, 1996.

Ruth A. Davis,

Acting Assistant Secretary for Consular Affairs.

[FR Doc. 96–28185 Filed 10–31–96; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1, 5 and 10

[Docket No. 951006247–6255–02]

RIN 0651–AA70

Communications With the Patent and Trademark Office

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (Office) is amending its rules of practice to specify addresses for agency mail to expedite mail delivery, define ''Federal holiday within the District of Columbia,'' clarify and simplify procedures for filing papers and fees by ''Express Mail,'' and remove certain exclusions from § 1.8(a)(2)(ii) to permit additional trademark documents to be considered timely filed if they are mailed or transmitted by the due date and in compliance with § 1.8(a)(1).

EFFECTIVE DATE: December 2, 1996.

FOR FURTHER INFORMATION CONTACT: Lawrence E. Anderson (for patent-related matters) by telephone at (703) 305–9285, by electronic mail at landerso@uspto.gov, or by mail to his attention addressed to the Assistant Commissioner for Patents, Box DAC, Washington, DC 20231; or Nancy L. Omelko (for trademark-related matters) by telephone at (703) 308–8910, extension 39, or by mail marked to her attention and addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202–3513.

SUPPLEMENTARY INFORMATION: In a Notice of Proposed Rulemaking published in the Federal Register at 57 FR 55691 (November 2, 1995) and in the Patent and Trademark Office *Official Gazette* at 1180 *Off. Gaz. Pat. Office* 122 (November 28, 1995), the Office proposed to change addresses for correspondence with the Office to reflect the creation of a mailroom site at the South Tower Building for processing most trademark-related mail; to distinguish correspondence intended for organizations reporting to the Assistant Commissioner for Patents from other correspondence; to add a separate mailing address in the Office of the Solicitor for disciplinary matters; and to delete the requirement for a certificate of mailing by Express Mail from § 1.10(b).

The following includes a discussion of the rules being changed, the reasons for those changes, and an analysis of the comments received in response to the Notice of Proposed Rulemaking.

General Mailing Addresses

The Office will now have three separate general mailing addresses: (1) Assistant Commissioner for Patents for correspondence processed by organizations reporting to the Assistant Commissioner for Patents, except for patent documents sent to the Assignment Division for recordation and requests for certified and uncertified copies of patent documents, which should be addressed to the Commissioner of Patents and Trademarks; (2) Assistant Commissioner for Trademarks for all trademark-related mail, except for trademark documents sent to the Assignment Division for recordation and requests for certified and uncertified copies of trademark documents, which should be addressed to the Commissioner of Patents and Trademarks; and (3) Commissioner of Patents and Trademarks for all other correspondence. In addition, there will be separate mailing addresses in the Office of the Solicitor for certain disciplinary matters and cases involving pending litigation. These addresses are set forth and discussed below.

Those who correspond with the Office are requested to use separate envelopes directed to the different areas.

Patent-Related Mail

Section 1.1 is amended to provide for correspondence which is processed by organizations reporting to the Assistant Commissioner for Patents to be addressed to the ''Assistant Commissioner for Patents, Washington, DC 20231.'' The Office first announced the new address for patent-related mail in a notice entitled ''Change of Address for Patent Applications and Patent Related Papers,'' published in the Patents *Official Gazette* at 1173 *Off. Gaz. Pat. Office* 13 (April 4, 1995).

This change will affect correspondence such as: patent applications, responses to notices of informality, requests for extension of time, notices of appeal to the Board of Patent Appeals and Interferences (the Board), briefs in support of an appeal to the Board, requests for oral hearing before the Board, extensions of term of patent, requests for reexamination, statutory disclaimers, certificates of correction, petitions to the Commissioner, submission of information disclosure statements, petitions to institute a public use proceeding, petitions to revive abandoned patent applications, and other correspondence related to patent applications and patents which is processed by organizations reporting to the Assistant Commissioner for Patents. When patent-related documents are filed with a certificate of mailing, pursuant to § 1.8, the certificate of mailing should be completed with the new address: Assistant Commissioner for Patents, Washington, DC 20231.

Unless otherwise specified, correspondence not processed by organizations reporting to the Assistant Commissioner for Patents, such as communications with the Board (excluding Notices of Appeal and appeal briefs), patent services including patent copy sales, assignments, requests for lists of patents and SIRs in a subclass, requests for the status of maintenance fee payments, as well as patent practitioner enrollment matters including admission to examination, registration to practice, certificates of good standing, and financial service matters including establishing a deposit account should continue to be addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231. Documents to be recorded with the Assignment Division, except those filed with new applications, should be addressed to: Box Assignment, Commissioner of Patents and Trademarks, Washington, DC 20231. Orders for certified and uncertified copies of Office documents should be addressed to: Box 10, Commissioner of Patents and Trademarks, Washington, DC 20231.

Special Office mail boxes as currently listed in each issue of the Patents *Official Gazette* should continue to be used to allow forwarding of particular types of mail to the appropriate areas as quickly as possible. Use of special box designations will facilitate the Office's timely and accurate identification and processing of the designated correspondence.

Checks should continue to be made payable to the Commissioner of Patents and Trademarks.

Trademark-Related Mail

Most trademark-related mail should be sent directly to the Trademark Operation at: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202–3513. When trademark-related documents are filed with a certificate of mailing, pursuant to § 1.8, the certificate of mailing should be completed with the new address: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202–3513. Use of the correct address will avoid processing delays. Trademark documents to be recorded with the Assignment Division, except those filed with new applications, should be addressed to: Box Assignment, Commissioner of Patents and Trademarks, Washington, D.C. 20231. Orders for certified and uncertified copies of trademark documents should be addressed to: Box 10, Commissioner of Patents and Trademarks, Washington, D.C. 20231.

The Office announced the new address for trademark-related mail in a notice entitled ''Change of Address for Trademark Applications and Trademark Related Papers,'' published in the Federal Register at 59 FR 29275 (June 6, 1994) and in the Trademarks *Official Gazette* at 1163 *Off. Gaz. Trademark Office* 80 (June 28, 1994) (republished at 1170 *Off. Gaz. Pat. Office* 303 (January 3, 1995)).

The Office will continue to maintain the special box designations and FEE/NO FEE indicators for trademark mail as currently listed in each issue of the Trademarks *Official Gazette.* Use of the boxes is encouraged, to expedite processing of incoming mail.

Checks should continue to be made payable to the Commissioner of Patents and Trademarks.

Mail intended for the Trademark Trial and Appeal Board should be addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202–3513, including BOX TTAB/FEE or BOX TTAB/NO FEE, whichever is applicable.

Hand-Carried Correspondence

All correspondence with the Office, except for communications relating to pending litigation as specified in amended § 1.1(a)(3)(i), may continue to be filed directly at the Attorney's Window located in Room 1B03 of Crystal Plaza Building 2, 2011 South Clark Place, Arlington, Virginia. Trademark-related papers may also be filed at the ''walk-up'' window located on the third floor of the South Tower Building, 2900 Crystal Drive, Arlington, Virginia. Hand delivery of trademark papers and fees directly to the South Tower Building is recommended, to expedite processing.

Trademark Documents Filed with Certificates of Mailing or Transmission Under § 1.8

The Office is amending § 1.8(a)(2) to remove the exclusions listed in § 1.8(a)(2)(ii)(B) through (F). This will permit the following trademark documents to be considered timely filed if they are mailed or transmitted by the due date and in compliance with § 1.8(a)(1): (1) affidavits of continued use or excusable nonuse, under 15 U.S.C. 1058; (2) renewal applications, under 15 U.S.C. 1059; (3) amendments to allege use, under 15 U.S.C. 1051(c); (4) statements of use, under 15 U.S.C. 1051(d)(1); (5) requests for extensions of time to file a statement of use, under 15 U.S.C. 1051(d)(2); and (6) petitions to cancel registered marks, under 15 U.S.C. 1064. This change is intended to make filing easier and less expensive because a significantly larger number of documents will be considered timely filed using the simpler, less expensive first class mailing provisions of § 1.8.

Section 2.165(a)(1), dealing with affidavits of use or excusable non-use filed under Section 8 of the Trademark Act, is amended by deleting the last sentence referencing the inapplicability of certificates of mailing provided by § 1.8.

It should be noted that § 1.6(d)(8), which provides that correspondence other than notices of ex parte appeal may not be transmitted by facsimile to the Trademark Trial and Appeal Board, will not change. Thus, while a cancellation petitioner may now ensure timely filing with the certificate of mailing procedure set forth in § 1.8(a)(1), the petitioner may not transmit the above-mentioned documents directed to the Trademark Trial and Appeal Board by fax or ensure timely filing with the certificate of facsimile transmission.

Section 1.8(a)(2)(ii)(A), which states that the Certificate of Mailing or Transmission Procedure does not apply to the filing of applications for registration of marks, will not change. The filing date of an application is considered to be much more critical than the filing dates of the papers accepted under § 1.8. For example, in Trademark applications, the granting of a filing date to an application potentially establishes a date of constructive use of the mark, and is also critical for determining whether foreign priority can be claimed under 15 U.S.C. 1126(d); therefore, entry of the date of deposit by a disinterested USPS employee is required.

Express Mail

Section 1.10 is being amended to simplify and clarify the procedures for filing correspondence by the ''Express Mail Post Office to Addressee'' (Express Mail) service of the United States Postal Service (USPS), by deleting the requirement for a Certificate of Mailing by Express Mail.

Section 1.10 was promulgated to implement 35 U.S.C. 21, under which the Commissioner may ''by rule prescribe that any paper or fee required to be filed in the Patent and Trademark Office will be considered filed in the Office on the date on which it was deposited with the United States Postal Service.''

Under the prior rule, the filer was required to include a Certificate of Mailing by Express Mail, certifying the date of deposit as Express Mail. Papers which did not include this certificate, or which included a certificate that did not meet the requirements of the rule, were given a filing date as of the date received in the Office rather than the date of deposit as Express Mail. The lost filing date for a significant number of these papers resulted in the loss of substantive rights. In light of the problematic nature of the requirement for a Certificate of Mailing by Express Mail and its apparent redundancy in purpose, inasmuch as the date of deposit has already been entered by a disinterested third party, the Office has deleted this requirement from § 1.10(b).

Under the new rule, Office personnel will routinely look to the Express Mail mailing label, and stamp the ''date-in'' or other official USPS notation as the filing date of the correspondence. If the USPS deposit date cannot be determined, the correspondence will be accorded the date of receipt in the Office as the filing date.

Section 1.10(b), as amended, provides that the Express Mail mailing label number should be placed on correspondence filed by Express Mail under § 1.10 prior to the original mailing. Correspondence *actually received* by the Office will not be denied a filing date as of the date of deposit with the USPS because the Express Mail mailing label number was not placed thereon prior to its original mailing. However, the absence of the number of the Express Mail mailing label will preclude a party from obtaining relief on petition, under § 1.10 (c) through (e).

Section 1.10(b) also provides that correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the Express Mail mailing label with the ''date-in'' clearly marked, and that persons dealing indirectly with the employees of the USPS (such as by deposit in an Express Mail drop box) do so at the risk of not receiving a copy of the Express Mail mailing label with the desired ''date-in'' clearly marked.

Sections 1.10(c) through 1.10(e) set forth procedures for petitioning the Commissioner to accord a filing date as of the date of deposit as Express Mail. Section 1.10(c) applies where there is a discrepancy between the filing date accorded by the Office and the ''date-in'' or other official notation entered by the USPS on the Express Mail mailing label; § 1.10(d) applies where the ''date-in'' is incorrectly entered by the USPS; and § 1.10(e) applies where correspondence deposited with the USPS as Express Mail is not received by the Office.

Miscellaneous Changes

Sections 1.3 and 5.33 are also being amended to change ''communications'' to ''correspondence,'' and for consistency with §§ 1.1, 1.6, and 1.8.

Section 1.6(a)(2) is amended to provide that correspondence deposited as Express Mail in accordance with § 1.10 will be considered filed on the date of its deposit, regardless of whether that date is a Saturday, Sunday or Federal holiday within the District of Columbia.

Section 1.9 is amended to add a definition of a ''Federal holiday within the District of Columbia'' to include an official closing of the Office.

Since the certificate of mailing by Express Mail is no longer a requirement of § 1.10, the provisions of Part 10 relating to misconduct have been amended to delete reference to this requirement.

Discussion of Specific Rules

The heading of § 1.1 is amended to state that the section contains the addresses for correspondence to the Patent and Trademark Office.

Section 1.1 is amended to set out all pertinent Office mailing addresses in paragraph (a) and in added paragraphs (a)(1), (a)(2), and (a)(3). The remaining paragraphs of § 1.1 contain directions for using box designations rather than addresses. Paragraph (a)(1) sets forth the new mailing address to which most patent-related documents should be sent. Paragraph (a)(2) sets forth the new mailing address to which most trademark-related documents should be sent. It is noted that correspondence not addressed according to (a)(1) and (a)(2), but sent instead to the Commissioner of Patents and Trademarks, will not be refused consideration but may be delayed in processing. The Solicitor's mailing address, formerly set out in paragraph (g) of the section, is moved to a new paragraph (a)(3). Paragraph 1.1(g) is removed and reserved.

Sections 1.1 and 1.3 are amended so that the word ''communications'' is changed to ''correspondence.''

Section 1.5(a) is amended by removing the requirement that the words ''PATENT APPLICATION'' appear on letters concerning patent applications. The remainder of the section remains unchanged.

Section 1.6(a)(1) is amended to add the sentence ''[t]he Patent and Trademark Office is not open for the filing of correspondence on any day that is a Saturday, Sunday or Federal holiday within the District of Columbia.'' In addition, § 1.6(a)(1) is further amended to add the phrase ''[e]xcept for correspondence transmitted by facsimile as provided for in paragraph (a)(3) of this section'' to the beginning of the sentence ''[n]o correspondence is received in the Patent and Trademark Office on Saturdays, Sundays or Federal holidays within the District of Columbia.'' Since the Office may ''receive'' a facsimile transmission under § 1.6(a)(3) on a Saturday, Sunday or Federal holiday within the District of Columbia, § 1.6(a)(1) is amended to add the phrase ''[e]xcept for correspondence transmitted by facsimile as provided for in paragraph (a)(3) of this section'' for clarity and consistency with § 1.6(a)(3). In addition, § 1.6(a)(1) is amended to begin with the sentence ''[t]he Patent and Trademark Office is not open for the filing of correspondence on any day that is a Saturday, Sunday or Federal holiday within the District of Columbia'' to clarify that any day that is a Saturday, Sunday or Federal holiday within the District of Columbia is a day that the Patent and Trademark Office is not open for the filing of applications within the meaning of Article 4(C)(3) of the Paris Convention.

Section 1.6(a)(2) is amended to delete the phrase ''unless the date of deposit is a Saturday, Sunday or Federal holiday within the District of Columbia in which case the date stamped will be the succeeding day which is not a Saturday, Sunday or Federal holiday within the District of Columbia.'' Thus, § 1.6(a)(1) will provide that the Office is not open for the filing of correspondence on any day that is a Saturday, Sunday or Federal holiday within the District of Columbia, but that correspondence deposited as Express Mail with the USPS in accordance with § 1.10 will be considered filed on the date of its deposit, regardless of whether that date is a Saturday, Sunday or Federal holiday within the District of Columbia (under 35 U.S.C. 21(b) or § 1.7).

Section 1.8(a)(1)(i)(A) is revised to state that papers and fees must be addressed as set out in § 1.1(a). For the purposes of 1.8(a)(1)(i)(A), first class mail is interpreted as including ''Express Mail'' and ''Priority Mail'' deposited with the USPS.

Section 1.8(a)(2)(ii) is revised to remove and reserve paragraphs (a)(2)(ii)(B) through (a)(2)(ii)(F). This will permit the following items to be filed in accordance with the procedures set forth in § 1.8(a): (1) an affidavit of continued use or excusable nonuse under section 8 (a) or (b) or section 12(c) of the Trademark Act, 15 U.S.C. 1058(a), 1058(b), 1062(c); (2) an application for renewal of a registration under section 9 of the Trademark Act, 15 U.S.C. 1059; (3) a petition to cancel a registration of a mark under section 14, subsection (1) or (2) of the Trademark Act, 15 U.S.C. 1064; (4) in an application under section 1(b) of the Trademark Act, 15 U.S.C. 1051(b), an amendment to allege use in commerce under section 1(c) of the Trademark Act, 15 U.S.C. 1051(c), or a statement of use under section 1(d)(1) of the Trademark Act, 15 U.S.C. 1051(d)(1); and (5) in an application under section 1(b) of the Trademark Act, 15 U.S.C. 1051(b), a request under section 1(d)(2) of the Trademark Act, 15 U.S.C. 1051(d)(2), for an extension of time to file a statement of use under section 1(d)(1) of the Trademark Act, 15 U.S.C. 1051(d)(1).

Section 1.9 is amended to add a definition of ''Federal holiday within the District of Columbia'' to include an official closing of the Office. When the entire Patent and Trademark Office is officially closed for business for an entire day, for reasons due to adverse weather or other causes, the Office will consider each such day a ''Federal holiday within the District of Columbia'' under 35 U.S.C. 21. Any action or fee due on such a day may be taken, or fee paid, on the next succeeding business day the Office is open.

This provision implements existing policy. In the past, the Office has published notices concerning unscheduled closings, stating that correspondence due on the date of the unscheduled closing would be deemed timely if filed on the next succeeding business day that the Office is open. See, *e.g.*, ''Closing of Patent and Trademark Office on Thursday, January 20, 1994 and Friday, February 11, 1994'' published in the Patent *Official Gazette* at 1161 *Off. Gaz. Pat. Office* 12 (April 5, 1994) (republished at 1170 *Off. Gaz. Pat. Office* 8 (January 3, 1995)) and ''Filing of Papers During Unscheduled Closings of the Patent and Trademark Office'' published in the Patent *Official Gazette* at 1097 *Off. Gaz. Pat. Office* 53 (December 20, 1988) (republished at 1170 *Off. Gaz. Pat. Office* 8 (January 3, 1995)).

Other legal holidays within the District of Columbia are New Year's Day (January 1), Martin Luther King, Jr.'s Birthday (third Monday in January), Presidential Inauguration Day, Washington's Birthday (third Monday in February), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (first Monday in September), Columbus Day (second Monday in October), Veterans Day (November 11), Thanksgiving Day (fourth Thursday in November) and Christmas Day (December 25).

The title of § 1.10 is revised to: (1) change ''papers and fees'' to ''correspondence'' and (2) remove the reference to a ''certificate.'' These changes are for consistency with the amendment to § 1.10 in this final rulemaking.

Section 1.10(a) is amended to provide that: (1) any correspondence received by the Office that was delivered by the ''Express Mail Post Office to Addressee'' (Express Mail) service of the USPS will be considered filed in the Office on the date of deposit with the USPS, (2) the date of deposit with the USPS is the ''date-in'' or other official USPS notation on the Express Mail mailing label, and (3) if the USPS deposit date cannot be determined, the correspondence will be accorded a filing date as of the date of receipt in the Office.

The date of deposit or mailing with the USPS is defined by the USPS as: (1) For correspondence that is paid for at the time of deposit—the date the correspondence is presented and accepted for Express Mail delivery at designated post offices, branches, or stations, and (2) For correspondence that is prepaid (*i.e.*, with a completed mailing label and postage affixed)—the date the prepaid correspondence is accepted by the USPS collection employees or the USPS pickup service. USPS Domestic Mail Manual (DMM) 49, at D–38 (Sept. 1, 1995).

Section 1.10(b) is amended by deleting the requirement for a certificate of mailing by Express Mail. As amended, § 1.10(b) provides that the number of the Express Mail mailing label should be placed on each piece of correspondence prior to the original mailing. Correspondence that is *actually received* by the Office will not be denied a filing date as of the date of deposit because the number of the Express Mail mailing label was not placed thereon prior to the original mailing. However, if the number of the mailing label did not appear on the correspondence as originally filed, relief will not be granted on petition under §§ 1.10(c) through (e), even if the party who filed the correspondence satisfies the other requirements of § 1.10(c), § 1.10(d) or § 1.10(e).

Since the filing of correspondence under § 1.10 without the number of the Express Mail mailing label thereon is an oversight that can be avoided by the exercise of reasonable care, requests for waiver of this requirement will not be granted on petition. A party's inadvertent failure to comply with the requirements of a rule is not deemed to be an extraordinary situation that would warrant waiver of a rule under §§ 1.183, 2.146(a)(5) or 2.148, nor is such an inadvertent omission considered to be an ''unavoidable delay,'' within the meaning of 15 U.S.C. 1062(b), 35 U.S.C. 133, § 1.137(a) or § 2.66(a). *See Honigsbaum* v. *Lehman*, 903 F. Supp. 8, 37 USPQ2d 1799 (D.D.C. 1995) (Commissioner did not abuse his discretion in refusing to waive requirements of § 1.10(c) in order to grant filing date to patent application, where applicant failed to produce Express Mail customer receipt or any other evidence that application was actually deposited with USPS as Express Mail); *Nitto Chemical Industry. Co., Ltd.* v. *Comer*, No. 93–1378, 1994 U.S. Dist. LEXIS 19211, at *13–14 (D.D.C. Mar. 7, 1994) (Commissioner's refusal to waive requirements of § 1.10 in order to grant priority filing date to patent application not arbitrary and capricious, because failure to comply with the requirements of § 1.10 is an ''avoidable'' oversight that could have been prevented by the exercise of ordinary care or diligence, and thus not an extraordinary situation under § 1.183); *Vincent* v. *Mossinghoff*, 230 USPQ 621 (D.D.C. 1985) (Misunderstanding of § 1.8 not

unavoidable delay in responding to Office Action); *Gustafson* v. *Strange,* 227 USPQ 174 (Comm'r Pats. 1985) (Counsel's unawareness of § 1.8 not extraordinary situation warranting waiver of a rule); *In re Chicago Historical Antique Automobile Museum, Inc.*, 197 USPQ 289 (Comm'r Pats. 1978) (Since certificate of mailing procedure under § 1.8 was available to petitioner, lateness due to mail delay not deemed to be extraordinary situation).

Section 1.10(b) further provides that correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the Express Mail mailing label with the ''date-in'' clearly marked, and that persons dealing indirectly with the employees of the USPS (such as by depositing correspondence in an Express Mail drop box) do so at the risk of not receiving a copy of the Express Mail mailing label with the desired ''date-in'' clearly marked. On petition, the failure to obtain an Express Mail mailing label with the ''date-in'' clearly marked will be considered an omission that could have been avoided by the exercise of due care, as discussed above.

Sections 1.10(c) through 1.10(e) set forth procedures for petitioning the Commissioner to accord a filing date as of the date of deposit as Express Mail. Such petitions are filed under § 1.181 for patent correspondence and § 2.146 for trademark correspondence. Section 1.10(c) sets forth procedures for filing a petition to the Commissioner for a filing date as of the date of deposit with the USPS, where there is a discrepancy between the filing date initially accorded by the Office and the ''date-in'' entered by the USPS. Such a petition should: (1) be filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date, (2) include a showing that the number of the Express Mail mailing label was placed on each piece of correspondence prior to the original mailing, and (3) include a true copy of the Express Mail mailing label showing the ''date-in'' or other official notation by the USPS.

Section 1.10(d) sets forth procedures for filing a petition to the Commissioner to accord a filing date as of the actual date of deposit with the USPS, where the ''date-in'' or other official notation is incorrectly entered by the USPS. Such a petition should: (1) be filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS, (2) include a showing that the number of the Express Mail mailing label was placed on each piece of correspondence prior to the original mailing, and (3) include a showing that the correspondence was deposited as Express Mail prior to the last scheduled pickup on the requested filing date. The showing under Section 1.10(d) must be corroborated by (1) evidence from the USPS, or (2) evidence that came into being *after* deposit and within one business day of the deposit of the correspondence as Express Mail. Evidence that came into being within one day after the deposit of the correspondence as Express Mail may be in the form of a log book which contains information such as the Express Mail number; the application number, attorney docket number or other such file identification number; the place, date and time of deposit; the time of the last scheduled pick-up for that date and place of deposit; the depositor's initials or signature; and the date and time of entry in the log. Any statement submitted in support of such a showing must be verified if made by a person other than an employee of the USPS or a practitioner as defined in § 10.1(r) of this chapter.

The reason the Office considers correspondence to have been filed as of the date of deposit as Express Mail is that this date has been verified by a disinterested USPS employee, through the insertion of a ''date-in,'' or other official USPS notation, on the Express Mail mailing label. Due to the questionable reliability of evidence from a party other than the USPS that did not come into being contemporaneously with the deposit of the correspondence with the USPS, § 1.10(d) specifically requires that any petition under § 1.10(d) be corroborated either by evidence from the USPS, or by evidence that came into being after deposit and within one business day *after* the deposit of the correspondence as Express Mail. A petition alleging that the USPS erred in entering the ''date-in'' will be denied if it is supported only by evidence (other than from the USPS) which was: (1) created prior to the deposit of the correspondence as Express Mail with the USPS (*e.g.*, an application transmittal cover letter, or a client letter prepared prior to the deposit of the correspondence), or (2) created more than one business day after the deposit of the correspondence as Express Mail (*e.g.*, an affidavit or declaration prepared more than one business day after the correspondence was deposited with the USPS as Express Mail). On the other hand, a notation in a log book, entered by the person who deposited the correspondence as Express Mail within one business day after such deposit, setting forth the items indicated above would be deemed on petition to be an adequate showing of the date of deposit under § 1.10(d)(3).

Section 1.10(d)(3) further provides that a party must show that correspondence was deposited as Express Mail before the last scheduled pickup on the requested filing date in order to obtain a filing date as of that date. This incorporates existing practice, as set forth in the *Manual of Patent Examining Procedure* (6th ed., January, 1995) § 513, and *Trademark Manual of Examining Procedure* (2nd ed., May, 1993) § 702.02(e) into the rule.

Section 1.10(e) sets forth procedures for filing a petition to the Commissioner to accord a filing date as of the date of deposit with the USPS, where correspondence deposited as Express Mail is never received by the Office. Such a petition should: (1) be filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence, (2) include a showing that the number of the Express Mail mailing label was placed on each piece of correspondence prior to the original mailing, (3) include a true copy of the originally deposited correspondence showing the number of the Express Mail mailing label thereon, a copy of any returned postcard receipt, a copy of the Express Mail mailing label showing the ''date-in'' or other official notation entered by the USPS, and (4) include a statement, signed by the person who deposited the documents as Express Mail with the USPS, setting forth the date and time of deposit, and declaring that the copies of the correspondence, Express Mail mailing label, and returned postcard receipt accompanying the petition are true copies of the correspondence, mailing label and returned postcard receipt originally mailed or received. Any statement in support of a petition under § 1.10(e) must be verified if made by a person other than a practitioner as defined in § 10.1(r) of this chapter.

Section 1.10(e) provides for the filing of a petition to accord correspondence a filing date as of the date of deposit with the USPS as Express Mail only where the correspondence was mailed with sufficient postage and addressed as set out in § 1.1(a). There is no corresponding provision that correspondence be properly addressed and mailed with sufficient postage in §§ 1.10(a), (c) and (d), because these sections apply only to correspondence that is actually received by the Office. Correspondence mailed by Express Mail that is *actually received* by the Office will not be denied a filing date as of the date of deposit as Express Mail simply

because the correspondence was not mailed with sufficient postage or not addressed as set out in § 1.1(a).

Section 1.10(e)(3) provides that if the requested filing date is a date other than the ''date-in'' on the Express Mail mailing label, the petition should include a showing under § 1.10(d)(3), as discussed above, that the correspondence was deposited as Express Mail before the last scheduled pickup on the requested filing date in order to obtain a filing date as of that date.

Section 1.10(f) provides that the Office may require additional evidence to determine whether the correspondence was deposited as Express Mail with the USPS on the date in question.

Section 2.165(a)(1), dealing with affidavits of use or excusable non-use filed under Section 8 of the Trademark Act, is amended by deleting the last sentence referencing the inapplicability of certificates of mailing provided by § 1.8.

Section 5.33 (entitled ''Correspondence'') is amended to change the correspondence address to ''Assistant Commissioner for Patents (Attention: Licensing and Review), Washington, D.C. 20231.''

Section 10.23(c)(9) is revised to reflect the fact that the certificate of mailing by Express Mail is no longer a requirement of § 1.10.

Response to Comments on the Rules

The comments received in response to the notice of proposed rulemaking have been given careful consideration and a number of the suggested modifications have been adopted. The comments and responses are discussed below.

Comment 1: One comment suggested that the Office return to a single mailing address.

Response: Addressing correspondence to specific areas within the agency, in accordance with § 1.1, reduces the amount of sorting required. Except as set out in § 1.1(a)(3)(iv), mail will be delivered within the Office regardless of how it is addressed. Nevertheless, use of a specific address should produce faster results for correspondents and savings to the Office in terms of reduced time and cost. The suggestion to address mail to a single mailing address will not be adopted.

Comment 2: Three comments requested a clarification of the reference to ''organizations reporting to the Assistant Commissioner for Patents'' in § 1.1(a)(1), suggested that each organization be identified, and noted that the change of address from ''Commissioner of Patents and Trademarks'' to ''Assistant Commissioner for Patents'' is confusing.

Response: Section 1.1(a)(1) has not been amended to list ''organizations reporting to the Assistant Commissioner for Patents.'' The vast majority of mail to be addressed to the Assistant Commissioner is intended for the Examining Groups. Furthermore, once a list of organizations is established in the rule, amendment to such a list would require implementation of a rule change. However, a list of papers that should be addressed to the Assistant Commissioner for Patents appears under the heading ''Patent-Related Mail'' in the Supplementary Information section.

Comment 3: Two comments requested clarification concerning how a new application incorrectly addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231, will be treated. Two comments opposed the address change in § 1.1, if the benefit of obtaining a filing date is conditioned upon the correspondence address being addressed correctly.

Response: Except for certain mail addressed incorrectly to the Office of the Solicitor, there will be no penalty for addressing a document to the wrong area within the Office, as long as one of the approved addresses is used. Use of the specific addresses listed within § 1.1 is strongly encouraged because it will facilitate the process both for the Office and the filer. Accordingly, a new application incorrectly addressed to the Commissioner will be treated the same as if the application was addressed to the specific Assistant Commissioner.

Comment 4: One comment supported the separate mailing addresses for mail directed to the Assistant Commissioner for Patents, Assistant Commissioner for Trademarks, Solicitor and the Commissioner, but viewed the practice under § 1.1(a)(3) with respect to correspondence to the Office of the Solicitor as a penalty for correspondents who misaddress mail.

Response: While the language in the proposed rule was based on the existing rule, 37 CFR 1.1(g) (1996), which has been in effect since 1988, § 1(a)(3)(iv) has been reworded in the final rule to state that improperly addressed correspondence ''may be returned.'' This language better represents the intent of the rule. The Post Office boxes are located off-site and mail to these boxes is handled directly by the Office of the Solicitor. The Office of the Solicitor cannot handle large volumes of mail from users who choose not to follow Office mailing rules.

Comment 5: One comment requested clarification on the distinction between § 1.1(a) which states that mail ''must'' be addressed to the Assistant Commissioner for Patents and § 1.1(a)(1) which states that mail ''should'' be addressed to the Assistant Commissioner for Patents, if any.

Response: The language of 1.1(a) has been amended to indicate that all correspondence must be addressed either to the ''Commissioner of Patents and Trademarks, Washington, D.C. 20231'' or to specific areas within the Office as set out in paragraphs (a)(1), (2) and (3) of § 1.1.

Comment 6: One comment questioned why it is now merely permissible to identify a patent application by its serial number and filing date whereas such information was previously mandatory.

Response: The only change to § 1.5 is the elimination of the requirement to include the words ''PATENT APPLICATION'' on letters concerning patent applications. Section 1.5 both before and after the proposed amendment provides that ''[w]hen a letter . . . concerns a previously filed application for a patent, it must identify on the top page in a conspicuous location, the application number (consisting of the series code and the serial number; e.g., 07/123,456) or the serial number and filing date assigned to that application. . . .'' Accordingly, correspondence must continue to identify a previously filed patent application by either (1) the application number, or (2) the serial number and filing date. The combination of the serial number and filing date is unique by itself.

Comment 7: One comment objected to the return of correspondence pertaining to an application that had not yet been accorded an application number because some correspondence may require immediate action. This person suggested that the Office search the computerized records given sufficient other identifying information, instead of returning the correspondence.

Response: If the correspondence is returned for failure to identify the correspondence with the appropriate information, the applicant has the option to return the correspondence with the appropriate information within two weeks of the date of the cover letter from the Office by utilizing the Certificate of Mailing or Transmission procedure under § 1.8 or the Express Mail procedure under § 1.10 to obtain the benefit of the date of deposit with the USPS. There does not appear to be any situation where a file would require immediate action in applications where the application number had not been assigned. If an application number has already been assigned, it is within the

filer's control to supply that information and avoid delays.

Comment 8: Seven comments opposed the addition of unscheduled closings of the Office to the definition of ''Federal holidays within the District of Columbia.'' The comments noted that substantive rights would be at risk for persons filing provisional patent applications and applications asserting priority claims based on foreign applications should the date on which an application must be filed fall on a day that the Office is closed for unforeseen reasons. One comment noted that the substantive rights of applicants seeking to secure a filing date prior to divulging an invention may lose rights if a later filing date, resulting from an unscheduled closing of the Office, is subsequent to the date of divulgence. Some of the comments suggested amending § 1.9 to make an exception for provisional patent applications and applications asserting a claim of priority based on a foreign application so that the filing date would not be affected by an unscheduled closing of the Office. One comment also suggested that § 1.9 be amended to distinguish between the filing of applications and the filing of responses. One comment suggested that the Commissioner allow for filing of a non-provisional patent application on Federal holidays where the one year anniversary of the provisional application falls on a Federal holiday.

Response: Section 1.6(a)(2) is being amended to delete the phrase ''unless the date of deposit is a Saturday, Sunday or Federal holiday within the District of Columbia in which case the date stamped will be the succeeding day which is not a Saturday, Sunday or Federal holiday in the District of Columbia.'' Section 1.6(a)(2) now provides that even if the Office is closed because it is a Saturday, Sunday or Federal holiday in the District of Columbia, correspondence deposited in the ''Express Mail Post Office to Addressee'' service of the USPS in accordance with § 1.10 will be considered filed on the date of deposit regardless of whether that date is Saturday, Sunday or a Federal holiday within the District of Columbia. Therefore, in light of the option to file an application under § 1.10 on any day and the amendment to § 1.6(a)(2), no substantive rights would be at risk, and the suggestions, set forth in the comments and noted above, have not been adopted.

Comment 9: Several comments objected to the requirement set forth in proposed § 1.10(b) which required deposit of Express Mail correspondence directly with the United States Postal Service (USPS) to ensure that a copy of the Express Mail label marked with the ''date in'' is received at the time of deposit. The reasons generally expressed by commenters were: (1) Practitioners and applicants feel compelled to oversee the work of the USPS employee to make certain that the ''date in'' is marked accurately, legibly and in a timely fashion and perceive a loss of control over the filing of the document under § 1.10 as a result; (2) inefficiency and burden are imposed upon persons filing who must actually go to the post office, stand in line and generally be confined to fewer hours during the day to deposit the Express Mail correspondence directly with the USPS than the hours available for deposit in the Express Mail drop box; and (3) inequality of opportunity to deposit directly with the USPS for individual practitioners and small firms which employ fewer people than larger firms to handle. Two comments questioned the Office's use of the term ''deposit'' and whether the Office exceeded any authority in the perceived understanding that the proposed rule was requiring the applicants or practitioners to do something beyond ''depositing'' the correspondence with the USPS, namely, overseeing the act of acceptance of the Express Mail correspondence by the USPS.

Response: Section 1.10(b) has been amended so that direct deposit of correspondence with the USPS is a recommendation, rather than a requirement. While the Office strongly urges direct deposit of Express Mail correspondence in order to obtain a legible copy of the Express Mail mailing label, parties are not precluded from using Express Mail drop boxes. Parties who do use drop boxes can protect themselves from uncertainty due to illegible mailing labels by routinely maintaining a log of Express Mail deposits in which notations are entered by the person who deposited the correspondence as Express Mail within one business day after deposit with the USPS in a petition filed under § 1.10 (c), (d) or (e). Evidence that came into being within one day after the deposit of the correspondence as Express Mail may be in the form of a log book which contains information such as the Express Mail number; the application number, attorney docket number or other such file identification number; the place, date and time of deposit; the time of the last scheduled pick-up for that date and place of deposit; the depositor's initials or signature; and the date and time of entry in the log. Any statement submitted in support of such a showing must be verified if made by a person other than an employee of the USPS or a practitioner as defined in § 10.1(r) of this chapter.

Comment 10: Several comments opposed the elimination of the certificate of mailing by ''Express Mail'' because it would eliminate a reliable mode of proving the date of deposit with the USPS.

Response: The elimination of the requirement for the certificate of mailing is adopted primarily to streamline the Office's processing of Express Mail correspondence. Under the old rule, the Office was required to scrutinize the certificate as well as the Express Mail label. Under the new rule, the ''date in'' on the Express Mail label would be the only date that the Office would look for to determine the filing date. Under the prior rule, the certificate of mailing by Express Mail only served as proof of a date of deposit when the certificate date was the same as the ''date in'' on the Express Mail label. The certificate did not afford protection to an applicant in the event that the certificate date differed from the Express Mail label date. Therefore, the elimination of the certificate of mailing requirement would not eliminate a reliable mode of proving the date of deposit.

Comment 11: Four comments suggested allowing Express Mail Corporate Account Mailing Statement of the USPS to serve as additional proof of the date of deposit.

Response: This suggestion has been adopted. Such records would be acceptable as additional proof of the date of deposit.

Comment 12: One comment requested clarification concerning whether deposit of correspondence as Express Mail in the Express Mail drop box must be done prior to the last scheduled pickup of the day in order to be entitled to the deposit date as the filing date of the correspondence.

Response: Correspondence sent by the ''Express Mail Post Office to Addressee'' service is considered filed in the Office on the ''date-in'' entered by the USPS. Accordingly, if the USPS enters the deposit date as its ''date-in,'' the correspondence will receive the deposit date as its filing date. However, if the USPS enters a date later than the deposit date as its ''date-in,'' the correspondence will receive the later date as its filing date. Section 1.10(d) permits the Office to correct a USPS ''date-in'' error when the correspondence is deposited in an Express Mail drop box prior to last scheduled pick up of the day, that is, the time clearly marked on the Express Mail drop box indicating when the box

will be cleared for the last time on the date of deposit. Section 1.10(d) sets forth the procedures to be followed to be entitled to such a correction.

Other Considerations

The rule changes are in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Executive Order 12612, and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule has been determined to not be significant for the purposes of Executive Order 12866.

The Office has determined that this rule change has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule changes would not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The rule change has no effect on patent fees.

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 rule change contains a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), which is currently approved by the Office of Management and Budget under Control No. 0651–0031. The public reporting burden for the certificate of mailing is estimated to average six minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Office of System Quality and Enhancement Division, Patent and Trademark Office, Washington, D.C. 20231, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. (ATTN: Paperwork Reduction Act Project 0651–0031).

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Freedom of information, Inventions and patents, Reporting and record keeping requirements.

37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

37 CFR Part 5

Classified information, Foreign relations, Inventions and patents.

37 CFR Part 10

Administrative practice and procedure, Conflicts of interest, Courts, Inventions and patents, Lawyers.

For the reasons set forth in the preamble and under the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6 and 15 U.S.C. 1123, 37 CFR Parts 1, 2, 5 and 10 are amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.1 is amended by removing and reserving paragraph (g) and by revising the heading and paragraph (a) to read as follows:

§ 1.1 Addresses for correspondence with the Patent and Trademark Office.

(a) Except for § 1.1(a)(3) (i) and (ii), all correspondence intended for the Patent and Trademark Office must be addressed to either ''Commissioner of Patents and Trademarks, Washington, D.C. 20231'' or to specific areas within the Office as set out in paragraphs (a)(1), (2) and (3)(iii) of this section. When appropriate, correspondence should also be marked for the attention of a particular office or individual.

(1) *Patent correspondence.* All correspondence concerning patent matters processed by organizations reporting to the Assistant Commissioner for Patents should be addressed to ''Assistant Commissioner for Patents, Washington, D.C. 20231.''

(2) *Trademark correspondence.* All correspondence concerning trademark matters, except for trademark-related documents sent to the Assignment Division for recordation and requests for certified and uncertified copies of trademark application and registration documents, should be addressed to ''Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202–3513.'' This includes correspondence intended for the Trademark Trial and Appeal Board.

(3) *Office of Solicitor correspondence.* (i) Correspondence relating to pending litigation required by court rule or order to be served on the Solicitor shall be hand-delivered to the Office of the Solicitor or shall be mailed to: Office of the Solicitor, P.O. Box 15667, Arlington, Virginia 22215; or such other address as may be designated in writing in the litigation. See §§ 1.302(c) and 2.145(b)(3) for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit.

(ii) Correspondence relating to disciplinary proceedings pending before an Administrative Law Judge or the Commissioner shall be mailed to: Office of the Solicitor, P.O. Box 16116, Arlington, Virginia 22215.

(iii) All other correspondence to the Office of the Solicitor shall be addressed to: Box 8, Commissioner of Patents and Trademarks, Washington, D.C. 20231.

(iv) Correspondence improperly addressed to a Post Office Box specified in paragraphs (a)(3) (i) and (ii) of this section will not be filed elsewhere in the Patent and Trademark Office, and may be returned.

* * * * *

(g) [Reserved]

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3. Section 1.3 is revised to read as follows:

§ 1.3 Business to be conducted with decorum and courtesy.

Applicants and their attorneys or agents are required to conduct their business with the Patent and Trademark Office with decorum and courtesy. Papers presented in violation of this requirement will be submitted to the Commissioner and will be returned by the Commissioner's direct order. Complaints against examiners and other employees must be made in correspondence separate from other papers.

4. Section 1.5 is amended by revising paragraph (a) to read as follows:

§ 1.5 Identification of application, patent, or registration.

(a) No correspondence relating to an application should be filed prior to receipt of the application number from the Patent and Trademark Office. When a letter directed to the Patent and Trademark Office concerns a previously filed application for a patent, it must identify on the top page in a conspicuous location, the application number (consisting of the series code and the serial number; e.g., 07/123,456),

or the serial number and filing date assigned to that application by the Patent and Trademark Office, or the international application number of the international application. Any correspondence not containing such identification will be returned to the sender where a return address is available. The returned correspondence will be accompanied by a cover letter which will indicate to the sender that if the returned correspondence is resubmitted to the Patent and Trademark Office within two weeks of the mailing date on the cover letter, the original date of receipt of the correspondence will be considered by the Patent and Trademark Office as the date of receipt of the correspondence. Applicants may use either the Certificate of Mailing or Transmission procedure under § 1.8 or the Express Mail procedure under § 1.10 for resubmissions of returned correspondence if they desire to have the benefit of the date of deposit with the United States Postal Service. If the returned correspondence is not resubmitted within the two-week period, the date of receipt of the resubmission will be considered to be the date of receipt of the correspondence. The two-week period to resubmit the returned correspondence will not be extended. In addition to the application number, all letters directed to the Patent and Trademark Office concerning applications for patents should also state the name of the applicant, the title of the invention, the date of filing the same, and, if known, the group art unit or other unit within the Patent and Trademark Office responsible for considering the letter and the name of the examiner or other person to which it has been assigned.

* * * * *

5. Section 1.6 is amended by revising paragraph (a) to read as follows:

§ 1.6 Receipt of correspondence.

(a) *Date of receipt and Express Mail date of deposit.* Correspondence received in the Patent and Trademark Office is stamped with the date of receipt except as follows:

(1) The Patent and Trademark Office is not open for the filing of correspondence on any day that is a Saturday, Sunday or Federal holiday within the District of Columbia. Except for correspondence transmitted by facsimile as provided for in paragraph (a)(3) of this section, no correspondence is received in the Patent and Trademark Office on Saturdays, Sundays or Federal holidays within the District of Columbia.

(2) Correspondence filed in accordance with § 1.10 will be stamped with the date of deposit as ''Express Mail'' with the United States Postal Service.

(3) Correspondence transmitted by facsimile to the Patent and Trademark Office will be stamped with the date on which the complete transmission is received in the Patent and Trademark Office unless that date is a Saturday, Sunday, or Federal holiday within the District of Columbia, in which case the date stamped will be the next succeeding day which is not a Saturday, Sunday, or Federal holiday within the District of Columbia.

* * * * *

6. Section 1.8 is amended by revising paragraphs (a)(1)(i)(A) and (a)(2)(ii) to read as follows:

§ 1.8 Certificate of mailing or transmission.

(a) * * *

(1) * * *

(i) * * *

(A) Addressed as set out in § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail; or

* * * * *

(2) * * *

(i) * * *

(ii) Relative to Trademark Registrations and Trademark Applications:

(A) The filing of a trademark application.

(B) [Reserved]

(C) [Reserved]

(D) [Reserved]

(E) [Reserved]

(F) [Reserved]

* * * * *

7. Section 1.9 is amended by adding a new paragraph (h) to read as follows:

§ 1.9 Definitions.

* * * * *

(h) A *Federal holiday within the District of Columbia* as used in this chapter means any day, except Saturdays and Sundays, when the Patent and Trademark Office is officially closed for business for the entire day.

8. Section 1.10 is revised to read as follows:

§ 1.10 Filing of correspondence by ''Express Mail.''

(a) Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the ''Express Mail Post Office to Addressee'' service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the ''date-in'' on the ''Express Mail'' mailing label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the Office receipt date as the filing date. See § 1.6(a).

(b) Correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the ''Express Mail'' mailing label with the ''date-in'' clearly marked. Persons dealing indirectly with the employees of the USPS (such as by deposit in an ''Express Mail'' drop box) do so at the risk of not receiving a copy of the ''Express Mail'' mailing label with the desired ''date-in'' clearly marked. The paper(s) or fee(s) that constitute the correspondence should also include the ''Express Mail'' mailing label number thereon. See paragraphs (c), (d) and (e) of this section.

(c) Any person filing correspondence under this section that was received by the Office and delivered by the ''Express Mail Post Office to Addressee'' service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the ''date-in'' on the ''Express Mail'' mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the ''date-in'' on the ''Express Mail'' mailing label or other official USPS notation, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) The number of the ''Express Mail'' mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by ''Express Mail;'' and

(3) The petition includes a true copy of the ''Express Mail'' mailing label showing the ''date-in,'' and of any other official notation by the USPS relied upon to show the date of deposit.

(d) Any person filing correspondence under this section that was received by the Office and delivered by the ''Express Mail Post Office to Addressee'' service of the USPS, who can show that the ''date-in'' on the ''Express Mail'' mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the ''Express Mail'' mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by ''Express Mail''; and

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in ''Express Mail Post Office to Addressee'' service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the ''Express Mail Post Office to Addressee'' service of the USPS. Any statement submitted in support of such a showing pursuant to this paragraph must be a verified statement if made by a person other than an employee of the USPS or a practitioner as defined in § 10.1(r) of this chapter.

(e) Any person mailing correspondence addressed as set out in § 1.1(a) to the Office with sufficient postage utilizing the ''Express Mail Post Office to Addressee'' service of the USPS but not received by the Office, may petition the Commissioner to consider such correspondence filed in the Office on the USPS deposit date, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;

(2) The number of the ''Express Mail'' mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by ''Express Mail;''

(3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the ''Express Mail'' mailing label thereon, a copy of any returned postcard receipt, a copy of the ''Express Mail'' mailing label showing the ''date-in,'' a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the ''date-in'' on the ''Express Mail'' mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in ''Express Mail Post Office to Addressee'' service prior to the last scheduled pickup for that day; and

(4) The petition includes a statement which establishes, to the satisfaction of the Commissioner, the original deposit of the correspondence, and that the copies of the correspondence, the copy of the ''Express Mail'' mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence and original ''Express Mail'' mailing label, returned postcard receipt, and official notation entered by the USPS. Such statement must be a verified statement if made by a person other than a practitioner as defined in § 10.1(r) of this chapter.

(f) The Office may require additional evidence to determine if the correspondence was deposited as ''Express Mail'' with the USPS on the date in question.

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

9. The authority citation for 37 CFR Part 2 continues to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

10. Section 2.165(a)(1) is revised to read as follows:

§ 2.165 Reconsideration of affidavit or declaration.

(a)(1) If the affidavit or declaration filed pursuant to § 2.162 is insufficient or defective, the affidavit or declaration will be refused and the registrant will be notified of the reason. Reconsideration of the refusal may be requested within six months from the date of the mailing of the action. The request for reconsideration must state the grounds for the request. A supplemental or substitute affidavit or declaration required by section 8 of the Act of 1946 cannot be considered unless it is filed before the expiration of six years from the date of the registration or from the date of publication under section 12(c) of the Act.

* * * * *

PART 5—SECRECY OF CERTAIN INVENTIONS AND LICENSES TO EXPORT AND FILE APPLICATIONS IN FOREIGN COUNTRIES

11. The authority citation for 37 CFR Part 5 continues to read as follows:

Authority: 35 U.S.C. 6, 41, 181–188, as amended by the Patent Law Foreign Filing Amendments Act of 1988, Pub. L. 100–418, 102 Stat. 1567; the Arms Export Control Act, as amended, 22 U.S.C. 2751 et seq., the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq., and the Nuclear Non-Proliferation Act of 1978, 22 U.S.C. 3201 et seq., and the delegations in the regulations under these acts to the Commissioner (15 CFR 370.10(j), 22 CFR 125.04, and 10 CFR 810.7).

12. Section 5.33 is revised to read as follows:

§ 5.33 Correspondence.

All correspondence in connection with this part, including petitions, should be addressed to ''Assistant Commissioner for Patents (Attention: Licensing and Review), Washington, D.C. 20231.''

PART 10—REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE

13. The authority citation for 37 CFR Part 10 continues to read as follows:

Authority: 5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 6, 31, 32, 41.

14. Section 10.23 is amended by revising paragraph (c)(9) to read as follows:

§ 10.23 Misconduct.

* * * * *

(c) * * *

(9) Knowingly misusing a ''Certificate of Mailing or Transmission'' under § 1.8 of this chapter.

* * * * *

Dated: October 24, 1996.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 96–28088 Filed 10–31–96; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 2

RIN 2900–AI17

Delegations of Authority; Nonsubstantive Miscellaneous Changes

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) regulations on delegation of authority to authorize Directors of Department of Veterans Affairs property and facilities under the charge and control of the Department of Veterans Affairs to appoint police officers with power to enforce Federal laws and Department of Veterans Affairs regulations, to investigate violations of those laws and to arrest for crimes committed on Department of Veterans Affairs property

to the full extent provided by Department policies and procedures.

EFFECTIVE DATE: November 1, 1996.

FOR FURTHER INFORMATION CONTACT: Sherwin Lynch, Headquarters Health Administration Service (161A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420; (202) 273–8312. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: This final rule consists of a delegation of authority and, therefore, is not subject to the notice and comment and effective date provisions of 5 U. S.C. 553.

The Secretary hereby certifies that this rule will not have a significant economic impact on a substantial number of small entitles as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule merely consists of a delegation of authority.

There is no Catalog of Federal Domestic Assistance Number.

List of Subjects in 38 CFR Part 2

Authority delegations (Government agencies).

Approved: June 14, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth above, 38 CFR part 2 is amended as set forth below:

PART 2—DELEGATIONS OF AUTHORITY

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 302; 38 U.S.C. 501; 44 U.S.C. 3702.

2. In § 2.6, paragraph (a)(8) is revised to read as follows:

§ 2.6 Secretary's delegations of authority to certain officials (38 U.S.C. 512.)

* * * * *

(a) * * *

(8) To authorize Directors of Department of Veterans Affairs property and facilities under the charge and control of the Department of Veterans Affairs to appoint police officers with the power to enforce Federal laws and Department of Veterans Affairs regulations, to investigate violations of those laws and to arrest for crimes committed on Department of Veterans Affairs property to the full extent provided by Department policies and procedures.

(Authority: 38 U.S.C. 501 and 512.)

* * * * *

[FR Doc. 96–28038 Filed 10–31–96; 8:45 am]

BILLING CODE 8320–01–P

38 CFR Parts 36 and 42

RIN 2900–AI48

Federal Civil Penalties Inflation Adjustment

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends Department of Veterans Affairs (VA) regulations by providing notice as required by statute to reflect statutory increases in maximum civil monetary penalties. Under 38 U.S.C. 3710, VA may impose civil monetary penalties for false loan guaranty certifications. Also, under 31 U.S.C. 3802, VA may impose civil monetary penalties for fraudulent claims and for fraudulent statements. The Federal Civil Monetary Penalties Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (the Act), sets forth a formula increasing the maximum statutory amounts for civil monetary penalties and requires VA to give notice of the new maximum amounts by regulation. Accordingly, this document gives notice that the maximum civil monetary penalties have been increased as follows: $11,000 maximum civil monetary penalty for false loan guaranty certifications; $5,500 maximum civil monetary penalty for fraudulent claims; and $5,500 maximum civil monetary penalty for fraudulent statements.

EFFECTIVE DATE: The effective date is November 1, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas O. Gessel, Director, Office of Regulations Management (02D), Office of General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8605.

SUPPLEMENTARY INFORMATION: Under the provisions of 5 U.S.C. 553, there is good cause for dispensing with prior notice and comment. This final rule merely sets forth specific information required by statute to be set forth in VA regulations. Accordingly, notice and public procedure thereon are impracticable, unnecessary, and contrary to the public interest.

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule merely sets forth specific information required by statute to be set forth in VA regulations. Accordingly, no proposed rulemaking was required in connection with the adoption of this final rule. Pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

There is no Catalog of Federal Domestic Assistance Number for the programs affected by this regulation.

List of Subjects

38 CFR Part 36

Condominiums, Housing, Indians, Individuals with disabilities, Loan programs—housing and community development, Loan programs—Indians, Loan programs—veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

38 CFR Part 42

Administrative practice and procedure, Claims, Fraud, Penalties.

Approved: September 27, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR parts 36 and 42 are amended as follows:

PART 36—LOAN GUARANTY

1. The authority citation for part 36, §§ 36.4300 through 36.4375, is revised to read as follows:

Authority: Sections 36.4300 through 36.4375 issued under 38 U.S.C. 101, 501, 3701–3704, 3710, 3712–3714, 3720, 3729, 3732, unless otherwise noted.

§ 36.4337 [Amended]

2. In § 36.4337, paragraphs (k)(1)(i) introductory text and (k)(3) are amended by removing ''$10,000'' and adding, in its place, ''$11,000''; and by adding an authority citation at the end of the section to read as follows:

§ 36.4337 Underwriting standards, processing procedures, lender responsibility and lender certification.

* * * * *

(Authority: 38 U.S.C. 3710)

PART 42—STANDARDS IMPLEMENTING THE PROGRAM FRAUD CIVIL REMEDIES ACT

3. The authority citation for part 42 continues to read as follows:

Authority: Pub. L. 99–509, secs. 6101–6104, 100 Stat. 1874, to be codified at 31 U.S.C. 3801–3812.

§ 42.3 [Amended]

4. In § 42.3, paragraphs (a)(1)(iv) and (b)(1) concluding text are amended by removing ''$5,000'' and adding, in their place, ''$5,500''; and by adding an authority citation at the end of the section to read as follows:

§ 42.3 Basis for civil penalties and assessments.

* * * * *

(Authority: 31 U.S.C. 3802)

[FR Doc. 96–28037 Filed 10–31–96; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 233

Civil Penalties for Violations of Postal Orders

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule is added to the Postal Service regulations on Inspection Service/Inspector General authority in order to implement civil penalties for violations of Postal Service Orders issued under 39 U.S.C. 3012, and to allow adjustments to civil monetary penalties administered by the Postal Service.

EFFECTIVE DATE: October 23, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Y. Angelo, (202) 268–3081.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, amended by the Debt Collection Improvement Act of 1996, Pub. L. No. 104–134, section 31001(s), 110 Stat. 1321 (1996), requires agencies that assess civil monetary penalties to adjust their civil monetary penalties for inflation. The Postal Service may seek a civil penalty under 39 U.S.C. 3012 for violations of Postal Service Orders. The Postal Service is governed by 28 U.S.C. 2641 note, and accordingly, adds section 233.12, Civil Penalties, to 39 CFR part 233.

List of Subjects in 39 CFR Part 233

Administrative practice and procedure, Banks, Banking, Credit, Crime, Law enforcement, Postal Service, Privacy, Seizures and forfeitures.

For the reasons set out in this document, the Postal Service amends 39 CFR part 233 as follows:

PART 233—INSPECTION SERVICE/ INSPECTOR GENERAL AUTHORITY

1. The authority citation for 39 CFR part 233 continues to read as follows:

Authority: 39 U.S.C. 101, 401, 402, 403, 404, 406, 410, 411, 3005(e)(1); 12 U.S.C. 3401–4322; 18 U.S.C. 981, 1956, 1957, 2254, 3061; 21 U.S.C. 881; Inspector General Act of 1978, as amended (Pub. L. No. 95–452 as amended), 5 U.S.C. App. 3.

2. Section 233.12 is added to read as follows:

§ 233.12 Civil penalties.

False representation and lottery orders—

(a) *Issuance.* Pursuant to 39 U.S.C. 3005, the Judicial Officer of the Postal Service, acting upon a satisfactory evidentiary basis, may issue a mail return and/or a cease and desist order against anyone engaged in conducting a scheme or device for obtaining money or property through the mail by means of a false representation, including the mailing of matter which is nonmailable, or engaged in conducting a lottery, gift enterprise, or scheme for the distribution of money or of real or personal property, by lottery, chance, or drawing of any kind.

(b) *Enforcement.* Pursuant to 39 U.S.C. 3012, any person:

(1) Who, through the use of the mail, evades or attempts to evade the effect of an order issued under 39 U.S.C. 3005(a)(1) or 3005(a)(2);

(2) Who fails to comply with an order issued under 39 U.S.C. 3005(a)(3); or

(3)Who (other than a publisher described by 39 U.S.C. 3007(b)) has actual knowledge of any such order, is in privity with any person described by paragraph (b) (1) or (2) of this section, and engages in conduct to assist any such person to evade, attempt to evade, or fail to comply with such order, as the case may be, through the use of the mail;

shall be liable to the United States for a civil penalty in an amount not to exceed $11,000 for each day that such person engages in conduct described by this paragraph (b). A separate penalty may be assessed under this paragraph (b) with respect to the conduct described by paragraphs (b) (1), (2), or (3) of this section.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 96–27347 Filed 10–31–96; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 58–1–7131–b]
[FRL–5634–5]

Redesignation of the Yavapai-Apache Reservation to a PSD Class I Area; State of Arizona; Dispute Resolution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of dispute resolution.

SUMMARY: The purpose of this action is to announce the EPA's resolution of an intergovernmental dispute over a request by the Yavapai-Apache Tribal Council to redesignate the Yavapai-Apache Reservation (''the Reservation'') as a non-Federal Class I area under the Clean Air Act program for prevention of significant deterioration of air quality. On August 22, 1994 the Governor of Arizona raised concerns about EPA's proposal to approve the request of the Yavapai-Apache Tribe to redesignate its Reservation as a Class I area and asked EPA to initiate the intergovernmental dispute resolution process provided for in section 164(e) of the Clean Air Act. The State and the Tribe were unable to reach an agreement concerning the redesignation. Section 164(e) of the Clean Air Act provides that EPA must therefore resolve the dispute. After fully considering the concerns raised by the State of Arizona, EPA declines in these particular circumstances to disapprove the Tribe's decision to limit the amount of air quality deterioration allowed within its Reservation. Therefore, as described in a final rulemaking notice also published in today's Federal Register, EPA is finalizing its proposed decision to redesignate the Yavapai-Apache Reservation as a non-Federal Class I area. The Class I designation will result in lowering the allowable increases in ambient concentrations of particulate matter, sulfur dioxide, and nitrogen dioxide within the Reservation.

EFFECTIVE DATE: December 2, 1996.

ADDRESSES: The public docket for this notice, which includes additional information related to this decision and relevant materials submitted to EPA, is available for public inspection and copying during normal business hours. Please contact the EPA official listed below at the given address. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Jessica Gaylord, Air and Toxics Division (A–5–1), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1290. An electronic copy of this Federal Register notice and other pertinent information is available on the World Wide Web at this Internet address: http://www.epa.gov/region09/air/yavapai/

SUPPLEMENTARY INFORMATION:

I. Summary of Final Rule Approving Yavapai-Apache Tribe's Request for Redesignation

Elsewhere in today's Federal Register EPA has published a final rulemaking notice granting the Yavapai-Apache Tribe's request to redesignate its reservation as a Class I area under the Clean Air Act (CAA) program for the prevention of significant deterioration of

air quality (PSD). The final rulemaking notice contains a discussion of the following: (1) The PSD program and PSD area classifications; (2) the PSD redesignation requirements; (3) the PSD class I redesignation request submitted to EPA by the Tribe and the public process accompanying EPA's review of the request; (4) the statutory and regulatory limits on the scope of EPA's review; and (5) EPA's response to public comments on EPA's proposed approval of the request, including concerns about the potential impacts of the redesignation on areas outside the reservation. While some aspects of the final rulemaking notice are reiterated here, the reader is referred to the notice for a more detailed discussion.

As explained in EPA's final rulemaking notice approving the redesignation, section 164(b)(2) of the CAA provides that EPA may disapprove a State or Tribal redesignation request only if it finds, after notice and public hearing, that the redesignation does not conform with the applicable procedural requirements. *See also* 40 CFR 52.21(g)(5). However, section 164(e) of the CAA also calls for EPA to consider ''the extent to which the lands involved are of sufficient size to allow effective air quality management or have air quality related values of such an area'' in the narrow context where EPA is resolving intergovernmental disputes relating to a PSD area redesignation.

As explained in EPA's notice of final rulemaking, EPA's review of the Tribe's request in light of the public comments revealed no procedural error by the Tribe. In this notice, EPA examines the issues raised by the State of Arizona and the Tribe in their intergovernmental dispute, including the specific factors EPA is required to consider in resolving intergovernmental disputes relating to redesignations. For the reasons described below, EPA declines in these particular circumstances to disapprove the Tribe's decision to limit the amount of air quality deterioration allowed within its Reservation. Accordingly, in the notice of final rulemaking also published in today's Federal Register, EPA announces its approval of the Tribe's Class I redesignation request.

II. Statutory and Regulatory Background

A. Description of the PSD Program: PSD Area Classifications, Redesignations and Permit Requirements

The PSD program applies to areas designated ''attainment'' or ''unclassifiable'' under section 107 of the CAA relative to EPA's national ambient air quality standards (NAAQS). *See* section 161 of the CAA. Attainment areas are areas that meet the NAAQS and unclassifiable areas are areas that cannot be determined on the basis of available information as meeting or not meeting the NAAQS. *See* section 107(d)(1)(A) of the CAA. These areas are referred to as ''PSD areas.''

PSD areas are further categorized as Classes I, II or III. The classification of an area determines the amount or ''increment'' of air quality deterioration that is allowed over a baseline level. Class I areas have the smallest increments and therefore allow the least amount of air quality deterioration. Conversely, Class III areas have the largest air quality increments and allow the greatest degradation. EPA's PSD regulations establish the incremental amount of air quality deterioration that is allowed for particulate matter, sulfur dioxide and nitrogen dioxide in Class I, II and III areas. *See* 40 CFR 52.21(c). In all instances, the NAAQS represent the overarching ceiling that may not be exceeded in a PSD area, notwithstanding any increment.

When Congress enacted a statutory PSD program in the 1977 amendments to the Clean Air Act it provided that specified Federal lands, including certain national parks and wilderness areas, must be designated as Class I areas and may not be redesignated to another classification. *See* section 162(a) of the CAA. These areas are called mandatory Federal Class I areas. The statute also carried forward as Class I areas any areas redesignated as Class I under EPA's pre-1977 PSD regulations. The Northern Cheyenne reservation was a redesignated Class I area affected by this provision. *See Nance* v. *EPA,* 645 F.2d 701 (9th Cir. 1981), *cert. denied, Crow Tribe of Indians* v. *EPA,* 454 U.S. 1081 (1981).

In the 1977 amendments to the Clean Air Act, Congress provided that all other PSD areas of the country would be designated as Class II areas. *See* section 162(b) of the CAA. At the same time, Congress gave States and Indian Tribes broad authority to redesignate Class II areas as Class I. *See* section 164 of the CAA.

Section 164(c) of the CAA expressly provides for PSD area redesignations by Federally recognized Indian Tribes:

> Lands within the exterior boundaries of reservations of federally recognized Indian tribes may be redesignated only by the appropriate Indian governing body.

The Department of the Interior periodically publishes a list of Tribes officially recognized by the Federal government. *See* 60 FR 9250 (February 16, 1995) (identifying Yavapai-Apache Nation of the Camp Verde Reservation, Arizona).

The Clean Air Act establishes a narrow role for EPA in reviewing State and Tribal PSD redesignations, providing for EPA disapproval of redesignation requests only if EPA finds that the procedural requirements applicable to redesignations have not been met. *See* section 164(b)(2) of the CAA. Accordingly, EPA's implementing regulations provide that EPA ''shall disapprove, within 90 days of submission, a proposed redesignation of any area only if [it] finds, after notice and opportunity for public hearing, that such redesignation does not meet the procedural requirements of [40 CFR 52.21(g)].'' *See* 40 CFR 52.21(g)(5). EPA's final rulemaking notice approving the Tribe's redesignation request published elsewhere in today's Federal Register examines in detail the procedural requirements, EPA's review role and related issues.

The EPA has previously approved Class I redesignation requests for the Northern Cheyenne Indian Reservation, the Flathead Indian Reservation, the Fort Peck Indian Reservation and the Spokane Indian Reservation. *See* 40 CFR 52.1382(c) and 52.2497.

The PSD program is implemented through a preconstruction review permit program. The permit program applies only to major stationary sources located in PSD areas. In general, a major stationary source is a large stationary source that has the potential to emit 250 tons per year of a regulated air pollutant or, for a certain set of specifically listed source categories (e.g., iron and steel mill plants, etc.), 100 tons per year of a regulated air pollutant. *See* 40 CFR 52.21(b)(1).

In broad overview, the PSD program calls for the owners and operators of proposed major stationary sources locating in PSD areas to submit a permit application containing an analysis of their air quality impacts and to install ''best available control technology.'' *See* sections 165(a) and 169(3) of the CAA. The air quality analysis, performed using air quality modeling, must show that the proposed source will not cause or contribute to an exceedance of an applicable PSD increment, over a baseline concentration, or a NAAQS. *See* 40 CFR 52.21(c) and (d). The permitting authority reviews the permit application and determines whether in its informed judgment, after notice and public hearing, the PSD permit requirements have been met.

B. Yavapai-Apache Tribe Request To Redesignate Its Reservation From Class II to Class I

On December 17, 1993, the Yavapai-Apache Tribal Council (''the Tribal Council'' or ''the Tribe'') submitted to EPA a request to redesignate the Yavapai-Apache Reservation from Class II to Class I. The Tribe's submittal explains that its redesignation request is to protect its air quality for its citizens:

> The Yavapai-Apache Tribe desires to maintain high quality air standards for its citizens by redesignating Reservation lands as a Class I Clean Air area.

See Yavapai-Apache Tribe Air Quality Redesignation Plan, Sept. 1993 at p. 1.

The Yavapai-Apache Reservation is located in the Verde Valley, in the State of Arizona. The Reservation is comprised of five land parcels which total approximately 635 acres. The Tribe's redesignation request includes its entire Reservation. Maps of the Reservation are included as appendices to the Tribe's September 1993 Air Quality Redesignation Plan, which is available as part of the public docket identified at the beginning of this notice.

The Reservation is approximately 90 miles north of Phoenix in the Verde Valley of central Arizona. The Verde Valley is situated near the ''red rock'' country of Sedona and Oak Creek Canyon. Nearby national forests include the Coconino National Forest, the Kaibab National Forest and the Prescott National Forest. The Montezuma Castle, Montezuma Well and Tuzigoot National Monuments are located within the Verde Valley in the vicinity of the Reservation. In addition, the Sycamore Canyon Wilderness Area, designated a mandatory Federal Class I area under the CAA, is located a few miles north of the Town of Clarkdale. *See* 40 CFR 81.403.

EPA reviewed the Tribe's redesignation request and preliminarily determined that it met the applicable procedural requirements of 40 CFR 52.21(g)(4). On April 18, 1994, EPA published a notice of proposed rulemaking in the Federal Register proposing to approve the request and announced a 30-day period to receive public comments. *See* 59 FR 18346.

At the request of the Town of Clarkdale, located near the Clarkdale parcel of the Reservation, EPA held a public hearing on the proposed redesignation on June 22, 1994. EPA's public hearing notice indicated that EPA would allow until July 6, 1994 for the submittal of written comments. In order to facilitate public understanding about EPA's proposed action, EPA began the public hearing with an explanation of the Class I redesignation process and the PSD program.

Following the public hearing, the Town of Clarkdale requested an extension of the public comment period. On July 20, 1994, EPA published a Federal Register notice announcing an extension of the public comment period, providing the public until August 22, 1994 to submit written comments. *See* 59 FR 37018–19.

At the conclusion of the extended comment period, the Governor of Arizona submitted an August 22, 1994 letter to EPA requesting EPA to initiate dispute resolution pursuant to section 164(e) of the CAA. *See* Letter from Fife Symington, Governor of Arizona, to Carol M. Browner, EPA Administrator.

III. The Intergovernmental Dispute

A. Background

In broad overview, section 164(e) of the CAA provides a mechanism for States and Tribes to resolve intergovernmental disagreements about a PSD area redesignation or proposed permit. Specifically, section 164(e) provides in relation to PSD redesignations that if a State affected by the redesignation of an area by an Indian tribe or an Indian tribe affected by the redesignation of an area by a State disagrees with such redesignation, the Governor or Indian ruling body may request EPA to enter into negotiations with the governments involved to resolve the dispute. The statute calls for EPA to resolve the dispute if the governments involved do not reach agreement. Further, section 164(e) provides that in resolving disputes related to an area redesignation, EPA must ''consider the extent to which the lands involved are of sufficient size to allow effective air quality management or have air quality related values of such an area.'' *See also* 40 CFR 52.21(t).

B. Concerns Raised by State and Tribe

In the discussion below, EPA has summarized the concerns that have been raised by the State and Tribe. Because the State was raising objections to the Tribe's redesignation request and because EPA has ultimately decided to approve the request, the summary below particularly focuses on the concerns raised by the State. Additional information about EPA meetings with State and Tribal representatives is contained in the public docket identified at the beginning of this notice.

The Governor of Arizona's August 22, 1994 letter indicated that he was concerned that ''[t]he effects of the proposed redesignation are not apparent to all of the stakeholders, and confusion exists about the potential impacts of the Agency's proposed action.'' The Governor indicated that he was requesting EPA to initiate the dispute resolution process so that ''the effects of the proposed action can be better understood and outstanding concerns addressed for the benefit of all stakeholders.'' *See* Letter from Fife Symington, Governor of Arizona, to Carol M. Browner, EPA Administrator.

In an October 6, 1994 letter EPA asked the State to elaborate the bases for its dispute, to help EPA facilitate resolution of the disagreement. *See* Letter from John C. Wise, EPA Deputy Regional Administrator, to Fife Symington, Governor of Arizona. In the letter, EPA also offered to meet with the State to discuss options for additional public outreach to address the State's concern that the effects of the proposed redesignation were not understood by all of the stakeholders.

The Governor's December 5, 1994 reply indicated that ''[t]he purpose of invoking the dispute resolution is to raise the issues of whether the Yavapai-Apache Reservation is of sufficient size to allow effective air quality management or have air quality-related values.'' *See* Letter from Fife Symington, Governor of Arizona, to Felicia Marcus, EPA Regional Administrator. The State's reply also referred to October 20, 1993 comments submitted by a State official during the Tribe's public comment period. The October 20, 1993 letter raised the following concerns:

> The proposed [Yavapai-Apache Tribe Air Quality Redesignation] Plan points out that the Reservation is comprised of five small, scattered land parcels totaling 635 acres in the Verde Valley, ranging in size from almost four to 458 acres, and located over a range of approximately 30 miles. Reservation lands are separated by relatively long distances and a variety of land ownership as well as development patterns.
>
> Considering the size and dispersed nature of the Reservation lands, the [Arizona] Department [of Environmental Quality] has concluded that redesignation of the Reservation to Class I status would not necessarily result in effective air quality management. Section 165 of the CAA prescribes the type of analysis which must be conducted prior to the issuance of permits for Prevention of Significant Deterioration in Class I areas. The Department has concluded that it would be neither realistic nor practicable to apply those requirements to all Reservation lands while distinguishing those lands from surrounding Class II areas, which would be subject to different air quality limitations.

See Letter from Edward Z. Fox, Director of the Arizona Department of Environmental Quality, to Theodore

Smith, Sr., Chairman of the Yavapai-Apache Tribe.

The Tribe responded to the State's comments regarding the size of the Reservation in the December 7, 1993 letter to EPA requesting redesignation to Class I, as follows:

> However, no where does the writer cite a law or regulation which requires Class I areas to be a certain size, but rather the regulations merely call for the EPA Administrator to consider the extent to which the lands involved are of sufficient size. The U.S. Congress, in passing the Clean Air Act, could not have intended that only larger areas could receive clean air designations while smaller areas must suffer from a lack of clean air. This is especially true since Congress included in the Clean Air Act an explicit provision for Indian Tribes to request redesignations and since Congress knew that Indian Reservations would clearly vary in size.

See Letter from Theodore Smith, Sr., Chairman of the Yavapai-Apache Tribe, to Matt Haber, EPA Region 9.

On January 12, 1995, EPA held a series of meetings in the Phoenix area with representatives of the State and Tribe to facilitate resolution of the dispute. EPA first met separately with representatives of the State and Tribe, to allow each to express its concerns in a non-adversarial setting, and then the two parties met without EPA officials. Subsequently, EPA officials held a joint meeting with representatives of the State and Tribe. In the joint meeting, which was transcribed, representatives of both parties described their concerns, summarized below.

Representatives of the State expressed concern about impacts outside of the reservation:

> The impact of the redesignation is significant with regard to areas outside of the Indian territory, Indian lands. And because of that, it has an impact which certainly was unforeseen or unanticipated by the non-Indian residents of the Verde Valley.
>
> The redesignation will have significant impacts on future growth and growth trends, business trends, job opportunities in the Verde Valley, and in a way which may or may not impact the ability to manage the area for air quality values or to effectively manage the area for air quality purposes. It is because of this what I consider to be [the] extraterritorial effect of the redesignation from the Tribe onto state and county and local lands that we believe the redesignation to be inappropriate.

See January 12, 1995 EPA Dispute Resolution Proceedings, Transcript at p. 7 (hereafter ''Transcript'').[1]

The State also described its belief that in addressing the dispute EPA is required to consider ''whether the area can be effectively managed for air quality values, meaning the redesignated area, which is the Tribal lands, or whether there are air quality related values on the Reservation that need to be protected.'' See Trans. at ps. 7–8. The State indicated that it believed the answer to both questions to be no and therefore it is inappropriate for the Tribe unilaterally to seek the redesignation:

> It is our opinion that in both of those situations the answer is no. And because of that, we believe that the health and effect of the—All the residents of the Verde Valley, Tribal or non-Tribal need to be protected, but be protected holistically, not one side dictating to the other. And we believe that this redesignation is indeed a dictation from one side to the other.

See Trans. at p. 8.

The State also raised concerns that the reservation consists of separate parcels and that in the State's view it was untenable and unworkable to manage air quality off of the disperse land parcels:

> It is a Reservation that is made up of five individual parcels spread out through the—five or six individual parcels throughout the Verde Valley. * * *
>
> * * * * *
>
> * * * [G]iven what I believe to be a very untenable and unworkable arrangement with regard to trying to manage air quality off of these dispersed pieces of Indian land, we think the designation is not appropriate.

See Trans. at ps. 7 & 9.

The State also objected to the redesignation because the redesignation would not address the Tribe's concern about existing health and welfare problems:

> And so to the extent that there are current problems with the health and welfare of the Tribal members, those issues don't get resolved in this process anyway and they will have to be resolved otherwise in some other form.

See Trans. at p. 8.

The Tribe stated that it had followed and met all of the procedural requirements that apply to a Tribal class I redesignation. *See* Trans. at p. 9. The Tribe indicated that it was concerned about the health and welfare of its members:

> While the Tribe respects the views of everyone, the Tribe holds the health and welfare of its members at a premium.

See Trans. at p. 13.

Further, the Tribe suggested that the concerns about off reservation impacts were based on misinformation and that the redesignation would not preclude economic development off the reservation:

> Some people have said that the Class I status would affect automobile emission standards or affect their ability to burn wood in their fireplaces, others have said that the Class I status would, quote, affect all development in the Verde Valley. Statements like these have no basis in fact. Economic development can still happen.

See Trans. at p. 13.

The Tribe recounted the process its redesignation has been subject to, as follows: (1) On September 11, 1993 the Tribal Council unanimously approved the air quality redesignation request and the description and analysis of its effects; (2) on October 21, 1993, the Tribe held a public hearing on the Reservation at which 43 people including 37 non-Indians voiced support for the redesignation and no one opposed it; (3) in December 1993 the Tribe submitted its redesignation request to EPA; (4) on April 18, 1994 EPA published a Federal Register notice proposing to approve the redesignation; (5) on May 18, 1994 the public comment period ended; (6) on May 20, 1994, EPA reopened the process and decided to hold an EPA sponsored public hearing in Arizona; (7) on June 22, 1994, EPA conducted a second public hearing on the reservation—at which 40 people provided comments, including at least 20 non-Indians, in support of the Tribe's request and five people opposed the request—and extended the public comment period for an additional two weeks; (8) on July 6, 1994 the extended public comment period concluded; (9) on July 20, 1994 EPA published another Federal Register notice extending the public comment period again; and (10) on August 22, 1994 the public comment period ended and that same day the Governor of Arizona sent a letter to EPA requesting this dispute resolution process. See Trans. at ps. 9–11.

The Tribe expressed concern about the length of time that had passed in arranging a meeting with the State to explore a resolution of the dispute:

> For over four months now, the Tribe has been patiently waiting for the State to agree to even attend the dispute resolution proceedings.

See Trans. at p. 11.

The Tribe expressed concern about the length of time that elapsed before the State provided a list of reasons for disagreeing with the redesignation:

> On October 6th, 1994, the EPA formally requested from the Governor a list or outline of his reasons for disagreeing with the Tribe's proposal. That request was made to produce the document within one week. Two months later, on December 5th, 1994, the Governor finally responded with a one-page letter simply stating that the issue was whether the Yavapai-Apache Reservation was of

[1] A copy of the transcript is included in the public docket for this action, identified at the beginning of this notice.

sufficient size to allow effective air quality management [or have air quality related values].

See Trans. at p. 11

After hearing the concerns expressed by the State and Tribe, EPA attempted to explore whether there was common ground for a resolution. *See* Trans. at p. 13. EPA adjourned the meeting when neither party expressed an interest in further discussion. *See* Trans. at p. 15. EPA subsequently encouraged the Tribe and the State to jointly meet again to further explore possible resolution of the dispute. The parties, however, declined.

IV. EPA's Resolution of the Intergovernmental Dispute

A. Introduction

Because the State and Tribe were unable to reach agreement, section 164(e) of the CAA calls for EPA to resolve the dispute. As noted, section 164(b)(2) of the CAA provides that EPA may disapprove a redesignation request submitted by a State or Tribe only if EPA finds, after notice and public hearing, that the redesignation does not meet the applicable procedural requirements. *See also* 40 CFR 52.21(g)(5). As explained below, these statutory and regulatory provisions and their associated legislative and administrative history indicate that so long as the prescribed procedures for public input and involvement are followed, EPA is to give States and Tribes broad latitude in deciding what PSD classification is appropriate for lands within their respective jurisdictions.

1. Statutory and Regulatory Background

EPA's pre-1977 PSD regulations authorized EPA to disapprove an area redesignation request if EPA determined that the State or Tribe proffering the request acted arbitrarily and capriciously in considering certain factors. *See* 39 FR 42510, 42515 (Dec. 5, 1974). In the 1977 Clean Air Act amendments Congress adopted major changes to the CAA, including a PSD regime to supplant EPA's pre-1977 administrative program. EPA's current regulations implement section 164(b)(2) of the CAA, adopted with the 1977 Clean Air Act amendments, by providing for disapproval of a State or Tribal redesignation only if EPA finds, after notice and opportunity for public hearing, that the request does not meet the applicable procedural requirements. EPA's regulations also reflect the limited EPA review role by calling for EPA to make this determination within 90 days of submission of a redesignation request. *See* 40 CFR 52.21(g)(5).

The legislative history associated with Congress's adoption of the 1977 PSD program indicates that Congress deliberately intended to curtail EPA's authority to disapprove a redesignation request under its pre-1977 regulations, giving States and Tribes greater discretion in this area:

> The intended purpose of [the congressional PSD program] are * * * (3) to delete the current EPA regulations and to substitute a system which gives a greater role to the States[, Tribal [2],] and local governments and which restricts the Federal Government in the following ways: * * * (b) By eliminating the authority which the Administrator has under current EPA regulations to override a State's [or Tribe's] classification of an area on the ground that the State [or Tribe] improperly weighed energy, environment, and other factors.

See H.R. Rep. No. 294, 95th Cong., 1st Sess. 7–8 (1977) *reprinted in* Senate Comm. on the Environment and Public Works, 95th Cong., 2d Sess., A Legislative History of the Clean Air Act Amendments of 1977, vol. 4 at 2474–75 (1978) (hereafter ''1977 CAAA Legislative History''); *see also* 1977 CAAA Legislative History, vol. 3 at 373 (colloquy between Senators Garn and Muskie, during the Senate's consideration of the Conference report, about the types of procedural error that might trigger a disapproval).

Thus, Congress adopted the statutory provisions governing EPA's review of State and Tribal redesignation requests to limit the scope of Federal review. Under the current provisions, EPA's role is to determine whether the requesting State or Tribe followed specific procedural requirements, to ensure that the local decisionmaking process provides ample opportunity for interested parties to express their views. While EPA must ensure procedural rigor, it is generally inappropriate for EPA to interpose superseding Federal views on the merits of the resulting State or Tribal decisions. *See, e.g.,* H.R. Rep. No. 294 at 146–47 (1977) *reprinted in* 1977 CAAA Legislative History, vol. 4 at 2613–14. The limited Federal review applies to both State and Tribal redesignation requests and therefore would apply to EPA's review of objections to a State's redesignation request.

In this instance, EPA examined the Yavapai-Apache Tribe's decision to limit the amount of air quality deterioration within its Reservation in light of significant comments and concluded that the redesignation request is the product of a decision-making process that comports with procedural requirements. The reader is referred to the notice approving the Tribe's redesignation request, also published in today's Federal Register. The notice contains a detailed discussion of these issues.

At the same time that section 164(b)(2) provides that EPA may disapprove a redesignation request only if it determines that the requesting State or Tribe has committed a procedural error, section 164(e) of the CAA calls for EPA to consider ''the extent to which the lands involved are of sufficient size to allow effective air quality management or have air quality related values of such an area'' in resolving intergovernmental disputes about a PSD area redesignation. EPA's regulations implementing section 164(e) simply repeat this language and do not provide additional regulatory guidance. *See* 40 CFR 52.21(t).

However, the legislative history accompanying the adoption of section 164(e) is pertinent, specifically indicating that the intergovernmental dispute resolution provision was not intended to encroach on Indian sovereignty. During the House of Representatives' consideration of the Conference Committee report, Congressman Rogers, Chairman of the House Subcommittee on Health and the Environment and one of the conferees, admonished that EPA's review of Tribal redesignations in resolving intergovernmental disputes should be exercised with utmost caution and that EPA should reverse a Tribal determination only under the most serious circumstances:

> The conference bill provides that both States and Indian tribes will continue to have the power they now have to redesignate their lands to a new air quality classification. In cases where another State may object to such classification, and when the two jurisdictions cannot amicably come to agreement, the Administrator is granted the power to review the redesignation. But it is intended that the Administrator's review of such determinations by tribal governments be exercised with utmost caution to avoid unnecessarily substituting his judgment for that of the tribe. The concept of Indian sovereignty over reservation lands is a critical one, not only to native Americans, but to the Government of the United States. A fundamental incident of that sovereignty is control over the use of their air resources. Some statutes, I imagine, have encroached upon Indian sovereignty, eroding treaty rights negotiated at an earlier time. This is not such a bill, for the Administrator should reverse the determination made by an Indian

[2] The statute and the legislative history make it clear that the references to State redesignation authority in the legislative history apply equally to redesignations by Tribes. *See, e.g.,* S. Rep. No. 127, 95th Cong., 1st Sess. 9 (1977) *reprinted in* 1977 CAAA Legislative History, vol. 3 at 1383.

governing body to reclassify its land, only under the most serious circumstances.

See 1977 CAAA Legislative History, vol. 3 at 326.

Federal and Agency Tribal policies direct EPA to respect Tribal sovereignty. For example, on January 24, 1983, President Reagan issued a Federal Indian Policy, reaffirming and calling for implementation of President Nixon's 1970 national policy of self-determination for Indian Tribes as well as the ensuing 1975 Indian Self-Determination and Education Assistance Act. The Policy Statement issued by President Reagan stressed two related themes: (1) that the Federal government will pursue the principle of Indian ''self-government'' and (2) that it will work directly with Tribal governments on a ''government-to-government'' basis. An April 29, 1994 Presidential Memorandum issued by President Clinton reiterated that the rights of sovereign Tribal governments must be fully respected. *See* 59 FR 22951 (May 4, 1994). EPA's Tribal policies implement these principles, including recognizing Tribal Governments as sovereign entities with primary authority and responsibility for the reservation populace. *See* November 8, 1984 ''EPA Policy for the Administration of Environmental Programs on Indian Reservations''; Policy Reaffirmed by Administrator Carol M. Browner in a Memorandum issued on March 14, 1994. *See also Washington Department of Ecology,* 752 F.2d 1465, 1471–72 and n.5 (9th Cir. 1985). The United States also has a unique fiduciary relationship with Tribes. *See, e.g., Nance* v. *EPA,* 645 F.2d 701, 710–11 (9th Cir.), *cert. denied, Crow Tribe of Indians* v. *EPA,* 454 U.S. 1081 (1981).

Finally, a central purpose of the CAA is ''to protect and enhance the quality'' of air resources ''to promote the public health and welfare.'' *See* section 101(b)(1) of the CAA; *see also Sierra Club* v. *Ruckleshaus,* 344 F. Supp 253 (D.D.C. 1972), *aff'd per curiam,* 4 Env't Rep. Cases 1815 (D.C. Cir. 1972), *aff'd by an equally divided court, sub nom. Fri* v. *Sierra Club,* 412 U.S. 541 (1973). The specific purposes of the PSD program include: (1) protecting the public health and welfare from any actual or potential adverse effect from air pollution, notwithstanding attainment and maintenance of the NAAQS; (2) insuring that economic growth will occur in a manner consistent with the preservation of existing clean air resources; and (3) assuring that emissions from any source in one jurisdiction will not interfere with the prevention of significant deterioration in any other jurisdiction. *See* section 160(1), (3), and (4) of the CAA.

2. Overview of Dispute Resolution

To disapprove the Tribe's Class I redesignation would wholly and summarily deprive the Tribe of any air quality protection on its Reservation that may be afforded by a more stringent classification. The intergovernmental dispute resolution provisions of section 164(e) provide a more narrowly tailored mechanism for addressing any disputes that actually result from the Class I redesignation in the context of a specific permit proceeding.

EPA would be the permitting authority for any proposed source locating within the boundaries of the Indian Reservation and EPA, in consultation with the Tribe, would implement the new Class I increment within the Reservation. However, the State is the permitting authority for PSD sources proposing to locate in the Verde Valley outside the Reservation boundaries. If, in the context where the State is the permitting authority, the governing body of the Tribe determines that a proposed source locating outside the Reservation would cause or contribute to an excess change in air quality within the Reservation, section 164(e) provides that the Tribe may request that EPA enter into negotiations with the State and Tribe to resolve the dispute. If the parties do not reach agreement, EPA would be required to resolve the dispute.

Thus, the Tribe may pursue specific concerns about a proposed source's impact on possible violations of air quality standards within the redesignated Class I area through EPA and the section 164(e) dispute resolution process. Section 164(e) similarly authorizes an affected State to invoke the dispute resolution process because of the impacts of a proposed PSD source on the State's air quality.

The Tribe's authority to protect the non-Federal Class I area within its jurisdiction is notably different from the authority of Federal Land Managers under section 165(d) of the CAA to protect Federal Class I areas. Federal Land Managers must directly certify that a proposed source causing or contributing to a violation of the Class I increment in a Federal Class I area will not adversely impact the area, before permitting may proceed. *See, e.g.,* section 165(d)(2)(C)(iii) of the CAA.

In the specific circumstances at issue, EPA believes that fully examining any State or Tribal concerns raised in the context of a particular permit proceeding where the Tribe has actually determined that a proposed source will cause or contribute to a violation of the allowable increment within the Reservation pursuant to section 164(e) is a more measured alternative to summarily disapproving the Tribe's request for several reasons. First, a central concern raised by the State (as well as public commenters) is the potential off-Reservation impacts of the redesignation. As explained below and in the Federal Register notice approving the redesignation request, EPA does not expect that the Class I redesignation will have major off-Reservation impacts. Further, if there are any actual permit controversies that result from the Class I redesignation, at that juncture there will be concrete facts and particularized, focused issues that are better fit for resolution than more general allegations and objections. EPA is committed to working with the State and Tribe to resolve any intergovernmental permit disputes that actually arise as a result of the Class I redesignation.

In addition, as explained further below, EPA will continue to provide public education about the potential impacts of the Class I redesignation. Further, EPA's technical staff do not expect that the additional Class I area, comprised of five separate parcels, will present substantial air quality management obstacles. EPA will work with the State to overcome any particular air quality management difficulties it encounters as a result of the Class I redesignation.

In the discussion below, EPA addresses the issues and concerns raised by the State, including the specific factors EPA is directed to consider pursuant to section 164(e) of the CAA. Ultimately, EPA declines in these specific circumstances to disapprove the Tribe's decision to limit the amount of air quality deterioration within its Reservation. Thus, the Class I redesignation for the Reservation will become part of the applicable implementation plan for the Yavapai-Apache Tribe, as provided in the final rulemaking notice published elsewhere in today's Federal Register.

B. Public Understanding of Redesignation Implications and Off-Reservation Impacts

The August 22, 1994 letter from the Governor of Arizona stated that the Governor was requesting EPA to initiate the dispute resolution process so that the effects of EPA's proposal to approve the redesignation can be better understood and outstanding concerns addressed for the benefit of all

stakeholders. *See* Letter from Fife Symington, Governor of Arizona, to Carol M. Browner, EPA Administrator.

At the January 12, 1995 meeting with EPA and Tribal representatives, a State representative expressed concern that the redesignation would have impacts outside of the Reservation that were unanticipated by the non-Indian residents of the Verde Valley, including significant impacts on future growth and growth trends, business trends, and job opportunities in the Verde Valley. The State representative objected to the redesignation because of this ''extraterritorial effect.'' *See* Trans. at p. 7.

The Tribe's redesignation request has been subject to a fairly extensive public review process to provide an opportunity for public input and to facilitate public understanding. The Tribe held a public hearing during its development of the redesignation request. A number of local citizens who are not Tribal members attended the Tribe's public hearing and expressed support for the Class I redesignation.

To enhance public understanding, EPA's Federal Register notice proposing to approve the redesignation request described the PSD program and the implications of a Class I redesignation. *See* 59 FR 18346 (April 18, 1994). EPA held a public hearing on its proposed approval of the redesignation request, to be responsive to a request from the Town of Clarkdale, a town located near one of the Reservation parcels. As indicated in the public notice announcing the public hearing, EPA began the public hearing ''with an informational discussion of the Class I redesignation process and an overview of the air quality permitting program that is related to the Class I redesignation'' to help the public understand the potential implications of the proposed redesignation. See *Red Rock News* and *Verde Independent,* both May 20, 1994. EPA also extended the public comment period on its proposal to August 22, 1994, in response to a request from the Town of Clarkdale. *See* 59 FR 37018 (July 20, 1994).

After receiving the Governor's August 22, 1994 letter expressing concerns about the stakeholder's understanding, EPA wrote to the Governor indicating that EPA ''would be pleased to meet with you to discuss options for additional outreach and dissemination of information.'' *See* Letter from John C. Wise, EPA Deputy Regional Administrator, to Fife Symington, Governor of Arizona (October 6, 1994). The State's reply did not further pursue this issue. *See* Letter from Fife Symington, Governor of Arizona, to Felicia Marcus, EPA Regional Administrator (December 5, 1994).

In this notice and the final rulemaking notice approving the Tribe's redesignation published elsewhere in today's Federal Register, EPA has endeavored to explain the PSD program and the potential effects of the Class I redesignation on areas outside the Reservation. The final rulemaking notice contains a detailed discussion that addresses concerns and misimpressions about potential economic and regulatory impacts, in response to questions and comments raised by the Towns of Camp Verde and Clarkdale and a mining company. This discussion was included in the final rulemaking notice to promote public understanding.

In the final rulemaking notice, EPA addressed, among other concerns, misconceptions about the CAA requirements associated with a PSD Class I redesignation. As explained, a PSD Class I redesignation does not impose vehicle inspection and maintenance (i.e., motor vehicle ''smog check'') in the surrounding area or establish requirements for controls on residential woodstoves in the surrounding area. EPA also indicated that it does not expect the redesignation of the non-Federal Class I area to adversely impact economic growth in the Verde Valley. For example, Tucson, which is located in southern Arizona, is bordered on its east and west by two separate parcels of a Federal Class I area, the Saguaro National Monument, Tucson has a population size and economic activity level that far exceeds that presently found in the Verde Valley. The reader is referred to that notice for further discussion of these issues.

Also, as explained in part II.A, the PSD preconstruction review permit requirements only apply to major stationary sources in a PSD area. The permit requirements apply to major stationary sources proposing to locate in a PSD area or to major modifications at existing major stationary sources. Major stationary sources are large sources that have the potential to emit 250 tons per year of regulated air pollutant or, for certain listed source categories, 100 tons per year of regulated air pollutant. *See* 40 CFR 51.166(b)(1) and 52.21(b)(1). In general terms, a major modification is a physical or operational change at a major stationary source that would result in a significant net emissions increase of a regulated air pollutant. *See* 40 CFR 51.166(b)(2) and 52.21(b)(2).

The area in the Verde Valley outside the Reservation boundaries is designated a Class II area under the PSD provisions. The owner/operator of a proposed major stationary source or proposed major modification to an existing major stationary source in this area would have to implement ''best available control technology'' irrespective of the PSD classification of the Reservation. *See* 40 CFR 51.166(b)(12) & 51.166(j). In addition, the owner or operator would have to demonstrate that emissions increases from the proposed source would not cause or contribute to a violation of a NAAQS or increment. *See* 40 CFR 51.166(k). The Class I designation may influence this analysis because in addition to assessing its air quality impact relative to the Class II increment in effect where the source is located, the source may have to assess its impact relative to the Class I increment applicable on the Reservation. The Class I designation may also trigger PSD review (including best available control technology and air quality analyses) for a new major stationary source or major modification which would construct within 10 kilometers of the Class I boundary and whose emissions rate or net emissions increase would have an impact of 1 microgram per cubic meter (24-hour average) on the Class I area.

As noted, the intergovernmental dispute resolution provisions of section 164(e) apply to permit disputes. If the Tribal governing body determines that a proposed source locating outside the Reservation would cause or contribute to an excess change in air quality within the Reservation, the Tribe may request that EPA enter into negotiations with the State to resolve the dispute. If the parties do not reach agreement, EPA would be required to resolve the dispute:

> In the event a dispute occurs over any development or activity in an adjacent State, the Governor of the affected State [or the Indian governing body of an affected Tribe] may request the Administrator to enter into negotiations. If this is not successful, the Administrator shall then resolve the dispute.

See 1977 CAAA Legislative History, vol. 3 at 530.

Thus, a Tribe or State with a non-Federal Class I area may pursue their concerns about a proposed source's impact on excess air quality deterioration within the area through the section 164(e) dispute resolution process. This is in contrast with the broad authority conferred on Federal Land Managers to protect Federal Class I areas. For example, Federal Land Managers must directly certify that a proposed source causing or contributing to a violation of a Class I increment in a Federal Class I area nevertheless will

not adversely impact the area, before a permit may be issued. *See, e.g.,* section 165(d)(2)(C)(iii) of the CAA.

There is a dilemma that is created by virtue of the interjurisdictional issues presented. The State has objected to the Tribe's redesignation because of potential off-Reservation impacts on economic development. However, to disapprove the Tribe's redesignation because it may have impacts on activity outside the Reservation would wholly deprive the Tribe of its decision to provide additional air quality protection within the Reservation and allow the State to effectively dictate the air quality increment appropriate for the Reservation and its populace.

Congress, by the adoption of the permit dispute provisions of section 164(e), has established a useful and reasonable mechanism to address this dilemma—providing for consideration and resolution of the reciprocal interjurisdictional concerns in particular permit proceedings. In these circumstances, EPA elects to rely on this statutory mechanism instead of disapproving the redesignation. For the reasons outlined above and in the final notice approving the redesignation, EPA does not expect the redesignation to have major off-Reservation impacts. Further, resolving conflicts in any permit controversy that actually does arise as a result of the Class I redesignation is more narrowly tailored than the sweeping decision of wholly disapproving the Tribe's request. At the same time, any unresolvable State and Tribal concerns actually raised as a result of the Class I redesignation may be considered in addressing the permit dispute. In any actual permit controversy the parties would also be resolving a dispute where the facts and issues are more concrete and therefore more fit for resolution than disputes involving general concerns and allegations. EPA is committed to working with the State and Tribe to resolve any intergovernmental permit disputes that actually arise as a result of the Class I redesignation.

Finally, by no means does EPA view the need to advance the public's understanding of the Tribal Class I redesignation as ending with EPA's approval of the Tribe's Class I redesignation request. EPA will continue to help clarify any confusion or misunderstanding. Among other efforts, EPA will continue to make staff available to answer any public inquiries about the Class I designation and its potential effects. Public inquiries should be directed to the EPA contact identified at the beginning of this notice. Further, in conjunction with today's decision, EPA is communicating with the Governor's office to reiterate EPA's willingness to meet with State officials to plan and conduct additional public outreach efforts.

C. Sufficient Size to Allow Effective Air Quality Management.

The State expressed concern that the redesignation of the Reservation would not necessarily result in effective air quality management. The State is concerned that the approximately 635 acre Reservation is comprised of five land parcels ranging in size from almost four to 458 acres, separated by different land uses and located over a large area. The State is therefore concerned that ''it would be neither realistic nor practicable'' to distinguish the Class I and II areas in applying the PSD permitting requirements. *See* Letter from Edward Z. Fox, Director of the Arizona Department of Environmental Quality, to Theodore Smith, Sr., Chairman of the Yavapai-Apache Tribe (Oct. 20, 1993). During the January 12, 1995 meeting with EPA and the Tribe, the State representative reiterated that he objected to ''a very untenable and unworkable arrangement with regard to trying to manage air quality off of these dispersed pieces of Indian land.'' *See* Trans. at p. 9.

As noted, in disputes resolving area redesignations, section 164(e) calls for EPA to consider ''the extent to which the lands involved are of sufficient size to allow effective air quality management.'' *See also* 40 CFR 52.21(t). Neither the statute nor EPA's implementing regulations elaborate on EPA's consideration of this factor.

The legislative history suggests that Congress intended to give States and Tribes broad discretion regarding the size and boundaries of areas redesignated. The report of the House Committee on Interstate and Foreign Commerce provides that if a State or Tribe ''wished to designate some parts class I and retain some class II areas, it may draw classification boundaries in any way it chooses—by entire air quality control regions, along county lines, or even along smaller subcounty lines.'' *See* H.R. Rep. No. 294 at 147 (1977) *reprinted in* 1977 CAAA Legislative History, vol. 4 at 2614. Further, a colloquy between Senators Garn and Muskie during the Senate's consideration of the Conference report indicates that it would be permissible to redesignate a single mine. *See* 1977 CAAA Legislative History, vol. 3 at 371.

The State did not specify why the Class I designation for the Reservation parcels would create difficulty in distinguishing between the Class I and II areas in implementing PSD permitting requirements, rendering implementation of the PSD program ''untenable and unworkable.'' EPA is uncertain what particular underlying concerns or obstacles informed the State's objection.

Over the years, air quality management tools, techniques and policies have become increasingly sophisticated and refined. Currently, air quality planning and management strategies apply to a variety of area sizes and configurations. For example, EPA, in coordination with States, has established nonattainment areas in States for the purpose of implementing nonattainment planning requirements for the lead NAAQS that encompass areas of only a few square kilometers. *See, e.g.,* 40 CFR 81.310 (lead nonattainment area in Florida that consists of ''[t]he area encompassed within a radius of (5) kilometers centered at UTM coordinates: 364.0 East, 3093.5 North, zone 17 (in city of Tampa)'') and 40 CFR 81.311 (lead nonattainment area in Georgia that consists of ''[t]hat portion of [Muscogee] county which includes a circle with a radius of 2.3 kilometers with the GNB, Inc., lead smelting and battery production facility in the center''). Conversely, there is an ozone transport region under the CAA for the purpose of ozone nonattainment planning that spans from Maine to northern Virginia. *See* section 184(a) of the CAA.

As noted in parts II.A and IV.B, a PSD permit applicant for a source proposing to locate outside the Reservation may have to demonstrate that the proposed source does not cause or contribute to a violation of the applicable increment in either the Class II area in which it is proposing to locate or within the Tribe's Class I area. Thus, applicants may need to include additional receptor points in their Class II area air quality modeling analyses to assess the effect of potential emissions on the Class I area parcels. As the permitting authority, the State would review the analyses to determine whether in the State's informed judgment the demonstration is sound.

EPA's technical staff examined whether it would be difficult to perform a PSD air quality modeling analysis that assessed the impacts of a proposed source on the Class II area in which it was located as well as the five separate, disperse Class I parcels. EPA staff concluded that based on existing modeling tools it would be relatively simple and practicable for a proposed source to project its impact on the Class I area parcels and relatively straight-forward for the reviewing permitting authority to evaluate the analyses. Further, such Class I area analyses may

already be required for a source locating in the area based on the source's proximity to the Sycamore Canyon Wilderness Area, a Federal Class I area. This analysis is included in the EPA's Technical Support Document, which is available for public review in the docket identified at the beginning of this notice.

EPA is the permitting authority for new major stationary sources that propose to locate within the boundaries of the Yavapai-Apache Reservation. EPA does not believe that its ability or the State's ability to effectively administer the PSD program within or outside the Yavapai-Apache Reservation will be significantly affected by the designation of the five separate parcels as Class I areas.

EPA, States and local governments routinely manage air quality management situations that are of greater complexity than the consideration of additional Class I areas within an area that is exclusively subject to PSD, containing no overlapping nonattainment areas and associated nonattainment planning requirements.

The State of Arizona contains a number of areas with complex air quality situations. Phoenix, for example, has one set of boundaries for ozone and carbon monoxide nonattainment planning purposes, another set of boundaries for particulate matter nonattainment planning purposes and overlapping portions of the City that are subject to PSD for other pollutants that are attainment or unclassifiable with respect to the NAAQS. *See* 40 CFR 81.303.

Arizona also has a number of Federal Class I areas. *See* 40 CFR 81.403. The City of Tucson contains a carbon monoxide nonattainment area with a specific set of boundaries. The metropolitan area is subject to PSD for other pollutants and is generally a Class II area. In addition, the City is bordered on its eastern and western boundaries by two separate parcels of the Saguaro National Monument, a Federal Class I area. Thus, in the Tucson area, it may be necessary to manage source impacts on the carbon monoxide nonattainment area, Class II increments and the two separate Class I area parcels.

In the Verde Valley, the State manages a PSD program that encompasses the Sycamore Canyon Wilderness Area, which is a mandatory Federal Class I area. Therefore, under current circumstances, the State may have to ensure that a major stationary source or major modification proposing to locate in the area demonstrate whether emissions would cause or contribute to violations of the Class I and II increments.

Thus, while the redesignation of the Yavapai-Apache Reservation as a non-Federal Class I area may increase the number of Class I increment analyses that the State would need to review, consideration of the consumption of Class I increment in addition to the consumption of Class II increment would not preclude the State from effectively implementing the PSD program. The PSD program frequently applies in areas that are comprised of disparate classifications and land uses. In addition, EPA will make technical staff and resources available to the State in the event the State encounters obstacles to effective air quality management as a result of the Class I redesignation.

In the circumstances at issue, the Tribe has requested that its entire Reservation be redesignated as a Class I area. EPA is reluctant to establish rigid requirements regarding the geographic size, geographic orientation, or population size of a Reservation, that would disqualify certain Tribes as a threshold matter from exercising the authority conferred under section 164(c) to redesignate lands within Reservation boundaries.

EPA would be inclined to a different outcome regarding the consideration of air quality management issues if EPA was faced with a specious redesignation request. For example, EPA would be disinclined to resolve an intergovernmental dispute by approving a Class I redesignation for a very small portion of a State or Reservation where the purpose of the request is not to provide air quality benefit for the requesting jurisdiction but to interpose effects and accompanying air quality management burdens outside of the jurisdiction.

Here, however, the Tribe's redesignation request indicates that protecting the health and welfare of the Reservation population is a primary concern. *See* Yavapai-Apache Tribe Air Quality Redesignation Plan, Sept. 1993. Moreover, the Tribe has requested that its entire Reservation be redesignated as a Class I area. That historical events have diminished the size of the Tribe's Reservation should not disqualify the Tribe from obtaining additional health and welfare protection for its Reservation populace.

D. Air Quality Related Values

The State also questioned whether the Reservation ''is of sufficient size to * * * have air quality-related values.'' *See* Letter from Fife Symington, Governor of Arizona, to Felicia Marcus, EPA Regional Administrator (Dec. 5, 1994). The State averred that in addressing a redesignation dispute under section 164(e) EPA is required to consider ''whether the area can be effectively managed for air quality values, meaning the redesignated area, which is the Tribal lands, or whether there are air quality related values on the Reservation that need to be protected.'' *See* Trans. at ps. 7–8. The State further contended that the redesignation is inappropriate because the answer to both questions is no. *See* Trans. at p. 8.

The State's concern that the Reservation is of insufficient size to have air quality related values was not clearly explained. The State's December 5, 1994 letter raising this concern referred to a previous October 20, 1993 correspondence between the State and the Tribe as having specifically raised this issue. However, the October 20, 1993 correspondence does not mention air quality related values. *See* Letter from Edward Z. Fox, Director Arizona Department of Environmental Quality, to Theodore Smith, Sr., Yavapai-Apache Tribal Chairman.

Section 164(e) provides that in resolving disputes about area redesignations EPA shall consider ''the extent to which the lands involved are of sufficient size to allow effective air quality management or have air quality related values of such an area.'' The State appears to have combined the two criteria into one, objecting that the redesignation should be denied because ''air quality values'' cannot be effectively managed on a Reservation of this size. In part IV.C, EPA addressed the State's concerns about whether the Reservation lands are of sufficient size to allow for effective air quality management. In this discussion, EPA addresses the separate consideration of ''air quality related values'' (AQRVs), including the State's assertion that the Tribe's redesignation is not warranted because there are no AQRVs on the Reservation that need to be protected.

Section 164(e) does not make identification of AQRVs that need to be protected a necessary condition of a redesignation. The final sentence of section 164(e) provides that in resolving redesignation disputes EPA must consider the extent to which the lands involved have AQRVs. A preceding sentence in section 164(e) explicates the meaning of this passage by calling for EPA to ''protect the air quality related values of the lands involved'' in resolving intergovernmental disputes over proposed PSD permits and redesignations. Thus, under section 164(e) EPA is to consider the AQRVs of

the lands involved in a redesignation, ensuring that any AQRVs are adequately protected in resolving intergovernmental disputes.

The provisions of section 164(e) do not, by contrast, require EPA to disapprove a decision by a State or Tribe to redesignate lands because a disagreeing State or Tribe believes the area does not have attributes that need to be protected. In addition to disputes over Class I redesignations, the terms of section 164(e) apply to intergovernmental disputes over a decision by a State or Tribe to give their Class II lands less air quality protection by redesignating them as Class III. The State's interpretation of section 164(e) that a redesignation is inappropriate if the area does not have AQRVs that need to be protected would not make sense in the context of a dispute over a Class III redesignation. It would be illogical for EPA to disapprove a redesignation to allow less air quality protection in an area because the requesting State or Tribe has failed to demonstrate that the lands involved have AQRVs that need to be protected.

Further, section 164(b) of the CAA and EPA's implementing regulations governing redesignation requirements do not require that a Tribe or State requesting a redesignation demonstrate or establish that the affected lands have AQRVs. *See* 40 CFR 52.21(g)(4). In addition, the legislative history accompanying the adoption of the PSD provisions, discussed in part IV.A, indicates that Congress intended to give States and Tribes broad discretion in redesignating areas and to restrict EPA's authority to override or disapprove their judgment.

AQRVs are given special protection under section 164(e) at least in significant part because of this local decisionmaking discretion. The PSD program adopted by Congress in 1977 modified EPA's pre-1977 administrative program to provide greater local discretion in redesignation decisions by ''removing the Federal land manager's authority to control classification of Federal lands.'' *See* H.R. Rep. No. 294 at 7–8 *reprinted in* 1977 CAAA Legislative History, vol. 4 at 2474–75.

Congress specified certain mandatory Federal Class I areas that may not be redesignated. *See* section 162(a) of the CAA. Congress also called for the Federal Land Managers to review certain Federal Class II areas—national monuments, primitive areas, and national preserves—and recommend to the affected States any appropriate areas for redesignation as Class I ''where air quality related values are important attributes of the area.'' *See* section 164(d) of the CAA. However, as indicated, Congress ultimately left it to the judgment of States, not the Federal Land Managers, to decide whether to redesignate these Class II Federal lands as Class I areas. Thus, by calling for EPA to protect any identified AQRVs in resolving intergovernmental disputes, section 164(e) ensures AQRV protection when a State has accepted the Federal Land Manager's recommendation under section 164(d) to request a Class I redesignation for Class II Federal lands where AQRVs are important attributes. *See generally* H.R. Rep. No. 294 at 148–49 *reprinted in* 1977 CAAA Legislative History, vol. 4 at 2615–16; *see also* section 160(2) of the CAA.

The term ''air quality related values'' is not defined in the CAA. The term ''air quality related values (including visibility)'' is used in conjunction with Federal Class I areas. *See generally* section 165(d) of the CAA. For Federal lands, the legislative history indicates that the term AQRVs includes: ''the fundamental purposes for which such lands have been established and preserved by Congress and the responsible Federal agency. * * * [U]nder the 1916 Organic Act to establish the National Park Service * * * the purpose of such national park lands 'is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.''' *See* S. Rep. No. 197, 95th Cong., 1st Sess. at 36 *reprinted in* 1977 CAAA Legislative History, vol. 3 at 1410. Federal Land Managers have identified, for example, values such as visibility, sensitive streams and watershed, and park vegetation as AQRVs for particular resources and impaired visibility, stream acidification and foliar injury as potential adverse impacts. *See, e.g.*, 55 FR 38403 (Sept. 18, 1990).

The Tribe's redesignation request addresses the Tribe's desire to ensure a clean and safe environment by maintaining high air quality standards for its citizens including, in particular, the elderly and young, to ensure that air quality within the Reservation is not adversely impacted by harmful industrial development, and to ensure that its resources are protected for future generations. The Tribe's request recounts the history of the Reservation and the special religious and cultural value it holds for Tribal members. The submittal describes the importance of the Class I redesignation in protecting vegetation, wildlife and water resources, and visual air quality, and expresses the Tribe's concern about adverse impacts on these resources. The Tribe's submittal describes the unique natural resources in the area where the Reservation is located, including: the Montezuma Castle, Montezuma Well and Tuzigoot National Monuments; the Prescott, Coconino and Kaibab National Forests; the Sycamore Canyon Wilderness Area, which is a Federal Class I area; and the ''red rock'' country near Sedona. *See* Yavapai-Apache Tribe Air Quality Redesignation Plan, Sept. 1993.

There may be a number of reasons for a State or Tribe to propose redesignation of its lands as Class I, including its judgment that decreasing the amount of allowable air quality deterioration is in the interests of the health and welfare of its community, independent of AQRVs. The purposes of the PSD program are broad and include: protection of health and welfare from actual or potential adverse effects, notwithstanding attainment of the national ambient air quality standards; and assuring that economic growth will occur in a manner consistent with the preservation of existing clean air resources. *See* section 160 (1) and (3) of the CAA.

The Yavapai-Apache Tribe has offered many reasons why it is requesting a Class I redesignation. The Clean Air Act generally calls for EPA to defer to such judgments. EPA declines to disapprove the Tribe's redesignation request because of the State's concern that the Tribe has not identified AQRVs that need to be protected.

E. Redesignation Does Not Resolve Current Air Quality Problems

The State's objection to the proposed redesignation because it does not address the Tribe's concern about ''current problems with the health and welfare of Tribal members'' and because such concerns ''will have to be resolved otherwise in some other form'' is problematic. *See* Trans. at p. 8.

If no steps were taken to protect current air quality until all pre-existing air quality problems were addressed, new air quality problems would be created in the interim that in turn require remedial action. This would be at odds with the purpose of the CAA to ''protect and enhance'' the quality of air resources. *See* section 101(b)(1). Further, the PSD program is fundamentally premised upon the efficacy of, at least, preventing existing air quality from significantly deteriorating.

Moreover, as noted, Federal law and policy provide that the Tribe as a sovereign government may decide whether requesting a Class I

redesignation for its Reservation is in the interests of Tribal health and welfare. The Tribe summarized its decision to request a Class I designation as follows:

> All people need a clean environment. The Yavapai-Apache Tribe desires to maintain high quality air standards for its citizens by redesignating Reservation lands as a Class I Clean Air area.
>
> * * * The Clean Air Act specifically provides a mechanism for any Indian tribe to promote and maintain clean air by redesignating reservation lands as Class I areas. Considering the uncertainty of ''safe levels'' of air pollution, the Yavapai-Apache Tribe seeks additional protection by redesignating its lands to Class I air quality under the Clean Air Act.
>
> Presently, Reservation lands are designated Class II allowing for increases in industrial pollution. A redesignation to Class I would reduce the permissible levels of pollution to ensure a clean and safe environment.

See Yavapai-Apache Tribe Air Quality Redesignation Plan, September 1993 at p. 1. EPA declines to disapprove the Tribe's decision to provide prospective air quality protection because of the State's concern that the redesignation will not remedy extant air quality problems.

F. Additional Concern Regarding Potential Future Redesignations

Governor Symington expressed the following additional concern in a letter to U.S. EPA Administrator Browner dated October 3, 1995:

> * * * approval of this redesignation may have effects far beyond the Verde Valley area. Twenty-one reservations are located, in whole or in part, in Arizona. A proliferation of redesignation requests and approvals for other reservations could have far-reaching consequences for the future of the State and its economic well-being.

See Letter from Governor Fife Symington to Administrator Carol Browner. In separate communication, Governor Symington posed whether Tribes whose reservations were located in proximity to large urban areas may redesignate to Class I. As discussed at length in both this notice and the accompanying notice granting the Yavapai-Apache Tribe's request, the Clean Air Act provides that federally recognized tribes may redesignate their reservation lands as they deem appropriate. Each such request must be individually evaluated as set forth in Section 164 of the Act and the implementing regulations at 40 CFR 52.21(g). EPA's action today redesignating the Yavapai-Apache Reservation is based on consideration of the specific factors relevant to this redesignation request. EPA does not believe that speculation concerning potential future requests for redesignation by other tribes is an appropriate consideration in granting or denying the request at hand.

Similarly, it would be difficult to speculate at this time about the general impact, economic or otherwise, if such a request for redesignation in proximity to an urban area were approved. We have explained in the Federal Register notice for the Yavapai-Apache Redesignation that a Class I designation creates requirements only for the construction or modification of major sources of air pollution. Smaller sources of air pollution would not be affected by a Class I designation, and permit applications for ''major sources'' are generally infrequent. On the other hand, the Class I area would be afforded greater air quality protections if one or more major sources were proposed for construction. Specifically, the Class I designation establishes a more stringent air quality standard that allows less emissions growth than in surrounding Class II areas over a certain baseline. A Class I designation would generally only affect those sources emitting pollutants for which an urban metropolitan area is designated attainment. In contrast, emissions of those pollutants for which the urban area is designated nonattainment would be mitigated by emissions offsets and more stringent control technology requirements. In addition, Tribes whose requests for redesignation have been approved would be able to invoke the dispute resolution provisions in section 164(e) to contest the permitting of any major source emitting criteria pollutants—whether under PSD or nonattainment new source review—with visibility impairment or other air quality related values serving as a basis for the dispute.

With respect to the review of PSD permit applications for major sources proposing to locate near tribal class I areas, EPA will publish shortly an advance notice of proposed rulemaking (ANPR) that will address issues related to non-federal class I areas. The decision to develop an ANPR follows a June 4, 1996, meeting among Mary Nichols, EPA's Assistant Administrator for Air and Radiation and representatives for the state environmental agencies of Michigan and Wisconsin. The state representatives expressed concern about the lack of specific procedures governing the review of PSD permit applications for major sources locating on state lands near tribal class I areas. In that meeting, Assistant Administrator Nichols agreed that rules specifically addressing the PSD permit review process for sources potentially affecting non-federal class I areas might be useful in clarifying the roles and responsibilities of the affected parties. The ANPR is intended to raise specific issues and solicit input from all interested parties. *See* Letters from Carol M. Browner, EPA Administrator, to Michigan Governor John Engler and Wisconsin Governor Tommy G. Thompson, both July 16, 1996.

While it is likely that issues and disputes will arise from time to time regarding impacts on reservations which have been redesignated to Class I, we do not expect such disputes to be frequent or insurmountable. As we have noted, there are many Class I areas located adjacent to communities that are Class II areas. We have mentioned Tucson's proximity to the Saguaro National Monument, a Federal Class I area. Economic growth is not inconsistent with the management of the more stringent air quality standard of the Class I area, as economic development in Tucson has not been hindered by its close proximity to the Saguaro National Monument Class I area. In addition, there are seven Class I areas either within or adjacent to the Los Angeles metropolitan area.

V. Administrative Review

A. Executive Order 12866

The Office of Management and Budget has exempted this action from centralized regulatory review pursuant to section 6 of Executive Order 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. *See* 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000. The decision announced in this notice is not a rule within the meaning of the Regulatory Flexibility Act. In any event, EPA's resolution of the intergovernmental dispute and the final rulemaking action to approve the Tribe's PSD redesignation request, published elsewhere in today's Federal Register, do not impose new requirements on small entities, may only potentially have an impact on major stationary sources, as defined by 40 CFR 52.21, and therefore will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.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, EPA 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, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if EPA publishes with the final rule an explanation why that alternative was not adopted.

The decision announced in this notice is not a regulation or rule within the meaning of the UMRA. In any event, EPA's resolution of the intergovernmental dispute announced in this notice and the final rulemaking action to approve the Tribe's PSD redesignation request, published elsewhere in today's Federal Register, are not subject to the requirements of sections 202 and 205 of the UMRA because they do not contain Federal mandates that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year.

Authority: 42 U.S.C. 7401–7671q.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: October 2, 1996.

Felicia Marcus,

Regional Administrator.

[FR Doc. 96–27848 Filed 10–31–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[AZ 58–1–7131–a; FRL–5634–4]

Arizona Redesignation of the Yavapai-Apache Reservation to a PSD Class I Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The purpose of this action is to approve the request by the Yavapai-Apache Tribal Council to redesignate the Yavapai-Apache Reservation (''the Reservation'') as a non-Federal Class I area under the Clean Air Act program for prevention of significant deterioration of air quality. The Class I designation will result in lowering the allowable increases in ambient concentrations of particulate matter, sulfur dioxide, and nitrogen dioxide on the Reservation.

EFFECTIVE DATE: December 2, 1996.

ADDRESSES: The public docket for this rulemaking, which includes additional information related to the final rule and materials submitted to EPA, is available for public inspection and copying during normal business hours. Please contact the EPA official listed below at the given address. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Jessica Gaylord, Air and Toxics Division (A–5–1), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1290. An electronic copy of this Federal Register notice and other pertinent information is available on the World Wide Web at this Internet address: http://www.epa.gov/region09/air/yavapai/

SUPPLEMENTARY INFORMATION:

I. The Clean Air Act's Program to Prevent Significant Deterioration of Air Quality (PSD)

A. Background

The genesis of the PSD program under the Clean Air Act (CAA) was a lawsuit brought by the Sierra Club to enjoin EPA's approval of state implementation plans that allowed air quality degradation in areas having air quality better than the national ambient air quality standards. *Sierra Club* v. *Ruckelshaus,* 344 F. Supp. 253 (D.D.C. 1972), *aff'd per curiam,* 4 Env't Rep. Cases 1815 (D.C. Cir. 1972), *aff'd by an equally divided court, sub. nom. Fri* v. *Sierra Club,* 412 U.S. 541 (1973). The district court granted the injunction reasoning that the stated purpose of the Clean Air Act in section 101(b)(1) to ''protect and enhance'' the quality of the nation's air embodied a non-degradation policy. *Sierra Club* at 255–56.

In response to the *Sierra Club* decision EPA adopted a PSD program. *See* 39 FR 42510 (Dec. 5, 1974). The administrative program was superseded by a congressionally-crafted program in the 1977 amendments to the Clean Air Act. Pub. L. No. 95–95, 91 Stat. 685; *see generally Alabama Power* v. *Costle,* 636 F.2d 323, 346–52 (D.C. Cir. 1979) (recounting history of PSD program preceding and including the adoption of the 1977 amendments). EPA presently has two sets of regulations implementing the 1977 statutory PSD program: (1) 40 CFR 51.166 establishes the requirements for state-administered PSD programs, and (2) 40 CFR 52.21 provides for Federal implementation of PSD requirements to address programmatic gaps.[1]

B. PSD Areas and Classifications

EPA establishes national ambient air quality standards (NAAQS) under the CAA. *See* 40 CFR Part 50. Areas nationwide are ''designated'' under section 107 of the CAA based on their air quality status relative to the NAAQS. The PSD program applies to areas designated ''attainment'' and ''unclassifiable'' under section 107 of the CAA—areas that meet the NAAQS, or areas that cannot be determined on the basis of available information as meeting or not meeting the NAAQS. These areas are often referred to as ''PSD areas.''

PSD areas are further categorized as Classes I, II or III. The classification of an area determines the amount or ''increment'' of air quality deterioration that is allowed over a baseline level. Class I areas have the smallest increments and therefore allow the least amount of air quality deterioration. Conversely, Class III areas have the largest air quality increments and allow the greatest deterioration. In all instances, the NAAQS represent the overarching ceiling that may not be exceeded in a PSD area, notwithstanding any increment.

There are PSD increments for particulate matter, sulfur dioxide and nitrogen dioxide. EPA's PSD regulations establish the incremental amount of air quality deterioration of these pollutants that is allowed in Class I, II and III areas. *See* 40 CFR 52.21(c).

When Congress enacted the PSD program in 1977 it provided that specified Federal lands, including

[1] The regulations have not been revised to conform with changes made in the 1990 Clean Air Act amendments. Pub. L. No. 101–549, 104 Stat. 2399.

certain national parks and wilderness areas, must be designated as Class I areas and may not be redesignated to another classification. *See* section 162(a) of the CAA. These areas are called mandatory Federal Class I areas. The statute also carried forward as Class I areas any areas redesignated as Class I under EPA's pre-1977 regulations. The Northern Cheyenne reservation was a redesignated Class I area affected by this provision. *See Nance* v. *EPA*, 645 F.2d 701 (9th Cir. 1981), *cert denied, Crow Tribe of Indians* v. *EPA*, 454 U.S. 1081 (1981). In the 1977 amendments Congress provided that all other PSD areas of the country would be designated as Class II areas. *See* section 162(b) of the CAA.

C. PSD Class I Redesignation Requests and Procedural Requirements

As noted, Congress designated all PSD areas of the country as Class II, except for special Federal lands and pre-existing redesignated Class I areas. At the same time, Congress gave States and Indian Tribes broad authority to redesignate Class II areas as Class I. *See* section 164 of the CAA.

Section 164(c) of the CAA expressly provides for PSD redesignations by Federally recognized Indian Tribes:

> Lands within the exterior boundaries of reservations of Federally recognized Indian tribes may be redesignated only by the appropriate Indian governing body.

The Department of the Interior periodically publishes a list of Tribes officially recognized by the Federal government. *See* 60 FR 9250 (Feb. 16, 1995) (identifying Yavapai-Apache Nation of the Camp Verde Reservation, Arizona).

Congress has generally established a narrow role for EPA in reviewing State and Tribal PSD redesignations. Under EPA's pre-1977 regulations, EPA would disapprove a redesignation submittal if the requesting State or Tribe arbitrarily and capriciously disregarded the following considerations: (1) growth anticipated in the area, (2) the social, environmental, and economic effects, or (3) any impacts on regional or national interests. *See* 39 FR at 42515.

By contrast, the PSD program enacted by Congress in 1977 provides that EPA may disapprove a redesignation request only if it finds, after notice and opportunity for public hearing, that the request does not meet the applicable procedural requirements. *See* section 164(b)(2) of the CAA. The legislative history indicates that Congress's 1977 amendments were intended to curtail EPA's authority to disapprove a redesignation request under its pre-1977 regulations, giving States and Tribal governments greater discretion in this area:

> The intended purposes of [the congressional 1977 PSD program] are . . . (3) to delete the current EPA regulations and to substitute a system which gives a greater role to the States [, Tribal,] and local governments and which restricts the Federal Government in the following ways: . . . (b) By eliminating the authority which the Administrator has under current EPA regulations to override a State's [or Tribe's] classification of an area on the ground that the State [or Tribe] improperly weighed energy, environment, and other factors.

See H.R. Rep. No. 294, 95th Cong., 1st Sess. 7–8 (1977) *reprinted in* Senate Comm. on the Environment and Public Works, 95th Cong., 2d Sess., A Legislative History of the Clean Air Act Amendments of 1977, vol. 4 at 2474–75 (1978) (hereafter ''1977 CAAA Legislative History'').[2]

Accordingly, EPA's current regulations provide for EPA disapproval of a redesignation only if the requesting State or Tribe did not meet the applicable procedural requirements in adopting its proposed redesignation:

> The Administrator shall disapprove, within 90 days of submission, a proposed redesignation of any area only if he finds, after notice and opportunity for public hearing, that such redesignation does not meet the procedural requirements of [40 CFR 52.21(g)].

See 40 CFR 52.21(g)(5). In adopting the regulatory revisions to reflect the statutory provisions, EPA explained that in light of section 164(b)(2) of the CAA it ''will no longer be able to base a disapproval of a proposed redesignation on a finding that the State [or Tribal] decision was arbitrary or capricious.'' *See* 42 FR 57479, 57480 (Nov. 3, 1977). Thus, so long as the applicable procedures are met, the statute and implementing regulations generally leave the decision to constrict or expand the amount of allowable air quality deterioration to the State or Tribal authority requesting the redesignation.

Several Indian Tribes have had lands within reservation boundaries redesignated as Class I areas. The EPA has previously approved Class I redesignation requests for the Northern Cheyenne Indian Reservation, the Flathead Indian Reservation, the Fort Peck Indian Reservation and the Spokane Indian Reservation. *See* 40 CFR 52.1382(c) and 52.2497(c).

The procedural requirements for a Class I redesignation by an Indian Governing Body are as follows:

(1) At least one public hearing must be held in accordance with procedures established in 40 CFR 51.102;

(2) Other States, Indian Governing Bodies, and Federal Land Managers whose lands may be affected by the proposed redesignation must be notified at least 30 days prior to the public hearing;

(3) At least 30 days prior to the Tribe's public hearing, a discussion of the reasons for the proposed redesignation including a satisfactory description and analysis of the health, environmental, economic, social and energy effects of the proposed redesignation must be prepared and made available for public inspection, and the public hearing notice must contain appropriate notification of the availability of such discussion;

(4) Prior to the issuance of the public notice for a proposed redesignation of an area that includes Federal lands, the Tribe must provide written notice to the appropriate Federal Land Manager and an adequate opportunity for the Federal Land Manager to confer with the Tribe and submit written comments and recommendations;

(5) Prior to proposing the redesignation, the Indian Governing Body must consult with the State(s) in which the Reservation is located and that border the Reservation. *See* 40 CFR 52.21(g)(4).

II. Yavapai-Apache Tribe Request to Redesignate its Reservation From Class II to Class I

On December 17, 1993, the Yavapai-Apache Tribal Council (''the Tribal Council'' or ''the Tribe'') submitted to EPA a request to redesignate the Yavapai-Apache Reservation from Class II to Class I. The Tribe's submittal explains that its redesignation request is to protect its air quality for its citizens:

> The Yavapai-Apache Tribe desires to maintain high quality air standards for its citizens by redesignating Reservation lands as a Class I Clean Air area.

See Yavapai-Apache Tribe Air Quality Redesignation Plan, Sept. 1993, at p. 1.

The Yavapai-Apache Reservation is located in the State of Arizona. The Reservation is comprised of five land parcels which total approximately 635 acres. The Tribe's redesignation request includes its entire Reservation. Maps of the Reservation are included as appendices to the Tribe's September 1993 Air Quality Redesignation Plan, which is available at the public docket identified at the beginning of this document.

[2] While this language refers only to states, both the statute and the legislative history make it clear that the discussion applies equally to redesignations by tribes. *See, e.g.*, S. Rep. No. 127, 95th Cong., 1st Sess. 9 (1977) *reprinted in* 1977 CAAA Legislative History, vol. 3 at 1383.

The Reservation is approximately 90 miles north of Phoenix in the Verde Valley of central Arizona. The Verde Valley is situated near the ''red rock'' country of Sedona and Oak Creek Canyon. Nearby national forests include the Coconino National Forest, the Kaibab National Forest and the Prescott National Forest. The Montezuma Castle, Montezuma Well and Tuzigoot National Monuments are located within the Verde Valley in the vicinity of the Reservation. In addition, the Sycamore Canyon Wilderness Area, designated a mandatory Federal Class I area under the CAA, is located a few miles north of the Town of Clarkdale. *See* 40 CFR 81.403.

EPA reviewed the Tribe's request and preliminarily determined that it met the applicable procedural requirements of 40 CFR 52.21(g)(4). On April 18, 1994, EPA published a notice of proposed rulemaking in the Federal Register proposing to approve the request and announced a 30-day period to receive public comment regarding whether the Tribe had met the procedural requirements. *See* 59 FR 18346.

At the request of the Town of Clarkdale, which is located adjacent to the Clarkdale parcel of the Yavapai-Apache Reservation, EPA held a public hearing on the proposed redesignation on June 22, 1994. EPA's public hearing notice provided that the scope of the public hearing would be limited to whether the Tribe has satisfied the redesignation procedural requirements. EPA indicated that only comments which address this issue would be considered in EPA's final decision to approve or deny the redesignation request. EPA's public hearing notice also indicated that EPA would allow until July 6, 1994 for the submittal of written comments. In order to facilitate public understanding about EPA's proposed action, EPA indicated that it would begin the public hearing with an explanation of the Class I redesignation process and the PSD program.

Following the public hearing, the Town of Clarkdale requested an extension of the public comment period. On July 20, 1994, EPA published a Federal Register document announcing an extension of the public comment period, providing the public until August 22, 1994 to submit written comments addressing whether the Tribe has met all of the procedural requirements of 40 CFR 52.21(g). See 59 FR 37018–19.

The Governor of Arizona submitted a letter dated August 22, 1994, to EPA indicating that ''[t]he effects of the proposed redesignation are not apparent to all of the stakeholders, and confusion exists about the potential impacts of the Agency's proposed action.'' The Governor's letter requested that EPA initiate dispute resolution of the matter pursuant to section 164(e) of the CAA.

In brief, section 164(e) of the CAA provides that if a State affected by the redesignation of an area by an Indian Tribe disagrees with the redesignation, the Governor may request EPA to enter into negotiations with the parties involved to resolve the dispute. Section 164(e) further provides that if the parties do not reach agreement, EPA shall resolve the dispute.

III. Today's Action

A. EPA's Final Decision to Approve the Tribe's Class I Redesignation Request

In today's document, EPA is announcing its decision to approve the Yavapai-Apache Tribe's December 17, 1993 request to redesignate its reservation from Class II to Class I for PSD purposes. The approval means that Class I PSD increments will apply within the reservation's boundaries, allowing a smaller amount of allowable air quality deterioration within the reservation than as a Class II area. *See* 40 CFR 52.21(c). In addition, a new major source or major modification which would construct within 10 km of the Reservation will be subject to review under PSD if emissions would have an impact on the Reservation equal to or greater than one microgram per cubic meter ($\mu g/m^3$), (24-hour average). *See* 40 CFR 52.21(b)(2), 40 CFR 52.21(b)(23), and 40 CFR 52.21(i).

EPA received a number of comments on its April 18, 1994 proposal to approve the Tribe's Class I redesignation. EPA has carefully reviewed and considered comments received during the public comment period in making its decision to approve the redesignation request. A number of the commenters raised issues outside the scope of EPA's review. As previously discussed, generally EPA may disapprove a redesignation request only if EPA finds that the redesignation does not meet the applicable procedural requirements. *See* 40 CFR 52.21(g)(5). EPA's review of the Tribe's request in light of the comments revealed no procedural error by the Tribe. Thus, EPA is finalizing its April 18, 1994 preliminary judgment that the Tribe met the procedural requirements.

In a separate document published in today's Federal Register, EPA explained the section 164(e) dispute resolution process, and addressed the issues presented. EPA's notice settles the dispute, as the State and the Tribe were unable to resolve their disagreements about the proposed redesignation. Once dispute resolution has been initiated, the CAA provides in section 164(e) that EPA ''consider the extent to which the lands involved are of sufficient size to allow effective air quality management * * *.'' The State thus argued that the five separate parcels that comprise the Yavapai-Apache Reservation are too small and scattered to allow for effective air quality management. Among the principal issues, the State also emphasized its concern regarding public understanding of the possible effects of this redesignation and issues related to potential future requests for redesignation by other Tribes. In settling the dispute, EPA disagreed with the State's conclusion that effective air quality management would be adversely affected by the redesignation. In addition, EPA has pledged its continuing commitment to facilitating public understanding of the effects of the redesignation. Moreover, each redesignation request must be evaluated on its merits, and concerns relating to potential future requests do not provide a basis for the denial of the Yavapai-Apache request. EPA's resolution of the dispute is consistent with the decision announced here, to approve the Tribe's Class I redesignation request. The reader is referred to the separate document published in today's Federal Register for more information on EPA's decision making in resolving the intergovernmental dispute.

B. Public Comments

As noted, EPA received many comments on its April 18, 1994 proposal to approve the Yavapai-Apache Tribe's Class I redesignation request. Many commenters, including local residents who are not Tribal members, supported EPA's proposal. Other commenters identified alleged procedural errors or objected to the Class I redesignation for other reasons. EPA also received comments questioning whether all of the land parcels identified by the Tribe are part of the Tribe's reservation.

While EPA has reviewed all comments received, only those comments identifying potential procedural errors and claiming that the Tribal submittal includes lands outside the reservation are relevant in determining whether EPA should modify its proposal and disapprove the request, in part or full. As noted, EPA may disapprove a redesignation request only if EPA finds that it does not meet the applicable procedural requirements. *See* section 164(b)(2) of the CAA & 40 CFR 52.21(g)(5). In addition to pertinent procedural issues, the question

regarding the affected land parcels is relevant because the underlying statutory authority for Tribal redesignations only includes lands within reservation boundaries. *See* section 164(c) of the CAA.

All other public comments objecting to the redesignation do not provide a basis for EPA disapproval. In the discussion that follows, EPA has nevertheless addressed many such comments contesting the redesignation, for the sole purpose of facilitating the public's understanding of today's action. EPA is providing separate responses to the remaining comments in the Technical Support Document (TSD) available in the public docket for this action, identified at the beginning of this document.

1. Scope of Yavapai-Apache Reservation

As noted, the Yavapai-Apache Tribe redesignation request encompassed five separate land parcels that collectively comprise the Tribe's reservation. EPA received comments questioning whether two of the parcels included in the redesignation request, the parcel near the Montezuma Castle National Monument and the Clarkdale parcel, were actually encompassed in the Yavapai-Apache Reservation and therefore allowed to be redesignated under the Act.

The Clean Air Act provides that lands within the exterior boundaries of reservations of federally recognized Indian tribes may be redesignated by the appropriate Indian governing body. *See* section 164(c) of the CAA. The PSD regulations define ''Indian Reservation'' as ''any federally recognized reservation established by Treaty, Agreement, executive order, or act of Congress.'' *See* 40 CFR 52.21(b)(27). In addition to lands formally designated as ''reservations,'' EPA considers trust land validly set apart for use of a tribe to be an ''Indian Reservation.'' *See Oklahoma Tax Commission* v. *Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 511 (1991); *United States* v. *John*, 437 U.S. 634, 648–49 (1978); 59 FR 43956, 43960 (Aug. 25, 1994); 56 FR 64876, 64881 (Dec. 12, 1991). EPA has indicated that it will be guided by relevant case law in interpreting the scope of ''reservation'' under the Clean Air Act. *See* 59 FR 43960.

The Bureau of Indian Affairs (BIA) has certified by letter to EPA, dated May 13, 1994, that all five parcels identified in the redesignation request are lands held in trust by the U.S. government for the beneficial use of the Tribe, including the parcels near Montezuma Well National Monument and Clarkdale. The BIA certification was accompanied with an abstract of the various title documents and BIA and U.S. Geological Survey quadrangle maps showing the parcels. The BIA certification is available for inspection at the public docket identified at the beginning of this document. EPA therefore concludes that all of the lands included in the Tribe's redesignation submittal are lands encompassed within its reservation.

2. Analysis of Health, Environmental, Economic, Social and Energy Effects

EPA's regulations require that a ''satisfactory description and analysis of the health, environmental, economic, social and energy effects of the proposed redesignation'' must be available for public inspection 30 days prior to the public hearing held by the Tribe. *See* 40 CFR 52.21(g)(2)(iii). (The public hearing held by the Tribe is separate from the one conducted by EPA.)

EPA did not receive public comments that the Tribe failed to follow proper procedures by failing to conduct a public hearing, by failing to have the analysis available prior to the hearing, by failing to provide timely notice of the hearing, or by failing to consult with the State prior to proposing the redesignation. *See* 1977 CAAA Legislative History, vol. 3 at 373 (colloquy between Senators Garn and Muskie, during the Senate's consideration of the Conference report, about the types of procedural error that might trigger a disapproval). EPA, however, has received comments alleging that the Tribe's analysis of health, environmental, economic, social and energy effects was inadequate.

A threshold question is the level of scrutiny EPA should apply to the Tribe's analysis in the face of claims that it is inadequate. As previously discussed, section 164(b)(2) of the CAA and the implementing regulations at 40 CFR 52.21(g)(5) provide that EPA may disapprove a redesignation request only if it finds that the request does not meet the procedural requirements. EPA believes that the availability of a satisfactory effects analysis is central to meaningful notice and public hearing and therefore a relevant procedural consideration. At the same time, there is considerable discretion involved in determining what is ''satisfactory.''

The specific use of the word ''satisfactory'' in the statute and implementing regulations suggests a relatively low threshold. Congress, by contrast, did not dictate that the analysis be comprehensive or exhaustive. Further, the statutory language does not assign any specific weight to the consideration of health, environmental, economic, social or energy effects, or suggest that one consideration should be given priority over another. The commenters objecting to the Tribe's analysis appeared to assume that the Tribe had to justify its redesignation. These commenters suggested that potential adverse effects, particularly possible economic impacts, should be disabling. These comments are discussed further below. In any event, EPA's implementing regulations do not elaborate what constitutes a ''satisfactory'' description and analysis, nor do the regulations specify to what extent this discussion should focus on the lands being proposed for redesignation or surrounding areas.

The legislative and regulatory history generally indicate that EPA's review of the analysis should be deferential. The legislative history accompanying the 1977 amendments, described previously, provides that Congress intended to eliminate EPA's authority to override a redesignation on the grounds that energy, environment and other factors were improperly weighed. *See* H.R. Rep. No. 294 at 7–8. The resulting 1977 amendments supplanted EPA's administrative scheme with provisions that limited EPA to a procedural review. *See* section 164(b)(2). In developing subsequent regulations, EPA indicated that EPA would no longer be able to disapprove a redesignation based on its finding that the State or Tribal decision was arbitrary or capricious. *See* 42 FR at 57480.

EPA's decision to approve a redesignation by the Northern Cheyenne Tribe was upheld under the pre-existing regulatory regime that expressly provided for an analysis that included consideration of growth anticipated, regional impacts, and social, environmental and economic effects as well as stricter EPA scrutiny of the analysis. The petitioners claimed that the Tribe's analysis was inadequate in several respects. The reviewing court affirmed EPA's approval, rejecting the claim that the Tribe was required to meet exacting analysis requirements and holding that the Tribe had considered the factors identified in EPA's regulations. *Nance* v. *EPA*, 645 F.2d at 712. The court further reasoned that the Tribe's decision was bolstered by the policy for maintaining clean air embodied in the CAA:

> [T]he Clean Air Act contains a strong presumption in favor of the maintenance of clean air, and the nature of a decision which simply requires that the air quality be maintained at a certain level prevents any exact prediction of its consequences. The Tribe has considered the factors enumerated in EPA regulations, and its choice in favor of the certainty of clean air is a choice

supported by the preferences embodied in the Clean Air Act.

Nance v. *EPA*, 645 F.2d at 712.

Accordingly, EPA generally has a limited role in reviewing the Class I redesignation requests. The emphasis is on assuring that there are no procedural defects. At the same time, EPA must refrain from substituting its judgment for that of the state or tribe requesting the redesignation. Thus, EPA must balance reviewing the Tribe's analysis to ensure that relevant considerations were examined without inappropriately ''second-guessing'' the Tribe's judgment.

EPA finds the Yavapai-Apache Tribe's analysis of the required factors to be satisfactory. The Tribe's submittal describes and analyzes the environmental, health, economic, social and energy effects of the proposed redesignation, including present conditions, the effects of redesignating to Class I and the effects of remaining a Class II area. The submittal describes the Tribe's reasons for proposing the redesignation as well as alternatives to the redesignation and the potential impacts of the redesignation. *See generally* Yavapai-Apache Tribe Air Quality Redesignation Plan, Sept. 1993.

The Town of Clarkdale commented that the Tribe failed to provide an accurate assessment and description of the health, environmental, economic, social and energy effects of the proposed redesignation on off-reservation areas including particularly Clarkdale. The Town of Clarkdale commented that it would be seriously and adversely affected by the redesignation of a reservation parcel near the Town. Another commenter asserted that the Tribe's analysis is incomplete and inadequate because the requirement to perform a description and analysis ''implies that the Tribe must weigh all relevant considerations and then justify its request.'' The commenter stated that the analysis must include adverse economic impacts on the surrounding areas and activities. The commenter stated that the Tribe may not take action ''that will inflict economic harm on off-Reservation landowners, communities, and citizens, just because the Tribe believes that the action will benefit the Tribe.'' The commenter was concerned about increased regulation, increased costs to industry and negative economic impacts on future mining activities outside the reservation.

EPA disagrees that the Tribe must justify its redesignation request in the manner suggested. A description and analysis of factors does not dictate calculating and demonstrating that certain factors outweigh others. Moreover, the fact that no weight or priority is assigned to any particular consideration, taken together with the broad redesignation discretion conferred on States and Tribes, indicates that the Tribe does not have to justify or overcome a balancing test in its redesignation request or show that a proposed redesignation will have no impact on the surrounding community. The Tribe's responsibility is to perform a ''satisfactory discussion and analysis'' of health, environmental, economic, social and energy effects.

The Tribe's request contained an analysis of health, environmental, economic, social and energy effects, including an examination of effects on conditions within the reservation. As noted, EPA's regulations do not prescribe whether or to what extent impacts outside the area being requested for redesignation must be examined. Nevertheless, the Tribe's submittal addressed impacts to housing, roads, public services, and general impacts to tourism and jobs in the surrounding areas, as well as a more detailed discussion of the impacts to the reservation lands. The Tribe's description of potential effects includes a discussion of the jobs related to tourism in comparison with those related to industrial expansion, and the potential effects on certain types of facilities located outside the Reservation boundaries. The Tribe noted that some industries may incur the cost of additional pollution controls to reduce impacts on the Class I area. The Tribe's submittal also identified the presence of mineral resources off reservation.

The Tribe's request to redesignate its reservation as Class I would limit the amount of future air quality deterioration within the reservation's boundaries. While the Tribe described and analyzed relevant effects, specific prospective impacts are speculative and would depend on the nature of future activities and their particular ambient air quality impacts. It is difficult to assess such impacts because ''the nature of a decision which simply requires that the air quality be maintained at a certain level prevents any exact prediction of its consequences.'' *Nance* v. *EPA*, 645 F.2d at 712.

3. Concern About Potential Impacts

Much of the concern about the potential off-reservation impacts stems from misimpressions about the scope of the PSD program and the protection of a non-Federal Class I area under the program. To facilitate public understanding, EPA has addressed the concerns about off-reservation impacts in the ensuing discussion.

a. *Concern About Increased Regulation.* Some commenters were under the misimpression that a Class I redesignation would place the residents of the Verde Valley ''under the strictest air control measures of the Federal law.'' These commenters expressed concerns that redesignation would activate restrictions on wood burning and any form of earth movement in order to curtail dust and smoke, as well as requiring vehicle smog inspections.

The residents of the Verde Valley will not be brought under the strictest air control measures of Federal law as a result of a Class I redesignation. As discussed in the proposal (59 FR 18346, April 18, 1994) and at EPA's presentation during the public hearing, the Verde Valley and the Reservation are currently subject to the PSD program. As noted, the PSD program applies to the following areas: (1) ''attainment'' areas that meet the NAAQS and (2) ''unclassifiable'' areas that cannot be classified as meeting or not meeting the NAAQS.

The Class I designation does not change which sources on or off the reservation are subject to PSD. In all instances, only ''major'' stationary sources in PSD areas are subject to the PSD program. *See, e.g.,* 40 CFR 52.21(b)(1)(i). Major stationary sources are relatively large industrial sources. The PSD provisions do not apply to mobile sources, such as cars. Major stationary sources are sources that emit, or have the potential to emit, over 250 tons per year (tpy) of a regulated air pollutant, or 100 tpy if the source is one of the 28 source categories listed in 40 CFR 52.21(b)(1). Iron and steel mills are an example of a listed source category that would be subject to PSD if the facility has the potential to emit more than 100 tpy of a regulated air pollutant. Particulates from unpaved roads could be affected by the redesignation only insofar as they occur at a major stationary source. Redesignation will not limit the home use of wood-burning stoves, nor will it create restrictions on controlled forest burning, as commenters suggested.

Further, PSD applies prospectively to proposed new major stationary sources or to proposed major modifications of existing major stationary sources. Very generally, major modifications are changes at an existing major stationary source that result in a significant net increase of regulated air pollutants. *See* 52.21(b)(2).

The central change resulting from the Class I redesignation approved today is that it allows for less air quality deterioration on the reservation than would have been allowed under its

Class II designation. The area around the reservation will continue to maintain its Class II designation. EPA's PSD regulations establish the incremental amount of air quality deterioration that is allowed for Class I, II and III areas for particulate matter, sulfur dioxide and nitrogen dioxide. *See* 40 CFR 52.21(c). In addition, a new major stationary source or major modification which would construct within 10 km of a Class I area is subject to review under the PSD regulations if emissions from the source would have an impact on the Class I area equal to or greater than the 1 $\mu g/m^3$ significance level. *See* 40 CFR 52.21(b)(2), 40 CFR 52.21(b)(23), and 40 CFR 52.21(i).

There is another program under separate provisions of the Clean Air Act that imposes more stringent requirements in nonattainment areas, or so called ''dirty air'' areas, in which air quality does not meet the NAAQS. Under the nonattainment area requirements, states may need to develop more stringent or broader requirements; these may affect smaller stationary sources than would be regulated under the PSD program, or in some instances necessitate vehicle inspection and maintenance (smog-check) programs. Such a program would not go into effect in the Verde Valley as a result of the redesignation. In fact, one of the primary objectives of the PSD program is to prevent air quality in attainment areas from deteriorating such that they fail to meet the NAAQS, become ''nonattainment'' and necessitate more stringent air pollution control measures.

Commenters also expressed concern that the redesignation would place additional burdens on local regulatory agencies, as well as the Arizona Department of Environmental Quality (ADEQ) to apply the Class I increments to off-reservation sources. As the PSD permitting authority for the lands outside the reservation in the Verde Valley, ADEQ would be the only agency affected by the redesignation. Air quality modeling to assess potential impacts on PSD increments is currently required for Class II areas, and performed by a PSD permit applicant. In certain circumstances, a proposed source may now also have to assess its impact on the Class I increment in effect on the Reservation.

Any additional administrative resources which would be required as a result of the Class I designation would not be substantial. ADEQ must currently review a permit applicant's analysis of the amount of increment that is consumed (if any) when a major source or major modification is constructed in a PSD Class II area near any existing Federal Class I area in Arizona. In the Verde Valley, for example, a major source locating near the Sycamore Canyon Wilderness Area—a Federal Class I area—would already be required to perform a Class I increment analysis. The redesignation of the Yavapai-Apache Reservation may increase the likelihood that a source must perform an increment analysis for nearby Class I areas. While the total number of such Class I analyses may increase, the Class I analysis is only one component of an analysis which sources are already required to submit. The responsibility to review the adequacy of any Class I increment analyses resulting from the redesignation does not pose substantial additional burdens for ADEQ in the review of PSD permit applications.

b. *Concern About Increased Costs to Industry.* Some commenters expressed concern that the redesignation would significantly increase the cost of complying with the PSD requirements.

EPA does not expect significant additional delay or cost for companies attempting to comply with the Class I requirements. As noted, the only types of industrial development affected by the Class I designation would be major stationary sources of air pollution. The permit applicant for a major stationary source in the Verde Valley subject to PSD is currently required to perform a modeling analysis to ensure that the Class II increments are protected. The applicant would therefore have to gather the necessary data, and conduct studies on air quality for the Class II analysis. The Class I designation may simply require in certain circumstances that additional receptor points be added to the model in order to simulate the effect of potential emissions on the Class I area to ensure that the Class I increments are protected. The cost of this additional component of an increments analysis is not expected to be substantial.

Further, every major stationary source proposing to locate in a PSD area, irrespective of the area's classification, must employ best available control technology (BACT). *See* sections 165(a)(4) and 169(3) of the CAA. Thus, every major source locating in a Class II area is required to utilize state-of-the-art air pollution controls and proximity to a Class I area generally would not affect the level of control required. Thus, as a general rule, a source would not incur additional control costs due to the redesignation. However, it is possible that in some instances impacts on a Class I area would require further decreases in emissions. A source could choose to achieve such emission reductions in a number of ways, including restrictions on hours of operation or throughput, additional emission controls or obtaining emission reductions from other sources in the area. In such a case a source would likely incur additional costs.

c. *Concern About Impacts on Development.* Some commenters expressed concern that the redesignation would hinder all future economic development in the Verde Valley. Others stated that it would place a significant economic and regulatory burden on future economic development in general, and on the development of hardrock mining resources in particular.

The commenters cited increased costs and increased regulatory burdens as the bases for the alleged impacts on development. As discussed above, EPA believes that significant increases in cost will be rare and generally unlikely to affect development in the area. As noted, the redesignation does not affect which sources will be subject to PSD. In all instances, ''major stationary sources'' in PSD areas are subject to PSD. The Verde Valley area outside the reservation is a PSD area and its PSD classification is unaffected by EPA's approval of the Class I designation for the Tribe.

There are many Class I areas located adjacent to communities that are Class II areas. For example, the Saguaro National Park, a Federal Class I area, is adjacent to the eastern and western boundaries of Tucson, Arizona. Tucson has a population size and economic activity level that far exceeds that presently found in the Verde Valley.

EPA performed a modeling analysis to assess the potential impact of some ''typical'' major sources proposing to locate near the Yavapai-Apache Reservation, to facilitate the public's understanding about the implications of the redesignation. This analysis suggests that while the Class I redesignation will protect existing air quality on the Reservation by limiting the amount of deterioration allowed, major stationary sources with well-controlled emissions locating near the Reservation should not exceed the Class I increment. More detailed information about EPA's analysis is available for public review in the docket listed at the beginning of this document.

As noted, commenters expressed specific concerns about the effect of the redesignation on development of mining resources in the area, noting that ore bodies cannot be relocated. One commenter argued that any conventional mining operation requiring crushing and concentration

would fall well within the category of a new major stationary source.

The discussion above regarding economic and regulatory effects of the redesignation in general also applies to mining operations. In addition, whether proposed mining activity would even be subject to PSD depends on the quantity and type of expected emissions. As noted, to be subject to PSD a facility must have the potential to emit more than 250 tpy of a regulated air pollutant, or more than 100 tpy if the facility is included in one of the 28 listed source categories. Mining operations are not included in the list of 28 source categories, and therefore the 250 tpy threshold applies. *See* 40 CFR 52.21(b)(1)(i). In addition, for many types of mining operations, fugitive emissions (emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening) make up a majority of pollutants emitted. *See* 40 CFR 52.21(b)(20). Fugitive emissions, such as dust, are counted towards the 250 tpy threshold for determining whether PSD applies only for specified source categories, which do not include most mining activities. *See* 40 CFR 52.21(b)(1)(c)(iii). Thus, the exclusion of fugitive emissions and the higher pollutant threshold may exclude mining activity from PSD review.

4. Disperse Reservation Lands and Character of Reservation Lands.

Some commenters stated that they were opposed to the redesignation because the reservation is comprised of five distinct land parcels. The commenters were concerned about the small size (i.e., 635 acres) and dispersed nature of the reservation lands and the impact on effective air quality management. As noted, EPA may disapprove a redesignation only if the Tribe did not follow the applicable procedures in adopting its redesignation. Because these comments do not relate to any alleged procedural transgression, they are not a basis for disapproval in this action.

However, section 164(e) calls for EPA to consider ''the extent to which the lands involved are of sufficient size to allow effective air quality management'' in resolving intergovernmental disputes about redesignations. Thus, EPA has fully assessed this consideration in addressing the State of Arizona's objection to the Tribe's Class I redesignation. As noted, EPA's resolution of the intergovernmental dispute is addressed in another notice in today's Federal Register and the reader is referred to that notice.[3]

Another commenter stated that the Class I redesignation is inappropriate because Class I status is intended for the protection of truly unique areas of national or regional significance because of their natural, scenic, recreational, or historic values, and that the Yavapai-Apache Reservation no more reflects any of these characteristics than any neighborhood in the Verde Valley or the country.

Congress made specified Federal lands, including certain national parks and wilderness areas, mandatory Class I areas that may not be redesignated. *See* section 162(a) of the CAA. This is consistent with one of the purposes of the PSD program to preserve, protect, and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic or historic value. *See* section 160(2) of the CAA.

However, Congress did not restrict redesignation of additional Class I areas by States and Tribes to lands deemed meritorious by the Federal government. Rather, Congress gave States and Tribes broad latitude to redesignate additional areas within their jurisdiction as Class I. Congress generally limited EPA's authority to disapprove the proposed redesignation of ''any'' area to circumstances where the redesignation does not meet procedural requirements. *See* section 164(b)(2) of the CAA

There may be a variety of reasons for a State or Tribe to propose redesignation of an area as Class I. One purpose of the PSD program is to protect health and welfare from actual or potential adverse effects, notwithstanding attainment of the national ambient air quality standards. *See* section 160(1) of the CAA.

Another purpose of the PSD program is to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources. *See* section 160(3) of the CAA.

The Tribe's redesignation request provides as follows:

> The Tribe is not seeking to change its air quality status to prevent development on or around the reservation * * *. The Tribe is against increased air pollution from industrial activity that could cause serious health problems for the people living on or near the Reservation * * *.
>
> People are concerned about the increase in pollution under Class II because of its anticipated effects on their most vulnerable age groups: the very young and the elderly people on the Reservation. * * *
>
> The uncertainty that surrounds these absolute [NAAQS] leads the Tribe to seek additional protection for the People and their finite resources through the maintenance of the lowest levels of pollution currently allowable: a Class I air quality designation.

See Yavapai-Apache Tribe Air Quality Redesignation Plan, Sept. 1993 at ps. 27, 30 and 40. The Tribe's request also examines the natural resource and cultural benefits of the proposed redesignation as well as the unique nearby natural resources.

In the final analysis, it is generally inappropriate for EPA to substitute its judgment for that of the Tribe's in these circumstances. As discussed, Congress generally placed only procedural restrictions on a Tribe's redesignation of non-Federal lands as Class I areas. The legislative history indicates that limited Federal review was a deliberate congressional decision.

5. Applicable Implementation Plan.

Some commenters stated that a redesignation cannot be approved under section 164 of the CAA until there is an applicable state implementation plan for the reservation. These commenters do not believe that such a plan exists for this area, and therefore the Tribe's request cannot be approved. The commenters reason that the State does not have jurisdiction over the reservation, therefore no applicable State implementation plan exists on the reservation and the absence of an applicable State implementation plan precludes approval of any Tribal redesignation.

Section 164 of the CAA makes no reference to an ''applicable state implementation plan.'' Section 164(e), the dispute resolution provisions, refers only to the ''applicable plan,'' providing that EPA's decision resolving the dispute shall become part of the applicable plan and shall be enforceable as part of such plan. Section 302(q) of the CAA in turn defines applicable implementation plan to include a plan approved under section 110 of the CAA, a plan Federally-promulgated under section 110(c) of the CAA or a plan approved or promulgated under section 301(d) of the CAA. Thus, a redesignation could be part of a state implementation plan (SIP), a Federal implementation plan (FIP), or eventually, a tribal implementation plan in accordance with sections 110(o) and 301(d) of the CAA. *See* 59 FR 43956.

The PSD regulations, however, provide that redesignations may be

[3] Responses to these comments are also contained in the TSD for this rulemaking action, available in the public docket identified at the beginning of this notice.

proposed by states or tribes, ''subject to approval by the Administrator as a revision to the applicable State implementation plan.'' *See* 40 CFR 52.21(g)(1). At the time this language was promulgated, the Agency had not clearly focused on the complex issues of tribal sovereignty as it relates to States. *Compare* 59 FR 43956.

The PSD rules at 40 CFR part 52 establish a Federal PSD program, or Federal implementation plan, where there would otherwise be gaps in programmatic coverage.[4] The Federal implementing rules expressly apply to Indian reservations. *See* 40 CFR 52.21(a) (''the provisions [of this section] shall also be applicable to all * * * Indian Reservations). The Federal implementing regulations also expressly provide for redesignations by Indian Tribes. *See* 40 CFR 52.21(g)(4).

Based on the language in section 164(c) of the CAA and 40 CFR 52.21(g)(4) of the regulations expressly authorizing Tribes to redesignate lands within reservation boundaries, it could not have been EPA's intent at the time it promulgated the language in 40 CFR 52.21(g)(1) to frustrate the ability of Tribes to redesignate their lands, and render meaningless the statutory and regulatory Tribal redesignation authority, by requiring that there be an applicable *State* implementation plan. Further, requiring that a State implementation plan apply on a reservation before EPA would approve a Tribal redesignation would be inappropriately treating Tribes as subdivisions of States instead of relating to Tribes on a ''government-to-government'' basis as called for by Federal policy. *See* part III.B.6, below.

Thus, EPA interprets the regulatory provision to have the same meaning as the statutory provision on which it is based, and to require that redesignations become part of the applicable implementation plan. Accordingly, for States, the applicable plan is the State implementation plan as specifically recognized in the regulations. Because Indian Tribes do not yet have authority to administer Tribal implementation plans, the Federal PSD rules issued at 40 CFR 52.21 establish, pursuant to section 110(c)(1) of the CAA, the Federal implementation plan as the applicable plan for the Tribe. *See* section 302(q) of the CAA. Thus, the redesignation approved today will become part of the Federal implementation plan for the reservation.

6. Additional Public Comments.

One commenter expressed concern that the redesignation could be detrimental to the economic well-being of the community. The commenter also asserted that it appears to be ''both unnecessary and possibly immoral'' to allow ''an extremely small minority of the population to impose a significantly higher level of bureaucratic regulation.'' The commenter encouraged EPA to suggest to the Tribe that it could pursue more ''meaningful and productive opportunities.''

In the preceding discussion, EPA has attempted to address concerns, and misimpressions, about potential economic impacts. Also as addressed previously, the PSD program gives States and Federally recognized Indian Tribes broad authority to redesignate lands within their jurisdictional boundaries. That authority is not limited by the size of population the requesting governmental entity represents or its population relative to the surrounding jurisdictions.

EPA is also guided by Federal and Agency Tribal policy in making decisions affecting Tribes. *Washington Department of Ecology* v. *EPA,* 752 F.2d 1465, 1471 & n. 5 (9th Cir. 1985). As outlined below, these policies direct EPA to treat Tribes as sovereign governments.

On January 24, 1983, the President issued a Federal Indian Policy stressing two related themes: (1) That the Federal government will pursue the principle of Indian ''self-government'' and (2) that it will work directly with Tribal governments on a ''government-to-government'' basis. An April 29, 1994 Presidential Memorandum reiterated that the rights of sovereign Tribal governments must be fully respected. 59 FR 22951 (May 4, 1994).

EPA's Tribal policies commit to certain principles, including the following:

> EPA recognizes Tribal Governments as sovereign entities with primary authority and responsibility for the reservation populace. Accordingly, EPA will work directly with Tribal Governments as the independent authority for reservation affairs, and not as the political subdivisions of States or other governmental units.
>
> * * * * *
>
> In keeping with the principal of Indian self-government, the Agency will view Tribal Governments as the appropriate non-Federal parties for making decisions and carrying out program responsibilities affecting Indian reservations, their environments, and the health and welfare of the reservation populace. Just as EPA's deliberations and activities have traditionally involved interests and/or participation of State Governments, EPA will look directly to Tribal Governments to play this lead role for matters affecting reservation environments.

See November 8, 1984 ''EPA Policy for the Administration of Environmental Programs on Indian Reservations''; Policy Reaffirmed by Administrator Carol M. Browner in a Memorandum issued on March 14, 1994.

Congress further enhanced Tribal sovereignty under the CAA in the 1990 amendments. The 1990 amendments added sections 110(o) and 301(d) to the CAA, which provide for administration of specified CAA programs in the same manner as States. These provisions further evidence strong Congressional commitment to tribal sovereignty and the desire to put tribes on an equal footing with states with regard to managing air quality resources. *See* 59 FR 43956.

The United States also has a unique fiduciary relationship with Tribes, and EPA must consider Tribal interests in its actions. *Nance* v. *EPA,* 645 F.2d at 710.

It would be inappropriate, under Federal law and policy, for EPA to disapprove the Tribe's request to seek additional protection of the reservation environment for the reasons suggested by the commenter.

EPA also received a comment from the attorney for the Town of Clarkdale objecting ''to the lack of procedural due process in the conduct of the Public Hearing held by EPA on * * * June 22, 1994.'' The commenter alleged that the EPA hearing officer was unfair and impartial because the Hearing Officer asked the attorney to conclude his comments when a five-minute time limit had been exceeded, some proponents of the project who spoke exceeded the five-minute time limit without interruption from the hearing officer, and the hearing officer failed to control applause and verbal expressions by members of the audience supporting the request which had the effect of a ''chilling process'' on any person in attendance intending to make public comment in opposition. The commenter therefore alleged that the entire EPA review process is tainted.

An opportunity for a public hearing is expressly provided for in conjunction with EPA disapproval of a redesignation request. Section 164(b)(2) of the CAA provides that EPA may disapprove an area redesignation request only if it finds ''after notice and opportunity for public hearing,'' that the redesignation

[4] *See* section 110(c)(1) of the CAA; *see also Phillips Petroleum Co.* v. *EPA,* 803 F.2d 545, 555–56 (10th Cir. 1986) (affirming EPA's authority to directly implement Safe Drinking Water Act Underground Injection Control program on Indian lands in Oklahoma where concluding otherwise would contradict the meaning and purpose of the Act by creating ''a vacuum of authority over underground injections on Indian lands, leaving vast areas of the nation devoid of protection from groundwater'').

does not meet the applicable procedural requirements. EPA's implementing regulations similarly provide that EPA shall disapprove, within 90 days of submission, a redesignation request only if it finds ''after notice and opportunity for public hearing'' that the redesignation does not meet the applicable procedural requirements. *See* 40 CFR 52.21(g)(5).

On April 18, 1994, EPA published a notice of proposed rulemaking in the Federal Register proposing to approve the Tribe's Class I redesignation request based on EPA's preliminary determination that it met the applicable procedural requirements, and announced a 30-day public comment period. *See* 59 FR 18346. EPA subsequently held the June 22, 1994 public hearing in question to be responsive to a request for a public hearing from the Town of Clarkdale attorney. In the announcement of the public hearing, EPA indicated that it would allow until July 6, 1994 for the submittal of written comments following the public hearing.

To facilitate the public's understanding of the issues, EPA began the public hearing with an informational discussion of the Class I redesignation process and an overview of the PSD permit program. Subsequently, a panel of EPA officials, including a presiding hearing officer, heard oral presentations from members of the public.

In her introductory remarks the presiding officer made the following statement:

> Please make your oral comments brief so that everyone has an opportunity to speak. To assist in this effort, please limit your comments to five minutes. If you have lengthier comments or comments that contain a significant amount of technical detail, I would ask that you submit them in writing before the end of the comment period. If you brought a written copy of your remarks with you today, you may hand it to the reporter after your testimony for inclusion in the record of the hearing.

See Hearing Transcript at p. 6.

The Town of Clarkdale attorney was the first speaker at the public hearing. After he spoke for approximately 10 minutes, the presiding officer asked him to conclude his comments in order to ensure that everyone would have time to speak. After providing those who expressed an interest in making an oral presentation with an opportunity to speak, EPA provided time for any additional comment including supplementary statements by those who had previously spoken.

EPA has reviewed the transcript and a videotape of the public hearing. The Town of Clarkdale attorney had a fair and reasonable opportunity to express his views at the public hearing during his statements at the outset of the hearing and again at the end of the hearing when EPA provided an opportunity for additional statements. Everyone present was afforded an equal opportunity to speak. While some members of the audience did applause and comment in response to the statements of others, their conduct did not create an intimidating or ''chilling'' atmosphere.

Further, EPA provided additional opportunities for submission of views to the Agency. As noted, in its announcement of the public hearing, EPA stated that it would consider post-hearing written comments submitted by July 6, 1994. Following the public hearing, the Town of Clarkdale requested an extension of the public comment period ''[t]o allow additional time for the public to respond to information presented by EPA and the public comment at the Public Hearing'' and ''[t]o allow for public comment not made at the Public Hearing of June 22, 1994, by reason of curtailment of opposing viewpoints.'' On July 20, 1994, in response to the Town of Clarkdale's request, EPA published a Federal Register document announcing an extension of the public comment period, providing the public until August 22, 1994 to submit written comments. *See* 59 FR 37018. The Town of Clarkdale submitted public comments dated August 22, 1994, in addition to several other written communications with EPA both preceding and following the EPA public hearing.

EPA has satisfied the procedures required by law, and arguably more, in reviewing the Tribe's PSD redesignation request. EPA has provided ample opportunity for public participation and has fully considered the resulting public comments in taking today's final action. EPA has acted well within its lawful discretion. *See Vermont Yankee Nuclear Power Co.* v. *NRDC,* 435 U.S. 519 (1978).

IV. Administrative Review

A. Executive Order 12866

The Office of Management and Budget has exempted this rulemaking action from centralized regulatory review pursuant to section 6 of Executive Order 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 et seq., EPA must prepare a regulatory flexibility analysis describing the impact of a final rule on small entities. *See* 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000. This final rulemaking action to approve the Tribe's PSD redesignation request does not impose new requirements on small entities and may only potentially have an impact on major stationary sources, as defined by 40 CFR 52.21. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.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, EPA 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, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if EPA publishes with the final rule an explanation why that alternative was not adopted.

EPA has determined that this final rulemaking action to approve the Tribe's PSD redesignation request does not contain Federal mandates that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added 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 this rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: October 2, 1996.

Felicia Marcus,

Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart D—Arizona

2. Subpart D is amended by adding § 52.150 to read as follows:

§ 150 Yavapai-Apache Reservation.

(a) The provisions for prevention of significant deterioration of air quality at 40 CFR 52.21 are applicable to the Yavapai-Apache Reservation, pursuant to § 52.21(a).

(b) In accordance with section 164 of the Clean Air Act and the provisions of 40 CFR 52.21(g), the Yavapai-Apache Indian Reservation is designated as a Class I area for the purposes of preventing significant deterioration of air quality.

[FR Doc. 96–27849 Filed 10–31–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[CA 126–0011a; FRL–5616–6]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision; Mojave Desert Air Quality Management District; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the California State Implementation Plan (SIP). The revisions concern rules from the Mojave Desert Air Quality Management District (MDAQMD) and the South Coast Air Quality Management District (SCAQMD). The rules control oxides of nitrogen (NO_x) from boilers and process heaters, internal combustion engines, residential natural gas-fired water heaters, and stationary gas turbines. This action will incorporate these rules into the Federally approved SIP. The intended effect of approving these rules is to regulate emissions of NO_x in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

DATES: This action is effective on December 31, 1996 unless adverse or critical comments are received by December 2, 1996. If the effective date is delayed, a timely notice will be published in the Federal Register.

ADDRESSES: Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

Mojave Desert Air Quality Management District, 15428 Civic Drive, Suite 200, Victorville, CA 92392.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1200.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being approved into the California SIP include: MDAQMD Rule 1157, Boilers and Process Heaters; MDAQMD Rule 1160, Internal Combustion Engines; SCAQMD Rule 1121, Control of Nitrogen Oxides from Residential Type Natural Gas-Fired Water Heaters; and SCAQMD Rule 1134, Emissions of Oxides of Nitrogen from Stationary Gas Turbines.

Background

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA or the Act) were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_x emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a Notice of Proposed Rulemaking entitled ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_x Supplement) which describes and provides preliminary guidance on the requirements of section 182(f). 57 FR 55620. The NO_x Supplement should be referred to for further information on the NO_x requirements and is incorporated into this notice of direct final rulemaking by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X (''major'' as defined in section 302 and section 182 (c), (d), and (e)) as are applied to major stationary sources of volatile organic compound (VOC) emissions, in moderate or above ozone nonattainment areas. The Southeast Desert Air Basin is classified as severe, and the Los Angeles-South Coast Air Basin Area is classified as extreme;[1] therefore these areas were subject to section 182(f), the RACT requirements of section 182(b)(2), and the November 15, 1992 deadline, cited below.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC (and NO_X) emissions not covered by either a pre-enactment or post-enactment control techniques guideline (CTG) document by November 15, 1992. There were no NO_X CTGs issued before enactment and EPA has not issued a CTG document for any NO_X sources since enactment of the CAA. The RACT rules covering NO_X sources and submitted as SIP revisions, are expected to require final installation of the actual NO_X controls as expeditiously as practicable, but no later than May 31, 1995.

MDAQMD Rule 1157 and Rule 1160 were both adopted on October 26, 1994, and submitted by CARB to EPA on November 30, 1994. SCAQMD Rule 1121 was adopted on March 10, 1995,

[1] The Southeast Desert Air Basin and the Los Angeles-South Coast Air Basin Area retained their designations of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

and submitted on May 24, 1995. SCAQMD Rule 1134 was adopted on December 7, 1995 and submitted on March 26, 1996. These submitted rules were found to be complete on January 30, 1995, July 24, 1995, and May 15, 1996, respectively, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V.[2] By today's document, EPA is taking direct final action to approve these rules into the SIP.

MDAQMD Rule 1157 controls emissions of NO^X from boilers and process heaters, and MDAQMD Rule 1160 regulates internal combustion engines. SCAQMD Rule 1121 controls emissions from residential water heaters, and SCAQMD Rule 1134 applies to stationary gas turbines. NO^X emissions contribute to the production of ground level ozone and smog. The rules were adopted as part of each district's efforts to achieve the National Ambient Air Quality Standards for ozone and in response to the CAA requirements cited above. The following section contains EPA's evaluation and final action for these rules.

EPA Evaluation

In determining the approvability of a NO_X rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for this action, appears in various EPA policy guidance documents.[3] Among these provisions is the requirement that a NO_X rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_X emissions.

For the purposes of assisting State and local agencies in developing NO_X RACT rules, EPA prepared the NO_X Supplement to the General Preamble. In the NO_X Supplement, EPA provides guidance on how RACT will be determined for stationary sources of NO_X emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO_X (see section 4.5 of the NO_X Supplement). In addition, pursuant to section 183(c), EPA is issuing alternative control technique documents (ACTs), which identify alternative controls for all categories of stationary sources of NO_X. The ACT documents will provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_X. However, the ACTs will not establish a presumptive norm for what is considered RACT for stationary sources of NO_X. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO_X RACT rules are fully enforceable and strengthen or maintain the SIP.

MDAQMD Rule 1157 is a new rule which controls emissions from boilers, steam generators, and process heaters with rated heat inputs of 5 million British Thermal Units per hour (MMBTU/hr) or more, used in a variety of industrial, institutional, and commercial operations. This rule contains NO_X RACT limits of 70 ppmv for units operated on gaseous fuel and 115 ppmv for units operated on liquid or solid fuel. Units permitted to emit more than 5 tons/day or more than 250 tons/year of NO_X must meet stricter emission limits. This rule also requires monitoring of fuel usage and annual source testing.

MDAQMD Rule 1160 is a new rule regulating internal combustion engines rated at 500 brake horsepower (bhp) or greater. The rule contains a VOC limit of 106 ppmv and a CO limit of 4500 ppmv. NO_X limits depend on the type of engine: 50 ppmv for rich-burn engines, 140 ppmv for lean-burn, and 700 ppmv for diesel. The rule also contains provisions for an alternative method of compliance with NO_X limits by requiring reductions of uncontrolled NO_X emissions by at least 90% for rich-burn engines, 80% for lean-burn engines, and 30% for diesel engines. Operator inspections are required at least every calendar quarter or after every 2,000 hours of operation, whichever is more frequent.

SCAQMD Rule 1121 applies to manufacturers, distributors, retailers, and installers of residential natural gas-fired water heaters. This submitted rule is a revision to the existing SIP rule, and contains the following major changes:

- An ''Applicability'' section has been added for clarification.
- Definitions have been added for several terms, such as: independent testing laboratory, mobile home water heater, and rated heat input capacity.
- Certification requirements have been amended to require source testing and verification from an independent testing laboratory, and reverification every three years.

SCAQMD Rule 1134 is a new rule that controls emissions from stationary gas turbines of 0.3 megawatt and larger. The rule contains NO_X emission limits ranging from approximately 9 ppmv to 25 ppmv, depending on the size of the unit. Annual source testing is required for units emitting 25 tons of NO_X per year or more. All other units must source test after every 8,400 hours of operation. This rule requires the use of a continuous emissions monitoring system with data gathering and retrieval capability, and requires maintenance of a daily operating log.

A more detailed discussion of the sources controlled,[4] the controls required, and the justification for why these controls represent RACT can be found in the Technical Support Document (TSD) for each rule, available from the U.S. EPA Region IX office.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations and EPA policy. Therefore, MDAQMD Rule 1157, MDAQMD Rule 1160, SCAQMD Rule 1121, and SCAQMD Rule 1134 are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a), section 182(b)(2), section 182(f) and the NO_X Supplement to the General Preamble.

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

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revisions should adverse or critical comments be filed. This action will be effective December 31, 1996, unless, within 30 days of its

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); and ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice'' (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988).

[4] SCAQMD Rule 1121 and Rule 1134 will apply to sources which are not covered in the SCAQMD NO_X RECLAIM program.

publication, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective December 31, 1996.

Regulatory Process

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this State implementation plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this direct final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Under 5 U.S.C. 801(a)(1)(A) as added 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 5 U.S.C. 804(2).

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on affected small entities. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

This action has been classified as a Table 3 action for signature by the Regional Administrator under procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Dated: September 17, 1996.

Felicia Marcus,

Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c) (207)(i)(D)(*3*), (220)(i)(C), and (230)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(207) * * *

(i) * * *

(D) * * *

(*3*) Rule 1157 and Rule 1160, adopted on October 26, 1994.

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(220) * * *

(i) * * *

(C) South Coast Air Quality Management District.

(*1*) Rule 1121, adopted on March 10, 1995.

* * * * *

(230) * * *

(i) * * *

(B) South Coast Air Quality Management District.

(*1*) Rule 1134, adopted on December 7, 1995.

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[FR Doc. 96–27846 Filed 10–31–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[CA 168–0019a; FRL–5641–7]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern negative declarations from the Sacramento Metropolitan Air Quality Management District (SMAQMD) for five source categories that emit oxides of nitrogen (NO_X): Nitric and Adipic Acid Manufacturing Plants, Utility Boilers, Cement Manufacturing Plants, Glass Manufacturing Plants, and Iron and Steel Manufacturing Plants. The SMAQMD has certified that these source categories are not present in the District and this information is being added to the federally approved State Implementation Plan. The intended effect of approving these negative declarations is to meet the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is

finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This action is effective on December 31, 1996, unless adverse or critical comments are received by December 2, 1996. If the effective date is delayed, a timely notice will be published in the Federal Register.

ADDRESSES: Copies of the submitted negative declarations are available for public inspection at EPA's Region IX office and also at the following locations during normal business hours.

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Air Docket (6102), U.S. Environmental Protection Agency, 401 ''M'' Street, SW, Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 92123–1095

Sacramento Metropolitan Air Quality Management District, Rule Development Section, 8411 Jackson Road, Sacramento, CA 95826

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Francisco, CA 94105, Telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION:

Applicability

The revisions being approved as additional information for the California SIP include five negative declarations from the SMAQMD regarding the following source categories: (1) Nitric and Adipic Acid Manufacturing Plants, (2) Utility Boilers, (3) Cement Manufacturing Plants, (4) Glass Manufacturing Plants, and (5) Iron and Steel Manufacturing Plants. These negative declarations were submitted by the California Air Resources Board (CARB) to EPA on March 4, 1996.

Background

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA) were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_X emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a notice of proposed rulemaking entitled ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement) which describes the requirements of section 182(f). The NO_X Supplement should be referred to for further information on the NO_X requirements and is incorporated into this document by reference. Section 182(f) of the Clean Air Act requires states to apply the same requirements to major stationary sources of NO_X (''major'' as defined in section 302 and section 182 (c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. The Sacramento Metropolitan Area (SMA) is classified as a severe nonattainment area for ozone [1]. The SMA area is subject to the RACT requirements of section 182(b)(2), cited above.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC emissions (not covered by a pre-enactment control technique guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_X CTGs issued before enactment and EPA has not issued a CTG document for any NO_X category since enactment of the CAA.

The five negative declarations were adopted on August 3, 1995, and submitted by the State of California on March 4, 1996. The submitted negative declarations were found to be complete on June 27, 1996, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V [2] and are being finalized for approval into the SIP as additional information.

This document addresses EPA's direct final action for the SMAQMD negative declarations for: (1) Nitric and Adipic Acid Manufacturing Plants, (2) Utility Boilers, (3) Cement Manufacturing Plants, (4) Glass Manufacturing Plants, and (5) Iron and Steel Manufacturing Plants. The submitted negative declarations certify that there are no NO_X sources in these source categories located inside SMAQMD. Therefore, the determination being evaluated is that there is no need to have RACT rules in the SIP for these source categories at this time.

[1] The Sacramento Metropolitan Area was designated nonattainment and classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991). The Sacramento Metropolitan Area was reclassified from serious to severe on June 1, 1995. See 60 FR 20237 (April 25, 1995).

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

EPA Evaluation and Action

In determining the approvability of a negative declaration, EPA must evaluate the declarations for consistency with the requirements of the CAA and EPA regulations, as found in section 110 of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

In a Resolution dated August 3, 1995, the SMAQMD Board affirmed that the SMAQMD does not have any major stationary sources in these source categories located within the federal ozone nonattainment planning area.

EPA has evaluated these negative declarations and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. SMAQMD's negative declarations for Nitric and Adipic Acid Manufacturing Plants, Utility Boilers, Cement Manufacturing Plants, Glass Manufacturing Plants, and Iron and Steel Manufacturing Plants are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective December 31, 1996 unless, by December 2, 1996, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective December 31, 1996.

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

Administrative Requirements

Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over population of less than 50,000.

Because this action does not create any new requirements but simply includes additional information into the SIP, I certify that it does not have a significant impact on any small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this State Implementation Plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The negative declarations being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added 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 5 U.S.C. 804(2).

Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 31, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 17, 1996.

Felicia Marcus,

Regional Administrator.

Subpart F of part 52, chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.222 is being amended by adding paragraph (b) to read as follows:

§ 52.222 Negative declarations.

* * * * *

(b) The following air pollution control districts submitted negative declarations for oxides of nitrogen source categories to satisfy the requirements of section 182 of the Clean Air Act, as amended. The following negative declarations are approved as additional information to the State Implementation Plan.

(1) Sacramento Metropolitan Air Quality Management District.

(i) Nitric and Adipic Acid Manufacturing Plants, Utility Boilers, Cement Manufacturing Plants, Glass Manufacturing Plants, and Iron and Steel Manufacturing Plants were submitted on March 4, 1996, and adopted on August 3, 1995.

[FR Doc. 96–27844 Filed 10–31–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[CA 159–0018a; FRL–5641–5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern negative declarations from the Mojave Desert Air Quality Management District (MDAQMD) for eight source categories that emit volatile organic compounds (VOC): Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation, SOCMI Reactors, SOCMI Batch Processing, Offset Lithography, Industrial Wastewater, Plastic Parts Coating-Business Machines, Plastic Parts Coating-Other, and Ship Building. The MDAQMD has certified that these source categories are not present in the District and this information is being added to the federally approved State Implementation Plan. The intended effect of approving these negative declarations is to meet the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient

air quality standards and plan requirements for nonattainment areas.

DATES: This action is effective on December 31, 1996, unless adverse or critical comments are received by December 2, 1996. If the effective date is delayed, a timely notice will be published in the Federal Register.

ADDRESSES: Copies of the submitted negative declarations are available for public inspection at EPA's Region IX office and also at the following locations during normal business hours.

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Air Docket (6102), U.S. Environmental Protection Agency, 401 ''M'' Street, SW., Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 92123–1095

Mojave Desert Air Quality Management District (formerly San Bernardino County Air Pollution Control District), 15428 Civic Drive, Suite 200, Victorville, CA 92392–2382.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Francisco, CA 94105, Telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION:

Applicability

The revisions being approved as additional information for the California SIP include eight negative declarations from the MDAQMD regarding the following source categories: (1) SOCMI Distillation, (2) SOCMI Reactors, (3) SOCMI Batch Processing, (4) Offset Lithography, (5) Industrial Wastewater, (6) Plastic Parts Coating-Business Machines, (7) Plastic Parts-Other, and (8) Ship Building. These negative declarations were submitted by the California Air Resources Board (CARB) to EPA on August 7, 1995.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the portions of San Bernardino County Air Pollution Control District[1] within the Southeast Desert Air Quality Management Area (AQMA). 43 FR 8964, 40 CFR 81.305. Because this area was unable to meet the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. (40 CFR 52.222). On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above district's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP–Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(b)(2) of the CAA, Congress statutorily adopted the requirement that States must develop reasonably available control technology (RACT) rules for sources ''covered by a Control Techniques Guideline (CTG) document issued by the Administrator between November 15, 1990 and the date of attainment.'' On April 28, 1992, in the Federal Register, EPA published a CTG document which indicated EPA's intention to issue CTGs for eleven source categories and EPA's requirement to prepare CTGs for two additional source categories within the same timeframe. This CTG document established time tables for the submittal of a list of applicable sources and the submittal of RACT rules for those major sources for which EPA had not issued a CTG document by November 15, 1993. The CTG specified that states were required to submit RACT rules by November 15, 1994, for those categories for which EPA had not issued a CTG document by November 15, 1993.

Section 182(b)(2) applies to areas designated as nonattainment prior to enactment of the amendments and classified as moderate or above as of the date of enactment. The Southeast Desert AQMA is classified as severe;[2] therefore, this area was subject to the post-enactment CTG requirement and the November 15, 1994 deadline. For source categories not represented within the portion of the MDAQMD designated nonattainment for ozone, EPA requires the submission of a negative declaration certifying that those sources are not present.

The eight negative declarations were adopted on June 28, 1995, and submitted by the State of California on August 7, 1995. The submitted negative declarations were found to be complete on February 7, 1996, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V[3] and are being finalized for approval into the SIP as additional information.

This document addresses EPA's direct-final action for the MDAQMD negative declarations for (1) SOCMI Distillation, (2) SOCMI Reactors, (3) SOCMI Batch Processing, (4) Offset Lithography, (5) Industrial Wastewater, (6) Plastic Parts Coating-Business Machines, (7) Plastic Parts Coating-Other, and (8) Ship Building. The submitted negative declarations represent eight of the thirteen source categories listed in EPA's CTG document.[4] The submitted negative declarations certify that there are no VOC sources in these source categories located inside MDAQMD's portion of the Southeast Desert AQMA. VOCs contribute to the production of ground level ozone and smog. These negative declarations were adopted as part of MDAQMD's effort to meet the requirements of section 182(b)(2) of the CAA.

EPA Evaluation and Action

In determining the approvability of a negative declaration, EPA must evaluate the declarations for consistency with the requirements of the CAA and EPA regulations, as found in section 110 of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

An analysis of MDAQMD's emission inventory revealed that there are no sources of VOC emissions from SOCMI Distillation, SOCMI Reactors, SOCMI Batch Processing, Offset Lithography, Industrial Wastewater, Plastic Parts Coating-Business Machines, Plastic Parts Coating-Other, and Ship Building. MDAQMD's review of their permit files also indicated that these source categories do not exist in the MDAQMD. In a document adopted on June 28, 1995, MDAQMD certified that MDAQMD does not have any major stationary sources in these source categories located within the federal ozone nonattainment planning area.

EPA has evaluated these negative declarations and has determined that they are consistent with the CAA, EPA

[1] On July 1, 1993, the San Bernardino County Air Pollution Control District was renamed the Mojave Desert Air Quality Management District.

[2] Southeast Desert Air Quality Management Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[4] MDAQMD has developed rules for the additional five source categories: Aerospace, Autobody Refinishing, Clean Up Solvents, Volatile Organic Liquid Storage Tanks, and Wood Furniture. MDAQMD has submitted rules for four of the source categories and has developed a rule for the remaining source category.

regulations, and EPA policy. MDAQMD's negative declarations for SOCMI Distillation, SOCMI Reactors, SOCMI Batch Processing, Offset Lithography, Industrial Wastewater, Plastic Parts-Business Machines, Plastic Parts-Other, and Ship Building are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective December 31, 1996, unless, by December 2, 1996, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective December 31, 1996.

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

Administrative Requirements

Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over population of less than 50,000.

Because this action does not create any new requirements but simply includes additional information into the SIP, I certify that it does not have a significant impact on any small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The negative declarations being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added 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 5 U.S.C. 804(2).

Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 31, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 6, 1996.

Felicia Marcus,

Regional Administrator.

Subpart F of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.222 is being amended by adding paragraph (a)(1)(iv) to read as follows:

§ 52.222 Negative declarations.

(a) * * *

(1) * * *

(iv) Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation, SOCMI Reactors, SOCMI Batch Processing, Offset Lithography, Industrial Wastewater, Plastic Parts Coating (Business Machines), Plastic Parts (Other), and Ship Building were

submitted on August 7, 1995 and adopted on June 28, 1995.

* * * * *

[FR Doc. 96–27842 Filed 10–31–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 300

[FRL–5642–7]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Deletion of the Seldon Clark Property from the General Electric/Shepherd Farm Superfund Site, East Flat Rock, Henderson County, North Carolina from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 announces the deletion of the Seldon Clark Property portion of the General Electric/Shepherd Farm Superfund Site from the National Priorities List (NPL), [Appendix B of 40 CFR Part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP)]. EPA and the State of North Carolina Department of Environment, Health, and Natural Resources have determined that the Seldon Clark Property poses no significant threat to public health or the environment and, therefore, under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) remedial measures are not appropriate. This deletion does not preclude future action under Superfund.

EFFECTIVE DATE: November 1, 1996.

FOR FURTHER INFORMATION CONTACT: Giezelle Bennett, Remedial Project Manager, U.S. Environmental Protection Agency, Region 4, North Site Management Branch, 100 Alabama Street, S.W., Atlanta, Georgia 30303–3014, (404) 562–8824.

SUPPLEMENTARY INFORMATION: The Site affected by this partial deletion from the NPL is: General Electric/Shepherd Farm Superfund Site in Henderson County, North Carolina.

A Notice of Intent to Delete for this Site was published on September 3, 1996 at 61 FR 46418 (FRL–5557–7). The closing date for comments on the Notice of Intent to Delete was October 3, 1996. EPA received no comments.

EPA identifies sites that appear to present a significant risk to the public health, welfare and the environment and it maintains the NPL as the list of those sites. Any site or portion thereof deleted from the NPL remains eligible for Fund-financed remedial actions in the future. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous Waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: October 23, 1996.

A. Stanley Meiburg,

Deputy Regional Administrator, U.S. EPA Region 4.

For reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O.). 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to Part 300 is amended by revising the entry for General Electric Co/Shepherd Farm Superfund Site, East Flat Rock, North Carolina to read as follows:

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes
*	*	*	*
NC	General Electric Co/Shepherd Farm	East Flat Rock/Henderson	P
*	*	*	*

P=Sites within partial deletion(s).

[FR Doc. 96–27834 Filed 10–31–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 960129018–6018–01; I.D. 102596C]

Fisheries of the Exclusive Economic Zone Off Alaska; Deep-Water Flatfish, Rex Sole and Arrowtooth Flounder in Statistical Area 620 of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for deep-water flatfish, rex sole and arrowtooth flounder by vessels using trawl gear in Statistical Area 620 of the Gulf of Alaska (GOA). This action is necessary to prevent overfishing of Pacific ocean perch (POP).

EFFECTIVE DATE: 1200 hours, Alaska local time (A.l.t.), October 28, 1996, until 2400 hours, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486-6919.

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 (Magnuson 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 Magnuson Act requires that conservation and management measures prevent overfishing. The 1996 overfishing level for POP in the Central Regulatory Area of the GOA is established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4304, February 5, 1996) as 4,870 metric tons (mt) and the acceptable biological catch as 3,860 mt. As of October 12, 1996, 5,142 mt of POP has been caught.

NMFS closed directed fishing for POP on July 11, 1996 (61 FR 37225, July 17, 1996), prohibited retention of POP on July 15, 1996, (61 FR 37700, July 19, 1996), and prohibited retention of all rockfish species by vessels using trawl gear on July 22, 1996 (61 FR 39100, July 26, 1996), in the Central Regulatory Area of the GOA. Substantial trawl fishing effort will be directed at remaining amounts of groundfish in the GOA during 1996. These fisheries can have significant bycatch of POP.

The Administrator, Alaska Region, NMFS, has determined, in accordance with § 679.25(a)(1)(i) and (a)(2)(i)(A), that prohibiting directed fishing for deep-water flatfish, rex sole and arrowtooth flounder by vessels using trawl gear is necessary to prevent overfishing of POP, and is the least restrictive measure to achieve that purpose. Without this prohibition of directed fishing, significant incidental catch of POP would occur by trawl vessels targeting these species and species groups. Therefore, NMFS is prohibiting directed fishing for these species and species groups by vessels using trawl gear in Statistical Area 620 of the GOA.

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

Classification

This action is taken under § 679.25 and is exempt from OMB review under E.O. 12866.

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

Dated: October 28, 1996.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–28036 Filed 10–28–96; 5:09 pm]

BILLING CODE 3510–22–F

Proposed Rules

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AWP–25]

Proposed Amendment of Class E Airspace; Grass Valley, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Grass Valley, CA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 07 at Nevada County Airpark has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations as Nevada County Airpark, Grass Valley, CA.

DATES: Comments must be received on or before November 13, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Operations Branch, AWP–530, Docket No. 96–AWP–25, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Operations Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-adressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AWP–25.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Operations Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending the Class E airspace area at Grass Valley, CA. The development of GPS SIAP at Nevada County Airpark has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS RWY 07 SIAP at Nevada County Airpark, Grass Valley, CA. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the Earth are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace area extending upward from 700 feet or more above the surface of the Earth

* * * * *

AWP CA E5 Grass Valley, CA [Revised]

Nevada County Airpark, CA
(lat. 39°13′28″N, long. 121°00′09″W)
Marysville VOR/DME
(lat. 39°05′55″N, long. 121°34′23″W)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of the Nevada County Airpark and within 3.5 miles south of the Marysville VOR/DME 074° radial extending from 13.9 miles east of the Marysville VOR/DME to the 4.3-mile radius of the Nevada County Airpark; thence counterclockwise via the 4.3-mile radius of the Nevada County Airpark to Lat. 39°17′00″N, 121°03′30″W, thence westbound along lat. 37°17′00″N, to a point 13.9 miles northeast of the Marysville VOR/DME, thence clockwise along the 13.9 mile DME of the Marysville VOR/DME, to the point of beginning, excluding the Beale AFB Class C airspace area.

* * * * *

Issued in Los Angeles, California, on October 23, 1996.

George D. Williams,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 96–28106 Filed 10–31–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AEA–11]

Proposed Amendment to Class E Airspace; Staunton, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Staunton, VA. The development of a new Standard Instrument Approach Procedure (SIAP) at Shenandoah Valley Regional Airport based on the Global Positioning System (GPS) has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before December 5, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AEA–530, Docket No. 96–AEA–11, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

An informal docket may also be examined during normal business hours in the Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Operations Branch, AEA–530 F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AEA–11.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace area at Staunton, VA. A GPS RWY 23 SIAP has been developed for the Shenandoah Valley Regional Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration

proposes to amend 14 CFR Pat 71 as follows:

PART 71—[AMENDED]

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

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

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the Earth

* * * * *

AEA VA E5 Staunton, VA [Revised]

Shenandoah Valley Regional Airport, VA (lat. 38° 15′49″ N, long. 78° 53′47″ W)

That airspace extending upward from 700 feet above the surface within a 10.5-mile radius of Shenandoah Valley Regional Airport and within 8 miles northwest and 4 miles southeast of the Shenandoah Valley Regional Airport localizer southwest course extending from the STAUT NDB to 16 miles southwest of the NDB and within a 6.8-mile radius of Bridgewater Air Park and within 4 miles northwest and 8 miles southeast of the 208° bearing from the Bridgewater NDB extending from the NDB to 16 miles southwest of the NDB.

* * * * *

Issued in Jamaica, New York, on October 21, 1996.

John S. Walker,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 96–28109 Filed 10–31–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 382

[Docket OST–96–1880; Notice 96–25]

RIN 2105–AC28

Nondiscrimination on the Basis of Handicap in Air Travel

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The Department is proposing to amend its rules implementing the Air Carrier Access Act of 1986 concerning seating accommodations for individuals with disabilities and the stowage of collapsible electric wheelchairs. These proposals are the result of petitions for rulemaking on which the Department previously received comment. The Department is also proposing to clarify the meaning of the general nondiscrimination provision in the Air Carrier Access Act rule. The Department is also seeking comment on petitions requesting a smoke-free path through airports for passengers with severe respiratory disabilities.

DATES: Comments are requested within January 30, 1997. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent, preferably in triplicate, to Docket Clerk, Docket No. OST–96–1880, Department of Transportation, 400 7th Street, S.W., Room PL–401, Washington, D.C., 20590. We request that, to facilitate scanning comments into the Department's electronic docket system, commenters put comments on 8½ by 11 inch white paper using dark ink, without tabs and unbound. Comments will be available for inspection at this address from 9:00 a.m. to 5:00 p.m., Monday through Friday. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date-stamp the postcard and mail it back to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, S.W., Room 10424, Washington, D.C., 20590. (202) 366–9306 (voice); (202) 755–7687 (TDD); or Nancy Ebersole, Office of the Assistant Secretary for Transportation Policy, same street address, Room 9217, (202) 366–4864.

SUPPLEMENTARY INFORMATION:

Background

In its September 1993 notice of proposed rulemaking on the Air Carrier Access Act (ACAA) rules (58 FR 47681; September 9, 1993), the Department asked for comment on three petitions for rulemaking. These concerned use of oxygen by airline passengers, seating accommodations for passengers with disabilities, and the stowage of collapsible electric wheelchairs. The Department is considering addressing the first of these issues through a negotiated rulemaking. The Department has decided to grant the other two petitions, by issuing this NPRM proposing amendments to the ACAA rule. The public will have the opportunity to comment on these proposals before the Department takes any final action on them. In addition, having become aware of misunderstanding on the part of some parties concerning the scope and nature of the general nondiscrimination obligation under the ACAA, the Department is proposing a clarification of Part 382's statement of that obligation.

General Nondiscrimination Obligation

The history of the ACAA clearly shows that Congress enacted the statute to fill a gap in nondiscrimination coverage left by a Supreme Court decision that said that section 504 of the Rehabilitation Act did not apply to air carriers, since they do not (with the exception of participants in the Essential Air Service program) receive Federal financial assistance. The intent of the statute was to achieve the same protection from discrimination for airline passengers that section 504 provides persons affected by Federally-assisted programs. For a summary of the history of the Act, see the preamble to the Department's 1990 final ACAA rule (55 FR 8009; March 6, 1990).

When Congress enacted the Americans with Disabilities Act (ADA), it excluded transportation by aircraft from the definition of ''specified public transportation.'' Congress did so specifically because air transportation was covered by the ACAA. (*See* H. Rept. 101–485, Pt. 1; May 14, 1990; p. 36.) There is no evidence that Congress intended this exclusion, which simply avoids duplication in coverage, to suggest that a weaker standard of nondiscrimination applies to air carriers than to transportation providers covered by the ADA.

Under section 504 and the ADA, providers of transportation and other facilities and services to the public have the obligation to take steps to accommodate customers who have disabilities, though these obligations have limits. For example, places of public accommodation under Title III of the ADA are required to make

> reasonable modifications in policies, practices, or procedures, when the modifications are necessary to afford goods, services, facilities, privileges, or accommodations to individuals with disabilities, unless the public accommodation can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, or accommodations. (28 CFR § 36.302.(a))

Under the ADA, public accommodations must remove barriers where doing so is ''readily achievable i.e., easily accomplishable and able to be carried out without much difficulty or expense'' (28 CFR § 36.304(a)). One option open to a public accommodation is making its services available through readily achievable alternative means where barrier removal itself is not

readily achievable (28 CFR § 36.305(a)). These provisions are intended to be compatible with the section 504 standards, which requires recipients of Federal funds to make accommodations to the needs of individuals with disabilities, as long as doing so does not create undue financial or administrative burdens.

The Department has become aware that there may be some misunderstanding concerning the applicability of these basic nondiscrimination principles to air carriers. To avoid such misunderstanding, the Department is proposing to add language to the nondiscrimination section of Part 382 reciting explicitly the existing legal requirement that carriers have the duty of accommodating disabilities of passengers, consistent with these principles, even where a specific accommodation is not mandated elsewhere in the regulation.

Seating Assignments to Accommodate Passengers' Disabilities

Background

Section 382.37 of the existing rule, concerning seating assignments, prohibits carriers from excluding a person from a particular seat location or requiring a person to sit in a particular location, on the basis of disability, with certain exceptions (e.g., to comply with the FAA's exit row seating rule). The intent of this provision was to preclude carriers from limiting a passenger's choice of seats on the basis of disability. The issue in this rulemaking is the other side of this coin: should carriers be required to provide a particular seat assignment that a passenger needs to accommodate a disability?

The petitioner, a consumer, has a disability that prevents her from bending one of her legs. She requested that the ACAA rule be modified to require airlines to seat a passenger in a location requested by the passenger (e.g., a bulkhead seat) when sitting in that location is necessary to reasonably accommodate the passenger's disability, even if this requires changing the seat assignment of another passenger. In addition to asking for comment on this petition, the 1993 NPRM also requested comment on whether, if such a requirement were added to the rule, carriers should be permitted to require advance notice for this accommodation.

Comments

There was strong support for this petition from consumers. About 50 comments from passengers and disability groups said that airlines should accommodate passengers with disabilities by placing them in a seat that facilitates their travel. Examples cited in the comments included ensuring that passengers with mobility impairments had the opportunity to sit in a a row with a movable aisle armrest, that people with fused legs could sit in bulkhead seats, that personal care attendants could sit next to passengers whom they serve, and that people with guide dogs could choose either a bulkhead or non-bulkhead seat.

One commenter suggested that, if an appropriate seat in coach was not available, the airline should offer a first-class upgrade if it would facilitate the passenger's travel and there was a seat available in first class. A few commenters suggested that it would be acceptable for an airline to require passengers requesting a seating accommodation to provide documentation of their need (e.g., a note from their doctor). Four disability community commenters opposed permitting airlines to request advance notice for providing seating accommodations. Three commenters suggested that seating accommodations be made for tall people, since they have trouble being comfortable in many airline seats, and one suggested similar treatment for parents traveling with infants.

Carriers and their associations generally opposed the petition. They had several objections. First, it would be difficult to determine which people deserved priority for seating accommodations. For example, if multiple persons arrived for a flight and asked for a bulkhead seat, how would carrier personnel decide who should be selected to receive the desired seat? Airline personnel should not have to decide who is the most deserving passenger. Second, it would be unfair and annoying to other passengers who were asked to move to make room for the disabled passengers. Passengers typically reserve flights on a first-come/first-serve basis, and often seek aisle or bulkhead seats because there is more space there, because they are tall, because they have infants to care for, etc. They do not want to be bumped from the seat assignment they had called in advance to obtain. Third, having to deal with seat reassignments would distract flight attendants and other personnel from other pre-flight duties, including those related to safety.

One commenter pointed out that, like other passengers, people with disabilities could call early for a seat assignment in order to get the accommodation they wanted. This commenter suggested that carriers should not have to do more than hold back one or two seats from advance assignment, and then only until 24 hours before departure. Another commenter suggested that, rather than mandating seating accommodations, airlines should ask for volunteers to move from seats, perhaps providing incentives like extra frequent-flier miles. One commenter thought disabled passengers present a risk because they clog the aisles. The commenter believes that such passengers should be kept out of aisle seats and deplaned last. Another said that passengers who want extra room should pay for it or find another mode of transportation. Three commenters thought that passengers desiring seating accommodations should have to provide advance notice, to minimize last-minute seat changes for other passengers.

DOT Response

As noted above, carriers have an obligation to accommodate the disabilities of passengers, through means such as altering policies and practices, as long as doing so does not create an undue financial or administrative burden or fundamentally alter the nature of the service provided. After reviewing the comments on this petition, the Department believes that responding to requests for seat assignments to accommodate the needs of an individual with a disability comes well within the scope of this obligation.

Many people with disabilities—particularly those with mobility impairments—find it very difficult to travel by air in the absence of seat assignments that facilitate their use of the aircraft. Having to transfer over a fixed aisle armrest, when moveable armrests are available elsewhere in the cabin, burdens wheelchair users. Sitting in a middle non-bulkhead seat may make it unfeasible for someone with a fused leg to travel. Sitting apart from a personal care attendant may make it impossible for a person with severe mobility impairment to eat or to receive other needed assistance during the flight. Seating accommodations that permit an individual who travels with a service animal to sit with the animal may also be necessary.

The proposal would apply only to requests in these four categories. The Department does not believe it would be relevant to apply the provision to persons with other disabilities (e.g., vision or hearing impairments, less severe mobility impairments). However, we seek comments on whether there are additional situations in which seating accommodations should be provided. In addition, we seek comment on whether

it is necessary or appropriate for persons seeking these seating accommodations to provide any documentation to the carrier.

To accommodate these needs of individuals with disabilities would not appear to impose significant financial or administrative burdens on carriers, or fundamentally alter the nature of the service they provide to passengers. What appears to be needed is a limited modification of existing administrative policies. There could be some inconvenience to other passengers, but when a carrier is implementing a nondiscrimination statute like the ACAA, accommodating the needs of passengers with disabilities outweighs this inconvenience.

Under the proposal, a passenger seeking seating accommodations would call the airline at least 48 hours before the scheduled departure of the flight (see discussion of advance notice below). If the airline had any seats that would provide the accommodation that had not yet been assigned to another passenger, it would assign such a seat to the requester. This includes situations in which there are unassigned seats that have not been made available for assignment to the general passenger population (e.g., seats that are not assigned until a short time before the flight or that are held for frequent fliers). If, however, all seats in which the needed accommodation could be provided to the requester have been assigned to other passengers, the airline would change the seat assignment of another passenger. In no case, however, would another passenger be bumped off the flight to accommodate the seating requests of an individual with a disability.

Part 382 already contains a number of accommodations for disabled passengers for which carriers may request advance notification (see 14 CFR § 382.33(b)). The purpose of this provision is to give carriers time to prepare to provide the accommodations. While the Department is aware that consumers with disabilities have opposed provisions of this kind, we believe that they strike a fair balance between the needs of passengers to receive accommodations and the needs of carriers to do the work of providing them. Therefore, in addition to requiring seating accommodations, we propose to add a 48 hours' advance notice provision.

We would point out that, for all accommodations to which the advance notice provisions apply, a carrier is required to provide the accommodation even when the passenger does not provide advance notice, if the carrier can do so by making a reasonable effort that will not delay the flight (see 14 CFR § 382.33(c)). In the case of seating accommodations, this should prove possible to do in most instances, since all that may be involved is a quick request by carrier personnel to another passenger to switch seats to accommodate the situation of a disabled passenger. While, in a case where advance notice had not been provided, the airline would not be mandated to change another passenger's seating assignment, the carrier would be obligated to make the request, and could, as comments suggested, provide incentives to persons who agreed to a seat assignment change.

The Department does not believe that implementing this proposed requirement would place carriers in the position of determining who was the most deserving occupant of a given seat. Airlines could, under the proposal, operate in a ''first-come/first-served'' manner. That is, if a passenger with a disability for which sitting in a bulkhead seat would be an accommodation (e.g., an individual with a fused leg, a passenger traveling with a service dog) makes a request to sit in that seat, another passenger subsequently requesting that seat as an accommodation to a disability could be told that the seat was unavailable. The airline would find a different seat to accommodate the second passenger to the extent feasible.

A few things that this NPRM does not propose to require in this provision should be noted. The proposal would not require airlines that do not pre-assign seats to passengers to begin doing so. These airlines allow passengers needing various kinds of accommodations to preboard. Permitting passengers who need particular kinds of seating accommodations to preboard would satisfy the intent of this provision. It might be necessary, however, for the carrier to request or direct that some preboarded passengers move to accommodate a passenger with a disability who needed a particular seat location as an accommodation. The Department seeks comment on whether any specific regulatory provisions are needed to handle this situation.

Nor would this proposal require the airline to provide upgrades to first class for coach passengers or provide more than one seat to an individual. In this context, we note that the Department has received occasional inquiries concerning passengers who are very obese. It may be necessary for some such passengers to occupy the space of two seats. The Department has been asked whether it is consistent with the ACAA for carriers to charge for two seats in this situation. We have replied that, if an individual is actually using two seats, it is not discriminatory for the airline to charge the individual for two seats. The Department seeks comments on whether this approach should be changed. Should there be circumstances in which such a passenger should be accommodated without being charged for more than one seat?

Handling of Collapsible Electric Wheelchairs

Background

The Department received a petition from Mr. Ralph Black, an attorney representing a consumer who uses a collapsible electric wheelchair, powered by a non-spillable battery. The consumer has encountered difficulty with airlines that, in her view, treat the wheelchair as it were a non-collapsible wheelchair powered by a spillable battery. The petition set forth a rationale for changing the ACAA rule and suggested revisions to the rule's language.

Comments

Disability commenters generally supported this petition. A few expressed the concern that airlines may damage wheelchairs, either by dropping them when being located into the luggage compartment or when disassembling or reassembling them. (Two carriers suggested, in response to this latter problem, that wheelchair manufacturers or passengers be required to provide written instructions for disassembly and reassembly.)

Air carrier comments focused on the battery-related portions of the petition. They reiterated a long-standing industry concern that passengers are not reliable sources of information about whether a battery is spillable or non-spillable. Reliance on passenger-representations, they said, could lead to safety problems. Some carrier comments suggested that FAA certify or label which batteries are non-spillable or that carriers be able to rely on their own list of approved non-spillable batteries.

DOT Response

The Department has decided to partially grant this petition for rulemaking. We believe it is useful to clarify that collapsible electric wheelchairs, like folding manual wheelchairs, can be carried in the cabin if they can be transported in appropriate storage locations, such as in closets or overhead compartments, or under seats. Indeed, commenters appeared to have

no objections to this idea. The Department has interpreted its existing rule consistent with this idea. Consequently, we are proposing to adopt the petitioner's proposed amendment to § 382.41(g)(2), as well as adding clarifications to § 382.41(e) concerning in-cabin storage.

However, the issue of distinguishing spillable from non-spillable batteries continues to be complex, and it continues to be discussed among the Department and representatives of the industry and disability community. We believe that is premature to propose further rulemaking on the subject of handling batteries at this time. We also believe that the existing, permissive provision concerning written instructions for disassembly and reassembly is adequate. We do not see in the comments an adequate basis for making the provision of such instructions mandatory.

Additional Provisions for Passengers With Hearing Impairments

The Department has received some suggestions for additional rulemaking concerning accommodations for persons with hearing impairments. These include captioning of video material (e.g., movies and other entertainment features) shown on the aircraft, and making telecommunications devices for the deaf (TDDs) available where air phone service is provided to other passengers. Part 382 requires captioning of safety videos, but not other videos shown on flights. Another suggestion was for providing assistive listening technology for public address announcements in the aircraft. The Department has also received suggestions for electronic message and/or assistive listening technology in gate areas, to ensure that hearing-impaired passengers would receive information about flight departures and arrivals, boarding announcements, etc. The Department seeks comment on the need for such accommodations, as well as their technical feasibility and cost.

Petitions Concerning an Accessible Path Through Airports for Persons With Severe Respiratory Disabilities

The Department is seeking comment on petitions from individuals with respiratory disabilities for a requirement for an accessible path through airports. Petitions on this subject have been received from Dr. Dwain Eckberg, a physician and medical school faculty member from Richmond, Virginia, and Dr. Judith Plotkin, a Maryland resident. Both individuals suggested that the Department add regulatory provisions to protect such individuals from exposure to tobacco smoke.

The petitions make the point that some individuals have respiratory conditions that can create significant health problems for them if they are exposed to tobacco smoke. If such an individual must, in order to get from the entrance of an airport to an aircraft, pass through areas in which he or she is exposed to smoke, he or she may suffer these health problems, require oxygen that is not immediately available, or require emergency medical treatment. Exposure to smoke, then, acts as a significant barrier for such individuals to the use of the air travel system.

If granted, these petitions would lead to a proposal that carriers and airports carrier ensure that an individual with a severe respiratory disability that is triggered by exposure to tobacco smoke have available a path of access from the terminal entrance to the aircraft free from exposure to tobacco smoke. As with other airport terminal accessibility issues, amendments to both the ACAA and section 504 rules would be needed as part of such a proposal. The air carrier and airport would be expected to work together to meet an obligation to provide such passengers with a means of getting to an aircraft that does not expose them to significant adverse health effects.

We anticipate that any proposal resulting from this petition would not specify or limit the means to be used. A smoke-free path through the airport, transportation from the gate to the tarmac that does not go through a terminal in which smoke is present, an enclosed cart that took the passenger through the airport without exposure to smoke that was present, etc. might all be possibilities.

The Department would not intend, if it granted these petitions, to propose to ban all smoking in terminals. Regulating smoking in public places is traditionally a state or local matter, and the Department would not attempt to pre-empt state or local decisionmaking.

The Department seeks comment on whether we should propose a provision of the kind requested by the petitioners. We seek comments on the extent to which such a provision is needed and on cost and feasibility considerations that should be taken into account.

The Department is also aware of people with environmental sensitivities to a wide variety of common substances (e.g., cleaning agents, perfumes). In some cases, these sensitivities may be severe. In addition to seeking comment on whether to proceed with a proposal based on the petitions, the Department seeks comment on whether it would be desirable and feasible to have similar provisions for people with severe environmental sensitivities.

Regulatory Analyses and Notices

This NPRM does not propose a significant rule under Executive Order 12866 or a significant rule under the Department's Regulatory Policies and Procedures. The Department certifies that this rule, if adopted, would not have a significant economic effect on a substantial number of small entities. The basis for this statement is that the modifications to airline practices and procedures involved if the rules are made final would involve little additional cost to carriers or airports.

The Department has determined that there would not be sufficient Federalism impacts to warrant the preparation of a Federalism Assessment. As it implements a nondiscrimination statute, this rule is not subject to scrutiny under the Unfunded Mandates Act.

List of Subjects in 14 CFR Part 382

Aviation, Handicapped.

Issued this 8th Day of October, 1996, at Washington, D.C.

Federico Peña,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department proposes to amend 14 CFR Part 382 as follows:

1. The authority citation for 14 CFR Part 382 would continue to read as follows:

Authority: 49 U.S.C. 41702, 47105, and 41712.

2. In § 382.7, a new paragraph (c) would be added to read as follows:

§ 382.7 General prohibition of discrimination.

* * * * *

(c) In carrying out their nondiscrimination obligations under this part, carriers shall, in addition to meeting the specific requirements of this part, provide accommodations to passengers with disabilities and remove barriers to the use of facilities and aircraft by such passengers. In meeting this obligation, carriers shall apply the standards of section 504 of the Rehabilitation Act of 1974, as amended, and Title III of the Americans with Disabilities Act.

3. In § 382.33(b), the ''and'' at the end of paragraph (b)(7) is proposed to be removed, a semicolon and the word ''and'' are proposed to be substituted for the period at the end of paragraph (b)(8), and a new paragraph (b)(9) is proposed to be added, to read as follows:

§ 382.33 Advance notice requirements.

* * * * *

(b) * * *

(9) Designation of a particular seat as an accommodation to a passenger's disability.

* * * * *

4. In § 382.37, a new paragraph (d) is proposed to be added to read as follows:

§ 382.37 Seat assignments.

* * * * *

(d) On request of a passenger with a disability designated in paragraph (d)(1) of this section for a particular seat assignment needed to accommodate the disability, the carrier shall provide the seat assignment to the passenger.

(1) Requests for seating accommodations required to be accommodated under this paragraph include a request by a wheelchair user for a seat in a row with a moveable armrest, a request by a person traveling with a personal care attendant whose services will be needed on the flight to sit next to the personal care attendant, a request by an individual traveling with a service animal for a bulkhead or non-bulkhead seat, or a request by an individual with a fused or immobile leg for a bulkhead seat or other seat that provides greater legroom than other seats.

(2) In responding to requests from passengers for seat assignments to accommodate a disability, carriers shall comply with FAA safety rules, including those pertaining to exit row seating (see 14 CFR 121.585 and 14 CFR 135.129).

(3) When a person makes a request for a seating accommodation covered by paragraph (d)(1) of this section, the carrier shall assign the person a seat providing the requested accommodation if it has not already been assigned, even if the seat is not available for assignment to other passengers at the time.

(4) When a person makes a request for a seating accommodation covered by paragraph (d)(1) of this section, and all seats providing the requested accommodation have already been assigned to other passengers, the carrier shall change the seat assignment of other passengers as needed to provide the accommodation.

(5) The carrier is not required to provide the accommodations in paragraphs (d) (4) and (5) in response to a request made less than 48 hours before the scheduled departure time of the flight.

(6) If an individual making the request does not make it 48 hours before the scheduled departure time of the flight, the carrier shall attempt to meet the request by asking other passengers to move to a different seat location to accommodate the individual. No other passenger shall be required to change assigned seats, however.

(7) If the carrier has already assigned a seat to an individual with a disability in response to a request covered by this paragraph, the carrier shall not reassign that individual to another seat in response to a subsequent request from another individual with a disability without the first individual's consent.

(8) In no case shall any passenger be removed from a flight or denied transportation in order to accommodate an individual with a disability under this paragraph.

5. In § 382.41, paragraphs (e)(2) and (g)(2) are proposed to be revised to read as follows:

§ 382.41 Stowage of personal equipment.

* * * * *

(e) * * *

(2) In an aircraft in which a closet or other approved stowage area is provided in the cabin for passengers' carry-on items, of a size that will accommodate a folding, collapsible, or break-down wheelchair, the carrier shall designate priority stowage space, as described in paragraph (e)(2)(ii) of this section for at least one such wheelchair in that area.

(ii) An individual with a disability who takes advantage of a carrier offer of the opportunity to preboard the aircraft may stow his or her wheelchair in this area, with priority over the carry-on items brought onto the aircraft by other passengers enplaning at the same airport. An individual with a disability who does not take advantage of a carrier offer of the opportunity to preboard may use the area to stow his or her wheelchair on a first-come, first-served basis along with all other passengers seeking to stow carry-on items in the area.

(g) * * *

(2) Whenever feasible, the carrier shall transport electric-powered wheelchairs secured in an upright position, so that batteries need not be separated from the wheelchair in order to comply with DOT hazardous materials rules. However, when an electric-powered wheelchair is designated to fold or collapse, the passenger may request that the batteries be removed and the wheelchair be folded. The carrier shall, in any case, take those actions (and only those actions) required by DOT hazardous materials regulations with respect to the transportation of batteries by air.

* * * * *

[FR Doc. 96–27192 Filed 10–31–96; 8:45 am]

BILLING CODE 4910–62–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 300

[Release No. SIPA–160; File No. SIPC–96–1]

Rules of the Securities Investor Protection Corporation

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule change.

SUMMARY: The Securities Investor Protection Corporation (''SIPC'') filed a proposed rule change with the Securities and Exchange Commission (''Commission''). The proposed rule change amends SIPC Rules 300 [1] and 301,[2] which relate to the closeout and completion of contracts for the purchase or sale of securities made by debtors in liquidation under the Securities Investor Protection Act of 1970 (''SIPA''). The Commission is publishing the proposed rule change for public comment. Within thirty-five days of publication of notice, the Commission must (absent an extension) by order approve the proposed rule change or institute disapproval proceedings. Because SIPC rules have the force and effect as if promulgated by the Commission, those rules are published in Title 17 of the Code of Federal Regulations.[3]

DATES: Comments are to be received on or before November 22, 1996.

ADDRESSES: 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 submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal

[1] 17 CFR 300.300 (1996). Rule 300 sets out the definitions of certain terms used in SIPC's rules.

[2] 17 CFR 300.301 (1996). Rule 301 governs contracts to be closed out or completed in a liquidation.

[3] 17 CFR 300.100–300.503 (1996).

office of SIPC. All submissions should refer to file number SIPC–96–1. Comments also may be submitted electronically at the following E–Mail address: rule-comments@sec.gov. All comment letters should refer to file number SIPC–96–1. This rule number should be included on the subject line if E-mail is used. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, 202/942–0131, Peter R. Geraghty, Assistant Director, 202/942–0177, or Louis A. Randazzo, Special Counsel, 202/942–0191, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: Pursuant to Section 3(e)(2)(A) of SIPA,[4] notice is hereby given that SIPC filed with the Securities and Exchange Commission on October 10, 1996, the proposed rule change as described in Item I below, which item has been prepared primarily by SIPC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. SIPC's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SIPC 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 above. SIPC has prepared the following summary of the purpose of and statutory basis for the proposed rule change.[5]

Section 8(e) of SIPA requires SIPC to adopt rules with respect to the closeout of contracts with a debtor for the purchase or sale of securities in the ordinary course of its business.[6] The purpose of the proposed rule change is to amend SIPC's Series 300 Rules, which address the closeout or completion of contracts for the purchase or sale of securities made by debtors in a liquidation under SIPA with other brokers or dealers, to be consistent with Commission Rule 15c6–1.[7] Rule 15c6–1, which became effective in June of 1995,[8] establishes three business days as the standard settlement timeframe for most securities transactions.[9] The adoption of a three business day settlement timeframe affected SIPC Rules 300 and 301, which currently refer to a five business day settlement timeframe.[10] Because Rule 15c6–1 does not affect SIPC Rules 302 through 307, SIPC does not propose to amend these rules. The proposed rule change also makes a technical correction to conform a statutory citation in Rule 300 to the correct section SIPA.[11]

II. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 SIPC 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.

To allow public access to SIPC's rules, SIPC rules that are approved by the Commission are published under Part 300 of 17 CFR Chapter II.

III. Statutory Analysis

Pursuant to SIPA and particularly Section 3(e),[12] SIPC proposes to amend 300.300 and 300.301 of Title 17 of the Code of Federal Regulations in the manner set forth below.

IV. List of Subjects in 17 CFR Part 300

Brokers, Securities, Securities Investor Protection Corporation.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 300—RULES OF THE SECURITIES INVESTOR PROTECTION CORPORATION

1. The authority citation for part 300 continues to read as follows:

Authority: Section 3, 84 Stat. 1636, as amended; 15 U.S.C. 78ccc.

§ 300.300 [Amended]

2. Section 300.300 is proposed to be amended by removing the reference to ''section 16(8)'' and adding ''section 16(7)'' in paragraph (a), and removing the reference to ''five business days'' and adding ''three business days'' in paragraph (c).

§ 300.301 [Amended]

3. Section 300.301 is proposed to be amended by removing the references to ''five business days'' and adding ''three business days'' in paragraphs (a)(2)(i) and (a)(2)(ii).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Dated: October 25, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–28007 Filed 10–31–96; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78ccc(e)(2)(A) (1995).

[5] The Commission has modified the language in this section.

[6] 15 U.S.C. 78ccc(8)(e) (1995).

[7] 17 CFR 240.15c6–1 (1996).

[8] *See* Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891 (October 13, 1993).

[9] Specifically, Rule 15c6–1 provides, among other things, that a broker-dealer shall not effect or enter into a contract for the purchase or sale of a security that provides for payment of funds and delivery of securities later than the third business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction. Prior to the effective date of Rule 15c6–1, the settlement cycle for securities transactions was five business days. *See* Release No. 33023, *supra* note 8.

[10] In order to remain consistent with the Commission's three business day settlement timeframe, SIPC proposes to amend the term ''open contractual commitment'' in Rule 300(c) by replacing the reference to five business days with three business days. Specifically, Rule 300(c) is proposed to be amended, in part, to provide that the term ''open contractual commitment'' means a failed to receive or a failed to deliver which had a settlement date prior to the filing date and the respective obligations of the parties remained outstanding on the filing date or had a settlement date which occurs on or within three business days subsequent to the filing date. In addition, SIPC proposes to amend Rule 301 by replacing the references to five business days with three business days.

[11] SIPC proposes to amend Rule 300(a) by replacing the reference to section 16(8) of SIPA with section 16(7) of SIPA.

[12] U.S.C. 78ccc(3)(e) (1995).

[13] 17 CFR 200.30–3(f)(3) (1996).

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AE64

Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA)

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend regulations concerning medical care for survivors and dependents of certain veterans, hereinafter referred to as the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA). These proposed regulations would establish basic policies and procedures governing the

administration of the CHAMPVA program, including CHAMPVA claims processing procedures and a description of benefits and services.

DATES: Comments must be received on or before December 31, 1996.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AE64.'' All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Susan Schmetzer, Health Administration Center (formerly CHAMPVA Center), P.O. Box 65023, Denver, CO 80206–5023, at (303) 331–7552. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The provisions of 38 U.S.C. 1713 authorize VA to provide medical care to the dependents and survivors of certain veterans ''in the same or similar manner and subject to the same or similar limitations'' as medical care is furnished by the Department of Defense (DoD) to certain dependents and survivors of active duty and retired members of the Armed Forces under 10 United States Code, Chapter 55, Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). This document proposes to amend VA regulations to include CHAMPVA claims processing procedures.

It is also noted that during the past several years VA has made changes with respect to CHAMPVA claims processing services. Previously, VA had an agreement with DoD to contract with commercial claims processors (fiscal intermediaries) for the processing of VA claims. However, in an effort to both contain costs and to improve services to the beneficiaries, VA now conducts its own claims processing services and has consolidated the operations in Denver, Colorado.

The Secretary hereby certifies that these regulatory amendments would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. § 601–612. These amendments would not cause significant economic impact on health care providers, suppliers, or entities since only a small portion of their business concerns CHAMPVA beneficiaries. The proposed rule would mostly impact individuals who are VA beneficiaries. Pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance Program numbers are 64.009, 64.010, 64.011.

Lists of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental services, Drug abuse, Foreign relations, Government contracts, Grant programs-Health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Veterans.

Approved

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 17 is proposed to be amended as set forth below:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

2. Section 17.84 is removed.

3. A new center heading consisting of §§ 17.270–17.278 is added to read as follows:

Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA)—Medical Care for Survivors and Dependents of Certain Veterans

Sec.
17.270 General Provisions
17.271 Eligibility
17.272 Benefit Limitations/Exclusions
17.273 Preauthorization
17.274 Cost Sharing
17.275 Claim Filing Deadline
17.276 Appeal/Review Process
17.277 Third Party Liability/Medical Care Cost Recovery
17.278 Confidentiality of Records

§ 17.270 General Provisions.

(a) CHAMPVA is the Civilian Health and Medical Program of the Department of Veterans Affairs. Pursuant to 38 U.S.C. 1713, VA is authorized to provide medical care in the same or similar manner and subject to the same or similar limitations as medical care furnished to certain dependents and survivors of active duty and retired members of the Armed Forces. The CHAMPVA program is designed to accomplish this purpose. Under CHAMPVA, VA shares the cost of medically necessary services and supplies for eligible beneficiaries as set forth below.

(b) For purposes of this section, the definitions of ''child,'' ''service-connected condition/disability,'' ''spouse,'' and ''surviving spouse'' shall be those set forth further in 38 U.S.C. 101. The term ''fiscal'' year refers to October 1, through September 30.

(Authority: 38 U.S.C. 1713)

§ 17.271 Eligibility.

(a) The following persons are eligible for CHAMPVA benefits provided that they are not eligible for CHAMPUS or Medicare Part A (except as noted in 17.271).

(1) The spouse or child of a veteran who has been adjudicated by VA as having a permanent and total service-connected disability;

(2) The surviving spouse or child of a veteran who died as a result of an adjudicated service-connected condition(s); or who, at the time of death, was adjudicated permanently and totally disabled from a service-connected condition(s);

(3) The surviving spouse or child of a person who died on active military service and in the line of duty and not due to such person's own misconduct; and

(4) An eligible child who is pursuing a full-time course of instruction approved under 38 U.S.C. Chapter 36, and who incurs a disabling illness or injury while pursuing such course (between terms, semesters or quarters; or during a vacation or holiday period) which is not the result of his or her own willful misconduct and which results in the inability to continue or resume the chosen program of education shall remain eligible for medical care until:

(i) the end of the six-month period beginning on the date the disability is removed; or

(ii) the end of the two-year period beginning on the date of the onset of the disability; or

(iii) the twenty-third birthday of the child, whichever occurs first.

(Authority: 38 U.S.C. 1713)

(b) Persons who lose eligibility for CHAMPVA by becoming potentially eligible for Medicare Part A as a result of reaching age 65 or who qualify for Medicare Part A benefits on the basis of a disability, including end stage renal disease, may re-establish CHAMPVA eligibility by submitting documentation from the Social Security Administration (SSA) certifying their non-entitlement to or exhaustion of Medicare Part A benefits. Persons under age 65 who are enrolled in both Medicare Part A and B

may become potentially eligible for CHAMPVA as a secondary payer to Medicare. In cases where CHAMPVA eligibility is restored upon exhaustion of Medicare benefits, CHAMPVA coverage will extend even during subsequent periods of Medicare eligibility. When both CHAMPVA and Medicare eligibility exist, CHAMPVA shall be the secondary payer.

(Authority: 38 U.S.C. 1713(d))

§ 17.272 Benefits Limitations/Exclusions.

(a) Benefits cover allowable expenses for medical services and supplies that are medically necessary and appropriate for the treatment of a condition and that are not specifically excluded from program coverage. Covered benefits may have limitations. The fact that a physician may prescribe, order, recommend, or approve a service or supply does not, of itself, make it medically necessary or make the charge an allowable expense, even though it is not listed specifically as an exclusion. The following are specifically excluded from program coverage:

(1) Services, procedures or supplies for which the beneficiary has no legal obligation to pay, or for which no charge would be made in the absence of coverage under a health benefits plan.

(2) Services and supplies required as a result of an occupational disease or injury for which benefits are payable under workers' compensation or similar protection plan (whether or not such benefits have been applied for or paid) except when such benefits are exhausted and are otherwise not excluded from CHAMPVA coverage.

(3) Services and supplies that are paid directly or indirectly by a local, state or Federal government agency (Medicaid excluded), including court-ordered treatment.

(4) Services and supplies that are not medically or psychologically necessary for the diagnosis or treatment of a covered condition (including mental disorder) or injury.

(5) Radiology, laboratory, and pathological services and machine diagnostic testing not related to a specific illness or injury or a definitive set of symptoms.

(6) Services and supplies above the appropriate level required to provide necessary medical care.

(7) Services and supplies related to an inpatient admission primarily to perform diagnostic tests, examinations, and procedures that could have been and are performed routinely on an outpatient basis.

(8) Postpartum inpatient stay of a mother for purposes of staying with the newborn infant (primarily for the purpose of breast feeding the infant) when the infant (but not the mother) requires the extended stay; or continued inpatient stay of a newborn infant primarily for purposes of remaining with the mother when the mother (but not the newborn infant) requires extended postpartum inpatient stay.

(9) Therapeutic absences from an inpatient facility or residential treatment center (RTC).

(10) Custodial care.

(11) Inpatient stays primarily for domiciliary care purposes.

(12) Inpatient stays primarily for rest or rest cures.

(13) Services and supplies provided as a part of, or under, a scientific or medical study, grant, or research program.

(14) Services and supplies not provided in accordance with accepted professional medical standards or related to experimental or investigational procedures or treatment regimens.

(15) Services or supplies prescribed or provided by a member of the beneficiary's immediate family, or a person living in the beneficiary's or sponsor's household.

(16) Services and supplies that are (or are eligible to be) payable under another medical insurance or program, either private or governmental, such as coverage through employment or Medicare.

(17) Service or supplies subject to preauthorization (see § 17.273) which were obtained without the required preauthorization; and services and supplies which were not provided according to the terms of the preauthorization.

(18) Inpatient stays primarily to control or detain a runaway child, whether or not admission is to an authorized institution.

(19) Services and supplies in connection with cosmetic surgery.

(20) Electrolysis.

(21) Dental care with the following exceptions:

(i) Dental care that is medically necessary in the treatment of an otherwise covered medical condition is an integral part of the treatment of such medical condition, and is essential to the control of the primary medical condition.

(ii) Dental care required in preparation for, or as a result of, radiation therapy for oral or facial cancer.

(iii) Gingival Hyperplasia.

(iv) Loss of jaw substance due to direct trauma to the jaw or due to treatment of neoplasm.

(v) Intraoral abscess when it extends beyond the dental alveolus.

(vi) Extraoral abscess.

(vii) Cellulitis and osteitis which is clearly exacerbating and directly affecting a medical condition currently under treatment.

(viii) Repair of fracture, dislocation, and other injuries of the jaw, to include removal of teeth and tooth fragments only when such removal is incidental to the repair of the jaw.

(ix) Treatment for stabilization of myofascial pain dysfunction syndrome, also referred to as temporomandibular joint (TMJ) syndrome. Authorization is limited to initial radiographs, up to four office visits, and the construction of an occlusal splint.

(x) Total or complete ankyloglossia.

(xi) Adjunctive dental and orthodontic support for cleft palate.

(xii) Prosthetic replacement of jaw due to trauma or cancer.

(22) Nonsurgical treatment of obesity or morbid obesity for dietary control or weight reduction (with the exception of gastric bypass, gastric stapling, or gastroplasty procedures in connection with morbid obesity when determined to be medically necessary).

(23) Services and supplies related to transsexualism or other similar conditions such as gender dysphoria (including, but not limited to, intersex surgery and psychotherapy, except for ambiguous genitalia which was documented to be present at birth).

(24) Sex therapy, sexual advice, sexual counseling, sex behavior modification, psychotherapy for mental disorders involving sexual deviations (e.g., transvestic fetish), or other similar services, and any supplies provided in connection with therapy for sexual dysfunctions or inadequacies.

(25) Removal of corns or calluses or trimming of toenails and other routine podiatry services, except those required as a result of a diagnosed systemic medical disease affecting the lower limbs, such as severe diabetes.

(26) Services and supplies, to include psychological testing, provided in connection with a specific developmental disorder. The following exception applies: Diagnostic and evaluative services required to arrive at a differential diagnosis for an otherwise eligible child unless the state is required to provide those services under Public Law 94–142, *Education for All Handicapped Children Act of 1975 as amended, See 20 U.S.C. Chapter 33.*

(27) Surgery to reverse voluntary surgical sterilization procedures.

(28) Services and supplies related to artificial insemination (including semen donors and semen banks), in vitro fertilization, gamete intrafallopian

transfer and all other noncoital reproductive technologies.

(29) Nonprescription contraceptives.

(30) Diagnostic tests to establish paternity of a child; or tests to determine sex of an unborn child.

(31) Preventive care (such as routine, annual, or employment-requested physical examinations; routine screening procedures; and immunizations). The following exceptions apply:

(i) Well-baby care from birth to the age of two years, including newborn examination, phenylketonuria (PKU) testing and newborn circumcision.

(ii) Rabies vaccine following an animal bite.

(iii) Tetanus vaccine following an accidental injury.

(iv) Rh immune globulin.

(v) Pap smears.

(vi) Mammography tests.

(vii) Genetic testing and counseling determined to be medically necessary.

(viii) Chromosome analysis in cases of habitual abortion or infertility.

(ix) Gamma globulin.

(32) Chiropractic and naturopathic services.

(33) Counseling services that are not medically necessary in the treatment of a diagnosed medical condition (such as educational counseling; vocational counseling; and counseling for socioeconomic purposes, stress management, life style modification, etc.).

(34) Acupuncture, whether used as a therapeutic agent or as an anesthetic.

(35) Hair transplants, wigs, or hairpieces, except that benefits may be extended for one wig or hairpiece per beneficiary (lifetime maximum) when the attending physician certifies that alopecia has resulted from treatment of malignant disease and the beneficiary certifies that a wig or hairpiece has not been obtained previously through the U.S. Government (including the Department of Veterans Affairs). The wig or hairpiece benefit does not include coverage for the following:

(i) Maintenance, wig or hairpiece supplies, or replacement of the wig or hairpiece.

(ii) Hair transplant or any other surgical procedure involving the attachment of hair or a wig or hairpiece to the scalp.

(iii) Any diagnostic or therapeutic method or supply intended to encourage hair growth.

(36) Self-help, academic education or vocational training services and supplies.

(37) Exercise equipment, spas, whirlpools, hot tubs, swimming pools, health club membership or other such charges or items.

(38) General exercise programs, even if recommended by a physician.

(39) Services of an audiologist or speech therapist, except when prescribed by a physician and rendered as a part of treatment addressed to the physical defect itself and not to any educational or occupational deficit.

(40) Eye exercises or visual training (orthoptics).

(41) Eye and hearing examinations except when rendered in connection with medical or surgical treatment of a covered illness or injury or in connection with well-baby care.

(42) Eyeglasses, spectacles, contact lenses, or other optical devices with the following exceptions:

(i) When necessary to perform the function of the human lens, lost as a result of intraocular surgery, ocular injury or congenital absence.

(ii) Pinhole glasses prescribed for use after surgery for detached retina.

(iii) Lenses prescribed as ''treatment'' instead or surgery for the following conditions:

(A) Contact lenses used for treatment of infantile glaucoma.

(B) Corneal or scleral lenses prescribed in connection with treatment of keratoconus.

(C) Scleral lenses prescribed to retain moisture when normal tearing is not present or is inadequate.

(D) Corneal or scleral lenses prescribed to reduce a corneal irregularity other than astigmatism.

(iv) The specified benefits are limited to one set of lenses related to one qualifying eye condition as set forth in (iii)(A–D) of this Section. If there is a prescription change requiring a new set of lenses, but still related to the qualifying eye condition, benefits may be extended for a second set of lenses, subject to medical review.

(43) Hearing aids or other auditory sensory enhancing devices.

(44) Prostheses with the following exceptions:

(i) Artificial limbs and eyes, or items inserted surgically in the body as an integral part of a surgical procedure.

(ii) Dental prostheses specifically required in connection with otherwise covered orthodontia directly related to the surgical correction of a cleft palate anomaly.

(45) Orthopedic shoes, arch supports, shoe inserts, and other supportive devices for the feet, including custom-made built-up shoes, or regular shoes later built up with the following exception: Shoes that are an integral part of an orthopedic brace and which cannot be used separately from the brace are covered.

(46) Services or advice rendered by telephone or other telephonic device, including remote monitoring, except for transtelephonic monitoring of cardiac pacemakers.

(47) Air conditioners, humidifiers, dehumidifiers, and purifiers.

(48) Elevators or wheelchair lifts.

(49) Alterations to living spaces or permanent features attached thereto, even when necessary to accommodate installation of covered durable medical equipment or to facilitate entrance or exit.

(50) Items of clothing, even if required by virtue of an allergy (such as cotton fabric versus synthetic fabric and vegetable-dyed shoes).

(51) Food, food substitutes, vitamins or other nutritional supplements, including those related to prenatal care for a home patient whose condition permits oral feeding.

(52) Enuretic (bed-wetting) devices; enuretic conditioning programs.

(53) Autopsy and post-mortem examinations.

(54) All camping, even when organized for a specific therapeutic purpose (such as diabetic camp or a camp for emotionally disturbed children), or when offered as a part of an otherwise covered treatment plan.

(55) Housekeeping, homemaker, or attendant services, including a sitter or companion.

(56) Personal comfort or convenience items, such as beauty and barber services, radio, television, and telephone.

(57) Smoking cessation services and supplies.

(58) Megavitamin psychiatric therapy; orthomolecular psychiatric therapy.

(59) All transportation except for specialized transportation with life sustaining equipment, when medically required for the treatment of a covered condition.

(60) Inpatient mental health services in excess of 30 days in any fiscal year (or in an admission), in the case of a patient 19 years of age or older; 45 days in any fiscal year (or in an admission), in the case of a patient under 19 years of age; or 150 days of residential treatment care in any fiscal year (or in an admission), unless a waiver for extended coverage is granted in advance.

(61) Outpatient mental health services in excess of 23 visits in a fiscal year, unless a waiver for extended coverage is granted in advance.

(62) Institutional services for partial hospitalization in excess of 60 treatment days in any fiscal year (or in an admission), unless a waiver for extended coverage is granted in advance.

(63) Detoxification in a hospital setting or rehabilitation facility in excess of seven days.

(64) Outpatient substance abuse services in excess of 60 visits during a benefit period. A benefit period begins with the first date of covered service and ends 365 days later.

(65) Family therapy for substance abuse in excess of 15 visits during a benefit period. A benefit period begins with the first date of covered service and ends 365 days later.

(66) Services that are provided to a beneficiary who is referred to a provider of such services by a provider who has an economic interest in the facility to which the patient is referred, unless a waiver is granted.

(67) Abortion, except when a physician certifies that the life of the mother would be endangered if the fetus were carried to term.

(68) Abortion counseling.

(69) Aversion therapy.

(70) Rental or purchase of biofeedback equipment.

(71) Biofeedback therapy for treatment of ordinary muscle tension states (including tension headaches) or for psychosomatic conditions.

(72) Drug maintenance programs where one addictive drug is substituted for another, such as methadone substituted for heroin.

(73) Immunotherapy for malignant diseases, except for treatment of Stage O and Stage A carcinoma of the bladder.

(74) Services and supplies provided by other than a hospital, such as nonskilled nursing homes, intermediate care facilities, halfway houses, homes for the aged, or other institutions of similar purpose.

(75) Services performed when the patient is not physically present.

(76) Medical photography.

(77) Special tutoring.

(78) Surgery for psychological reasons.

(79) Treatment of premenstrual syndrome (PMS).

(80) Medications not requiring a prescription, except for insulin.

(81) Thermography.

(82) Removal of tattoos.

(83) Penile implant/testicular prosthesis procedures and related supplies for psychological impotence.

(84) Dermabrasion of the face.

(85) Chemical peeling for facial wrinkles.

(86) Panniculectomy, body sculpting procedures.

(b) CHAMPVA-determined allowable amount.

(1) The term allowable amount is the maximum CHAMPVA-determined level of payment to a hospital or other authorized institutional provider, a physician or other authorized individual professional provider, or other authorized provider for covered services. The CHAMPVA-allowable amount is determined prior to cost sharing and the application of deductibles and/or other health insurance.

(2) A Medicare-participating hospital must accept the CHAMPVA-determined allowable amount for inpatient services as payment-in-full. (Reference 42 CFR Parts 489 and 1003).

(3) An authorized provider of covered medical services or supplies shall accept the CHAMPVA-determined allowable amount as payment-in-full.

(4) A provider who has collected and not made an appropriate refund, or attempts to collect from the beneficiary, any amount in excess of the CHAMPVA-determined allowable amount may be subject to exclusion from Federal benefit programs.

(Authority: 38 U.S.C. 1713)

§ 17.273 Preauthorization.

(a) Preauthorization or advance approval is required for any of the following:

(1) Non-emergent inpatient mental health and substance abuse care, including admission of emotionally disturbed children and adolescents to residential treatment centers.

(2) All admissions to a partial hospitalization program (including alcohol rehabilitation).

(3) Outpatient mental health visits in excess of 23 per calendar year and/or more than two (2) sessions per week.

(4) Dental care.

(5) Durable medical equipment with a purchase price in excess of $300.00.

(6) Organ transplants.

(Authority: 38 U.S.C. 1713)

§ 17.274 Cost sharing.

(a) With the exception of services obtained directly from VA medical facilities, CHAMPVA is a cost-sharing program in which the cost of covered services is shared with the beneficiary. In addition to the beneficiary cost share, an annual (calendar year) outpatient deductible requirement ($50 per beneficiary or $100 per family) must be satisfied prior to the payment of outpatient benefits. There is no deductible for inpatient services. CHAMPVA pays the CHAMPVA-determined allowable amount less the deductible, if applicable, and less the beneficiary cost share. To provide financial protection against the impact of a long-term illness or injury, an annual cost limit or ''catastrophic cap'' has been placed on the beneficiary cost-share amount for covered services and supplies. This annual cap on cost sharing is $7,500 per CHAMPVA-eligible family. Credits to the annual catastrophic cap are limited to the applied annual deductible(s) and the beneficiary cost-share amount. Costs above the CHAMPVA-allowable amount, as well as costs associated with noncovered services, are not credited to the catastrophic cap computation.

(b) If the CHAMPVA benefit payment is under $1.00, payment will not be issued. Catastrophic cap and deductible will, however, be credited.

(Authority: 38 U.S.C. 1713)

§ 17.275 Claim filing deadline.

(a) Unless an exception is granted under paragraph (b) of this subsection, claims for medical services and supplies must be filed with the Center no later than:

(1) One year after the date of service; or

(2) In the case of inpatient care, one year after the date of discharge; or

(3) In the case of retroactive approval for medical services/supplies, 180 days following beneficiary notification of authorization; or

(4) In the case of retroactive approval of CHAMPVA eligibility, 180 days following notification to the beneficiary of authorization for services occurring on or after the date of first eligibility.

(b) Requests for an exception to the claim filing deadline must be submitted, in writing, to the Center and include a complete explanation of the circumstances resulting in late filing along with all available supporting documentation. Each request for an exception to the claim filing deadline will be reviewed individually and considered on its own merit. The Center Director may grant exceptions to the requirements in paragraph (a) if he or she determines that there was good cause for missing the filing deadline. For example, when dual coverage exists, the CHAMPVA allowable amount cannot be determined until after the primary insurance carrier has adjudicated the claim. In such circumstances an exception may be granted provided that the delay on the part of the primary insurance carrier is not attributable to the beneficiary. Delays due to provider billing procedures do not constitute a valid basis for an exception.

§ 17.276 Appeal/review process.

Notice of the initial determination regarding payment of CHAMPVA benefits will be provided to the beneficiary on a CHAMPVA

Explanation of Benefits (EOB) form. The EOB form is generated by the CHAMPVA automated payment processing system. If a beneficiary disagrees with the determination concerning covered services or calculation of benefits, he or she may request reconsideration. Such requests must be submitted to the Center in writing within one year of the date of the initial determination. The request must state why the beneficiary believes the decision is in error and must include any new and relevant information not previously considered. Any request for reconsideration that does not identify the reason for dispute will be returned to the claimant without further consideration. After reviewing the claim and any relevant supporting documentation, a CHAMPVA benefits advisor will issue a written determination to the beneficiary that affirms, reverses or modifies the previous decision. If the beneficiary is still dissatisfied, within 30 days of the date of the decision he or she may make a written request for review by the Center Director. The Director will review the claim and any relevant supporting documentation and issue a decision in writing that affirms, reverses or modifies the previous decision. The decision of the Director with respect to benefit coverage and computation of benefits is final.

(Authority: 38 U.S.C. 1713)

Note: Denial of CHAMPVA benefits based on legal eligibility requirements may be appealed to the Board of Veterans Appeals in accordance with 38 C.F.R. Part 20. Medical determinations are not appealable to the Board. 20 C.F.R. § 20.101.

§ 17.277 Third Part Liability/Medicare Cost Recovery.

The Center will actively pursue third party liability/medical care cost recovery in accordance with 38 CFR 1.900, *et seq.*

§ 17.278 Confidentiality of records.

Confidentiality of records will be maintained in accordance with 38 CFR 1.500, *et seq.*

[FR Doc. 96–27668 Filed 10–31–96; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 126–0011b; FRL–5616–7]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision; Mojave Desert Air Quality Management District; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which control oxides of nitrogen (NO_X) from boilers and process heaters, internal combustion engines, residential water heaters, and gas turbines. The intended effect of proposing approval of these rules is to regulate emissions of NO_X in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Rules section of this Federal Register, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed action, no further activity is contemplated in relation to this action. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by December 2, 1996.

ADDRESSES: Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

Mojave Desert Air Quality Management District, 15428 Civic Drive, Suite 200, Victorville, CA 92392.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1200.

SUPPLEMENTARY INFORMATION: This document concerns Mojave Desert Air Quality Management District (MDAQMD) Rule 1157, Boilers and Process Heaters; MDAQMD Rule 1160, Internal Combustion Engines; South Coast Air Quality Management District (SCAQMD) Rule 1121, Control of Nitrogen Oxides from Residential Type Natural Gas-Fired Water Heaters; and SCAQMD Rule 1134, Emissions of Oxides of Nitrogen from Stationary Gas Turbines. MDAQMD Rule 1157 and Rule 1160 were submitted to EPA by the California Air Resources Board on November 30, 1994. SCAQMD Rule 1121 was submitted on May 24, 1995, and SCAQMD Rule 1134 was submitted on March 26, 1996. For further information, please see the information provided in the direct final action which is located in the Rules section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Date Signed: September 17, 1996.

Felicia Marcus,

Regional Administrator.

[FR Doc. 96–27847 Filed 10–31–96; 8:45 am]

BILLING CODE 6560–50–W

40 CFR Part 52

[CA 168–0019b; FRL–5641–8]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to act on revisions to the California State Implementation Plan (SIP) which concern five negative declarations from

the Sacramento Metropolitan Air Quality Management District (SMAQMD) for the following Oxides of Nitrogen (NO_X) source categories: Nitric and Adipic Acid Manufacturing Plants, Utility Boilers, Cement Manufacturing Plants, Glass Manufacturing Plants, and Iron and Steel Manufacturing Plants. The intended effect of proposing to include these negative declarations in the SIP is to meet the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this Federal Register, the EPA is acting on the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A rationale for this action is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by December 2, 1996.

ADDRESSES: Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the negative declarations are available for public inspection at EPA's Region 9 office and at the following locations during normal business hours.

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Air Docket (6102), U.S. Environmental Protection Agency, 401 ''M'' Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

Sacramento Metropolitan Air Quality Management District, Rule Development Section, 8411 Jackson Road, Sacramento, CA 95826.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Section, A–5–3, Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION: This document concerns negative declarations for five NO_X source categories from the SMAQMD: (1) Nitric and Adipic Acid Manufacturing Plants, (2) Utility Boilers, (3) Cement Manufacturing Plants, (4) Glass Manufacturing Plants, and (5) Iron and Steel Manufacturing Plants. These negative declarations certify that the above source categories are not present in the SMAQMD. They were adopted by the SMAQMD on August 3, 1995, and submitted to EPA on March 4, 1996, by the California Air Resources Board. For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 17, 1996.

Felicia Marcus,

Regional Administrator.

[FR Doc. 96–27845 Filed 10–31–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[CA 159–0018b; FRL–5641–6]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to act on revisions to the California State Implementation Plan (SIP) which concern eight negative declarations from the Mojave Desert Air Quality Management District for the following volatile organic compound (VOC) source categories: Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation, SOCMI Reactors, SOCMI Batch Processing, Offset Lithography, Industrial Wastewater, Plastic Parts-Business Machines, Plastic Parts-Other, and Ship Building. The intended effect of proposing to include these negative declarations in the SIP is to meet the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this Federal Register, the EPA is acting on the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A rationale for this action is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by December 2, 1996.

ADDRESSES: Written comments on this action should be addressed to: Daniel A. Meer, Chief, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the negative declarations are available for public inspection at EPA's Region 9 office and at the following locations during normal business hours.

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Air Docket (6102), U.S. Environmental Protection Agency, 401 ''M'' Street, S.W., Washington, DC. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

Mojave Desert Air Quality Management District (formerly San Bernardino County Air Pollution Control District, 15428 Civic Drive, Suite 200, Victorville, CA 92392–2382.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Section, A–5–3, Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION: This document concerns negative declarations for eight VOC source categories from the Mojave Desert Air Quality Management District: (1) Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation, (2) SOCMI Reactors, (3) SOCMI Batch Processing, (4) Offset Lithography, (5) Industrial Wastewater, (6) Plastic Parts -Business Machines, (7) Plastic Parts - Other, and (8) Ship Building. These negative declarations confirm that these source categories are not present in the MDAQMD. They were

submitted to EPA on August 7, 1995 by the California Air Resources Board.

For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Date: October 6, 1996.

Felicia Marcus,

Regional Administrator.

[FR Doc. 96–27843 Filed 10–31–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 82

[FRL–5645–3]

RIN 2060–AF36

Protection of Stratospheric Ozone: Proposal to Extend the Existing Reclamation Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Through this action EPA is proposing to amend the Clean Air Act section 608 refrigerant recycling regulations to extend the effectiveness of the refrigerant purity requirements of § 82.154 (g) and (h), which are currently scheduled to expire on December 31, 1996, until EPA adopts revised purity requirements. EPA initially extended these requirements in response to requests from the air-conditioning and refrigeration industry to avoid widespread contamination of the stock of chlorofluorocarbon (CFC) and hydrochlorofluorocarbon (HCFC) refrigerants that could result from the lapse of the purity standard. Such contamination would cause extensive damage to air-conditioning and refrigeration equipment, release of refrigerants, and refrigerant shortages with consequent price increases.

EPA proposed a more flexible approach to ensuring the purity of refrigerants on February 29, 1996, and solicited public comment. EPA received significant comments regarding the potential delegation of authority and the unintentional creation of a monopoly. EPA believes prior to adopting a more flexible approach EPA must further consider these comments. EPA intends to issue a supplemental proposal that would revise several aspects of the February 29, 1996 proposal.

Today EPA is proposing to extend the current reclamation requirements. This continuation will not result in any additional burden on the regulated community. Moreover, the retention of the reclamation requirement will protect the environment, public health, and consumers by ensuring that contaminated refrigerants are not vented or charged into equipment.

DATES: Comments must be received by December 2, 1996 unless a public hearing is held. A public hearing, if requested, will be held in Washington, DC. If such a hearing is requested, it will be held on November 12, 1996 at 9 a.m. Anyone who wishes to request a hearing should call Cindy Newberg at 202/233–9729 by November 8, 1996. If a public hearing is held, the comment period will be extended until December 16, 1996.

ADDRESSES: Comments and materials supporting this rulemaking are contained in Public Docket No. A–92–01, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460 in room M–1500. Dockets may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials. Comments on this action should be addressed to Public Docket No, A 92–01 VIII.L at the above address.

If a public hearing is held, it will be held at the Washington Information Center, Headquarters Services, Waterside Mall (ground floor) 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Cindy Newberg, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, SW., Washington, DC 20460, (202)233–9729. The Stratospheric Ozone Information Hotline at 1–800–296–1996 can also be contacted for further information. Interested persons may contact the Stratospheric Protection Hotline to learn if a hearing will be held and to obtain the date and location of any hearing. Any hearing will be strictly limited to the subject matter of this proposal.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

I. Regulated Entities
II. Overview
III. Background
VI. Today's Action
V. Summary of Support Analysis

I. Regulated Entities

Entities potentially regulated by this action are those that wish to recover, recycle, reclaim, sell, or distribute in interstate commerce refrigerants that contain chlorofluorocarbons (CFCs) and/or hydrochlorofluorocarbons (HCFCs). Regulated categories and entities include:

Category	Example of regulated entities
Industry	Reclaimers. Equipment manufacturers. Air-conditioning and refrigeration contractors and technicians. Owners and operators of industrial process refrigeration equipment. Laboratories. Plumbing, heating and cooling contractors.

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 affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your company is regulated by this action, you should carefully examine the applicability criteria contained in Section 608 of the Clean Air Amendments of 1990; discussed in regulations published on May 14, 1993 (59 FR 28660); and discussed below. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Overview

Paragraphs 82.154(g) and (h) of 40 CFR part 82, subpart F set requirements for sale of used refrigerant, mandating that it meet certain purity standards. These requirements will expire on December 31, 1996. EPA is considering whether it is appropriate to promulgate new, more flexible, requirements based on industry guidelines. To that end, EPA issued a Notice of Proposed Rulemaking (NPRM) on February 29, 1996 (61 FR 7858) that addressed various issues including the adoption of a more flexible approach to reclamation. EPA has analyzed the public comments. EPA will issue a final rulemaking soon; however, EPA has decided not to complete promulgation of all the proposed changes discussed in that NPRM as part of one final rulemaking.

The February 29, 1996, NPRM was an omnibus notice that addressed many aspects of 40 CFR Part 82, Subpart F. Amongst the various issues considered in that NPRM is the adoption of a more flexible approach to reclamation with the related adoption of third-party certification for laboratories and reclaimers. Other issues addressed in the NPRM include changes to the recordkeeping and reporting requirements for technician certification programs, the adoption of an updated

industry standard, amending the definitions of motor vehicle air-conditioning-like appliances and small appliances, the adoption of formal revocation procedures for approved certification programs, transfers of refrigerant between subsidiaries, and clarifying the distinction between major and minor repairs. EPA planned to issue one final rulemaking later this year. Instead, after careful analysis, EPA intends to issue two notices: a final rulemaking completing many aspects of that NPRM; and a separate revised proposal notice reconsidering the adoption of a more flexible approach to reclamation and third-party certification for laboratories and reclaimers. EPA has determined that this course of action is necessary to provide sufficient opportunity for the Agency to fully consider a broad range of alternative structures for an effective program that ensures the quality of refrigerants.

Central to the proposed adoption of a more flexible approach to reclamation, is the proposed adoption of third-party certification programs for both laboratories and reclaimers. Commenters have identified several specific concerns regarding the appropriateness of delegating various functions to third-parties, and whether EPA may unintentionally create a monopoly. Through today's notice, EPA is not signaling the Agency's agreement or disagreement with any of the comments received. EPA is merely indicating a need to further consider these comments. EPA believes a flexible approach to reclamation can be developed that avoids any inappropriate delegations and also does not force the creation of unwanted monopolies. However, the commenters have prompted EPA to consider other potential structures for such a program that vary significantly from what was proposed. To ensure that the public has adequate opportunity to comment, EPA intends to issue a revised proposal this winter.

While EPA believes its appropriate to provide an opportunity for the public to comment on changes to the NPRM, a lapse in the current standards could result in widespread contamination of the stock of CFC and HCFC refrigerants and must be avoided. Such contamination would cause extensive damage to air-conditioning and refrigeration equipment, release of refrigerants, and refrigerant shortages with consequent price increases. Release of CFC and HCFC refrigerants has been found to deplete stratospheric ozone, resulting in increased human and environmental exposure to ultraviolet radiation. Increased exposure to ultraviolet radiation in turn can lead to serious health and environmental effects. Therefore, EPA is proposing to extend the effectiveness of the current refrigerant purity requirements, only until EPA can complete a rulemaking to adopt more flexible requirements that will still ensure refrigerant purity.

III. Background

On May 14, 1993, EPA published final regulations establishing a recycling program for ozone-depleting refrigerants recovered during the servicing and disposal of air-conditioning and refrigeration equipment (58 FR 28660). These regulations include evacuation requirements for appliances being serviced or disposed of, standards and testing requirements for used refrigerant sold to a new owner, certification requirements for refrigerant reclaimers, and standards and testing requirements for refrigerant recycling and recovery equipment.

When EPA promulgated the final rule, the Agency noted that further rulemaking would be required to address issues that had been raised during the comment period for the proposed rule (57 FR 58644). One of these issues was whether a standard for used refrigerant could be developed that would protect air-conditioning and refrigeration equipment, but would allow technicians to clean refrigerant themselves, rather than sending the refrigerant to an off-site reclaimer.

The final rule published on May 14, 1993, requires that refrigerant sold to a new owner be reclaimed to the ARI Standard 700 of purity by a certified reclaimer (§ 82.154(g) and (h) referencing standard in § 82.164 and the definition of reclaim found in § 82.152). As discussed in the final rule, this requirement protects the purity of used refrigerant to prevent damage to air-conditioning and refrigeration equipment from the use of contaminated refrigerant. Equipment damage from contaminated refrigerant would result in costs to equipment owners, in releases of refrigerant from damaged equipment through increased leakage, servicing and replacement, and in reduction in consumer confidence in the quality of used refrigerant. This reduction in consumer confidence could lead to the premature retirement or retrofit of CFC or HCFC equipment since consumers would no longer believe that a sufficient stock of trustworthy refrigerants was available.

Although the reclamation requirements contained in 82.154(g) and (h) would clearly protect equipment, EPA believed that a more flexible but as effective requirement should be developed, particularly for refrigerant transferred between owners whose equipment was similar and was serviced by the same contractor. However, the only existing standard at the time EPA promulgated the rule was ARI Standard 700, and the only agreed upon means of enforcing it was by limiting sale of used refrigerant to only certified reclaimers. Certified reclaimers, unlike contractors or technicians, are required to have the equipment available that can verify that the refrigerant meets the purity standards, thus ensuring its purity prior to selling the refrigerants.

In order to encourage industry to explore the possibility of developing more flexible but still effective standards and technologies for purifying refrigerant, as well as more flexible means for ensuring compliance with purity standards, EPA adopted a commenter's suggestion and established an expiration date, or ''sunset,'' for the reclamation requirement. EPA accordingly made the reclamation requirements at § 82.154(g) and (h) effective until May 15, 1995, two years after publication of the final rule. EPA believed that this two-year period would be sufficient for industry to develop new guidelines for reuse of refrigerant and for EPA to complete a rulemaking to adopt them if EPA determined that they would continue to reduce emissions to the lowest achievable level and maximize the recapture and recycling of refrigerants (58 FR 28679).

In December, 1994, a committee representing a wide range of interests within the air-conditioning and refrigeration industry published *Industry Recycling Guide (IRG–2): Handling and Reuse of Refrigerants in the United States.* This document establishes requirements and recommendations for the reuse of refrigerant in a number of different situations, including refrigerant transfers on the open market and between equipment owned by different people but serviced by the same contractor. EPA began pursuing a rulemaking to adopt the IRG–2 requirements. However, because the original sunset date was approaching, EPA also pursued a rulemaking to extend the effectiveness of § 82.154(g) and (h) (60 FR 14608). That rulemaking extended the effectiveness of the provisions until March 18, 1996. EPA believed that this extension would provide sufficient opportunity to develop and publish a proposed rule, take public comment, and develop and publish a final rule.

EPA drafted a proposed rulemaking concerning the adoption of a more

flexible approach for ensuring refrigerant purity. However, several events beyond the agency's control delayed the EPA's ability to release this proposal prior to February 29, 1996. Therefore, at the urging of industry representatives, EPA extended the sunset date for the purity requirements to avoid a lapse of the reclamation requirements.

Representatives of the air-conditioning and refrigeration industry expressed concern that any lapse in refrigerant purity requirements could result in a number of problems, including sloppy handling of refrigerant and dumping of contaminated refrigerant on the market. These problems would result in significant damage to equipment, release of refrigerant, and aggravated refrigerant shortages.

Currently, the reclamation requirement encourages careful handling of refrigerant, because refrigerant that is irretrievably contaminated (for instance through mixture with other refrigerants) will not be accepted by any reclaimer, rendering it worthless. If this check is removed, sloppy handling may become widespread. This would not only lead to damage to equipment, but to the permanent loss of part of the stock of pure refrigerant through refrigerant mixture. Even in the best case in which the mixed refrigerant was properly disposed of, the limited supply of refrigerant would thereby be further reduced, necessitating more retrofit or replacement of existing equipment. Unfortunately, it is likely that the mixed refrigerant would often be used in air-conditioning and refrigeration equipment or vented rather than disposed of properly.

The possibility of widespread dumping of refrigerant on the market has been raised by reports that contractors and ''recyclers'' are stockpiling used refrigerant. In some cases, dumping dirty refrigerant on the market might be attractive simply because it enables the seller of refrigerant to avoid the costs of reclamation; for others, it might be attractive because the refrigerant is unreclaimable and therefore worthless if analyzed or sent to a reclaimer. In either situation, such dumping would lead to widespread equipment damage and potential releases of refrigerant. In addition, since domestic CFC production ceased December 31, 1995, protecting the purity of the existing stock of CFC refrigerants is essential.

IV. Today's Action

In response to these concerns, EPA is extending the effectiveness of the current reclamation requirements until the Agency can adopt replacement requirements. It was never EPA's intent to leave air-conditioning and refrigeration equipment and refrigerant supplies unprotected by a purity standard, but only to replace the existing standard with a more flexible standard when that was developed. As discussed above, EPA is currently undertaking rulemaking to adopt a more flexible standard.

V. Summary of Supporting Analysis

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

It has been determined by OMB and EPA that this action to amend the final rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this rulemaking is estimated to result in the expenditure by State, local, and tribal governments or private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. As discussed in this preamble, this rule merely extends the current reclamation requirements during consideration of a more flexible approach that may result in reducing the burden of part 82 Subpart F of the Stratospheric Protection regulations on regulated entities, including State, local, and tribal governments or private sector entities.

C. Paperwork Reduction Act

There is no additional information collection requirements associated with this rulemaking EPA has determined that the Paperwork Reduction Act does not apply. The initial section 608 final rulemaking did address all recordkeeping associated with the refrigerant purity provisions. An Information Collection Request (ICR) document was prepared by EPA and approved by the Office of Management and Budget(OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. This ICR is contained in the public docket A–92–01.

D. Regulatory Flexibility Analysis

EPA has determined that is not necessary to prepare a regulatory flexibility analysis in connection with this proposed rule because it continues existing requirements. Any impact this proposed rule will have on small entities will be to provide relief from regulatory burdens.

List of Subjects in 40 CFR Part 82

Enviromental protection, Aerosols, air pollution control, Chemicals, Chlorofluorocarbons, Hydrochlorofluorocarbons, Labeling, Stratospheric ozone layer.

Dated: October 28, 1996.

Carol M. Browner,

Administrator.

Part 82, chapter I, title 40, of the code of Federal Regulations, is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Section 82.154 is amended by revising paragraphs (g) and (h) to read as follows:

§ 82.154 Prohibitions.

* * * * *

(g) No person may sell or offer for sale for use as a refrigerant any class I or class II substance consisting wholly or in part of used refrigerant unless:

(1) The class I or class II substance has been reclaimed as defined at § 82.152;

(2) The class I or class II substance was used only in an MVAC or MVAC-like appliance and is to be used only in an MVAC or MVAC-like appliance; or

(3) The class I or class II substance is contained in an appliance that is sold or offered for sale together with the class I or class II substance.

(h) No person may sell or offer for sale for use as a refrigerant any class I or class II substance consisting wholly or in part of used refrigerant unless:

(1) The class I or class II substance has been reclaimed by a person who has been certified as a reclaimer pursuant to § 82.164;

(2) The class I or class II substance was used only in an MVAC or MVAC-like appliance and is to be used only in an MVAC or MVAC-like appliance; or

(3) The class I or class II substance is contained in an appliance that is sold or offered for sale together with the class I or class II substance.

* * * * *

[FR Doc. 96–28095 Filed 10–31–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2090

[WO–350–1430–00–24 1A]

RIN 1004–AC65

Nonmineral Entries on Mineral Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to remove the regulations concerning Nonmineral Entries on Mineral Lands, in its entirety. This action is undertaken because this subpart consists of redundant and unnecessary requirements.

DATES: Any comments must be received by BLM at the address below on or before December 2, 1996. Comments received after the above date will not necessarily be considered in the decisionmaking process on the final rule.

ADDRESSES: If you wish to comment, you may hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, D.C., or mail comments to the BLM, Administrative Record, Room 401LS, 1849 C Street, NW., Washington, D.C. 20240. Commenters may transmit comments electronically via the Internet to: WOComment@wo.blm.gov [For Internet, please include ''attn: AC65'', your name and address in your message. If you do not receive a confirmation from the system that we have received your internet message, contact us directly. Comments will be available for public review at the L Street address during regular business hours, 7:45 a.m. to 4:15 p.m., Monday through Friday, except Holidays.

FOR FURTHER INFORMATION CONTACT: Chris Fontecchio, Regulatory Affairs Group, BLM, at (202) 452–5012.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background and Discussion of Proposal
III. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments on the proposed rule should be specific, should be confined to issues pertinent to this proposed rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the commenter is addressing. Comments should specifically address why any or all of the provisions of subpart 2093 should be deleted. BLM will not necessarily consider or include in the Administrative Record for the final rule, comments which BLM receives after the close of the comment period (see **DATES** above) or comments delivered to an address other than those listed (see **ADDRESSES** above).

II. Background and Discussion of Proposal

These regulations were enacted pursuant to a series of statutes dating back to 1902. Most of subpart 2093 is a review of the various statutory authorities governing nonmineral entries on mineral lands, and the remainder of this subpart sets out BLM procedures for processing claims and other actions under these statutes.

The portions of this subpart which reiterate statutory language are unnecessarily duplicative and can be removed. These portions are found in sections 2093.0–3; 2093.1–1, 2093.1–2; 2093.2–1; 2093.2–2; 2093.3–1; 2093.3–4; 2093.3–5; 2093.4–1; and 2093.5–1.

The remaining sections contain procedures enacted to help BLM to carry out its statutory duties. These sections have become largely obsolete; nonmineral entries on mineral lands are extremely rare and unlikely to become any more widespread, given the scarcity of land on which such entries could be available in the foreseeable future and the repeal of the homestead laws. BLM has not used this subpart in over ten years.

In addition, while BLM cannot determine with certainty that there are no applications pending anywhere in the United States, the few which might remain do not require an extensive, formal procedural program. Rather, BLM can consider each application based on the guidance provided by the applicable statutes. A comment period is provided to give applicants or other interested parties an opportunity to voice any particular concerns that this removal action might raise. Finally, these procedures govern BLM's internal working and are best suited for publication in the BLM Manual.

III. Procedural Matters

National Environmental Policy Act

The BLM has prepared an environmental assessment (EA), and has found that the proposed rule would not constitute a major federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental

Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM's Administrative Record at the address specified previously. The BLM invites the public to review these documents by contacting us at the addresses listed above (see **ADDRESSES**), and suggests that anyone wishing to submit comments in response to the EA and FONSI do so in accordance with the ''*Written Comments*'' section above, or contact us directly.

Paperwork Reduction Act

This proposed rule does not contain information collection requirements subject to Office of Management and Budget approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Act

BLM has determined under the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*, that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Removal of 43 CFR subpart 2093 will not result in any unfunded mandate to state, local or tribal governments in the aggregate, or to the private sector, of $100,000,000 or more in any one year.

Executive Order 12612

The proposed rule will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, BLM has determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism assessment.

Executive Order 12630

The proposed rule is not a government action that interferes with constitutionally protected property rights. Section 2(a)(1) of Executive Order 12630 specifically exempts actions abolishing regulations or modifying regulations in a way that lessens interference with private property use from the definition of ''policies that have takings implications.'' Since the primary function of the rule is to abolish unnecessary regulations, there will be no private property rights impaired as a result. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property, or require further discussion of takings implications under this Executive Order.

Executive Order 12866

According to the criteria listed in section 3(f) of Executive Order 12866, BLM has determined that the proposed rule is not a significant regulatory action. As such, the rule is not subject to Office of Management and Budget review under section 6(a)(3) of the order.

Executive Order 12988

The Department of the Interior has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Author

The principal author of this proposed rule is H. W. Moritz, BLM, 849 C Street, NW., Washington, D.C. 20240. Telephone: 202–452–0362 (commercial or FTS).

List of Subjects in 43 CFR Part 2090

Airports; Alaska; Coal; Grazing lands; Indians-lands, Land Management Bureau; Public lands; Public lands-classification; Public lands-mineral resources; Public lands-withdrawal; Seashores; Veterans.

For the reasons set forth in the preamble and under the authorities contained within 43 U.S.C. 1740, subpart 2093 of part 2090, group 2000, subchapter B, chapter II of Title 43 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 2090—SPECIAL LAWS AND RULES

1. The authority citation for Part 2090 is revised to read as follows:

Authority: 43 U.S.C. 1740; 43 U.S.C. 1201.

PART 2090—[AMENDED]

2. Part 2090 is amended by removing subpart 2093.

Dated: October 21, 1996.

Sylvia V. Baca,

Deputy Assistant Secretary of the Interior.

[FR Doc. 96–27580 Filed 10–31–96; 8:45 am]

BILLING CODE 4310–84–M

43 CFR Part 4300

[WO–420–1050–00–24]

RIN 1004–AC70

Grazing Administration; Alaska Reindeer

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (''BLM'') proposes to revise the regulations at 43 CFR 4300, which provide for the administration of permits for grazing reindeer in Alaska. Part 4300 explains to the public how to apply for permits and what a permit entitles a person to do. BLM proposes to translate the current part 4300 regulations into plain English and with few exceptions, would not change the substance of the regulations.

DATES: Comments: Submit comments by December 2, 1996. BLM will consider comments received or postmarked on or before this date.

ADDRESSES: *Comments:* You may hand-deliver your comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L St., NW., Washington, DC; or mail comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW., Washington, DC 20240. You may transmit comments electronically via the Internet to: WOComment@WO0033wp.wo.blm.gov. Please include ''Attn: AC70'' and your name and address in your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly.

FOR FURTHER INFORMATION CONTACT: Olivia Short, (202) 452–0345 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Your written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where possible, you should reference the specific section or paragraph of the proposal that you are addressing.

II. Background

The current part 4300 regulations were written in order to carry into effect

the provisions of the Act of September 1, 1937 (50 Stat. 900; 25 U.S.C. 500, *et seq.*) (''The Act''). The Act authorized the Secretary of the Interior to manage the reindeer industry in Alaska for the purpose of maintaining a self-sustaining industry for natives of Alaska. The Act also authorized the Secretary to issue permits to natives for grazing reindeer on public lands.

III. Discussion of Proposed Rule

This proposed rule is a rewriting of the present regulations into Plain English. Plain English is a method of writing and formatting which is designed to add significant clarity to formerly bureaucratic and convoluted language. Plain English allows both the public and the administering agency to fully understand the requirements each is obliged to follow. BLM has arranged the proposed rule in a question and answer format, with a new numbering of sections. This will make it easier for the public to locate the sections that concern them. Few changes in policy or requirements have been made in this proposed rule, but BLM has clarified several matters. A new definition of reindeer has been added. The new definition combines the old definition with a statement that clarifies the reindeer's relationship to wild caribou. The proposed rule states that a $10 application fee is paid for each year of the permit. This seems like a new requirement because the existing part 4300 regulations do not specify that the fee must be paid for each year. Actually, it has long been a BLM procedure to charge herders an annual fee in order to cover the administrative costs of processing the applications. Reasons for cancellation of a permit are expanded to include those reasons currently used by BLM to reduce or modify a permit.

IV. Procedural Matters

National Environmental Policy Act

BLM has determined that this proposed rule is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, and that the proposed rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM, Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term ''categorical exclusion'' means a category of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

This proposed rule qualifies as a categorical exclusion under item 1.10 for regulations of an administrative, financial, legal, technical, or procedural nature. The publication of this proposed rule does not change the rights of customers who may file applications and has no impact on the environment. The rule, when final, will simplify the application procedures and make clear to applicants the legal requirements they need to meet.

Paperwork Reduction Act

BLM has submitted the information collection requirements in the proposed rule to the Office of Management and Budget for approval as 44 U.S.C. 3501 *et seq* requires. BLM will not require collection of this information until the Office of Management and Budget has given its approval.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. BLM has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

BLM has determined that this proposed rule will not result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Executive Order 12612

The proposed rule would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, BLM has determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism assessment.

Executive Order 12630

The proposed rule does not represent a government action that would interfere with constitutionally protected property rights or result in a taking of private property.

Executive Order 12866

BLM has determined that the proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866. The rule is, therefore, not subject to review by the Office of Management and Budget under section 6(a)(3) of that order.

Executive Order 12988

The Department of the Interior has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Author

The principal author of this rule is Olivia Short, Bureau of Land Management, Regulatory Management Team, 1849 C Street, NW., Washington, DC 20240, Telephone 202–452–0345 (Commercial or FTS).

List of Subjects in 43 CFR Part 4300

Administrative practice and procedure, Alaska, Grazing lands, Land Management Bureau, Range Management, Reindeer, Reporting and recordkeeping requirements.

For the reason set forth above, and under the authority of 25 U.S.C 500k, BLM proposes to revise 43 CFR part 4300 to read as follows:

Dated: October 21, 1996.

Sylvia V. Baca,

Deputy Assistant Secretary, Land and Minerals Management.

PART 4300—GRAZING ADMINISTRATION; ALASKA; REINDEER; GENERAL

General Information

§ 4300.1 What is a reindeer?
§ 4300.2 Is there a special form for my application?

Before you apply for a reindeer grazing permit

§ 4300.10 On what types of public land can I obtain a reindeer grazing permit?
§ 4300.11 Who qualifies to apply for a permit?
§ 4300.12 What is the definition of a native?

Applying for a grazing permit

§ 4300.20 How do I apply for a permit?
§ 4300.21 What must I include in my application?
§ 4300.22 What fees must I pay?
§ 4300.23 After I file my application, can I use the land before BLM issues my permit?

§ 4300.24 Does my filed application mean that no one else can file an application?
§ 4300.25 Does my filed application mean I will automatically receive a permit?

Protests against a grazing permit application

§ 4300.30 Can someone else protest my permit application?

Conditions of your approved permit

§ 4300.40 How long can I graze reindeer with my permit?
§ 4300.41 What will the permit say about the number of reindeer and where I can graze them?
§ 4300.42 If I have existing improvements on the land, will these be allowed in the initial permit?
§ 4300.43 What should I do if I want to construct and maintain improvements on the land?
§ 4300.44 Are there any major restrictions on my grazing permit that I might otherwise think are allowed?
§ 4300.45 Must I submit any reports?

Changes that can affect your permit

Other Uses of the land

§ 4300.50 Are there other uses of the land that may affect my permit?
§ 4300.51 Will I be notified if another use, disposal, or withdrawal occurs on the land?
§ 4300.52 Can other persons use the land in my permit for mineral exploration or production?

Changes in the size of the permitted area

§ 4300.53 Can BLM reduce the size of the land in my permit?
§ 4300.54 Can BLM increase the size of the land in my permit?
§ 4300.55 What if I don't agree with an adjustment of my permit area?

Permit renewals

§ 4300.57 How do I apply for a renewal of my permit?
§ 4300.58 Will the renewed permit be exactly the same as the old permit?

Assigning your permit to another party

§ 4300.59 If I want to assign my permit to another party, when must I notify BLM?
§ 4300.60 What must be included in my assignment document?
§ 4300.61 Can I sublease any part of the land in my permit?

Closing out your permit

§ 4300.70 May I relinquish my permit?
§ 4300.71 Under what circumstances can BLM cancel my permit?
§ 4300.72 May I remove my personal property or improvements when the permit expires or terminates?

Reindeer crossing permit

§ 4300.80 How can I get a permit to cross reindeer over public lands?

Trespass

§ 4300.90 What is a trespass?

PART 4300—GRAZING ADMINISTRATION; ALASKA; REINDEER; GENERAL

Authority: 25 U.S.C. 500k, and 43 U.S.C. 1701 *et seq.*

General Information

§ 4300.1 What is a reindeer?

Reindeer, *Rangifer tarandus,* are a semi-domesticated member of the deer family, Cervidae. They are essentially the same animal as their wild cousins, the caribou, but tend to be smaller than caribou. Reindeer and caribou are different subspecies of the same family, genus, and species. The term ''reindeer'' includes caribou that have been introduced into animal husbandry or have joined reindeer herds, the offspring of these caribou, and the offspring of reindeer.

§ 4300.2 Is there a special form for my application?

All applications and reports you submit to BLM must be on a BLM-approved form and in duplicate.

Before you apply for a reindeer grazing permit

§ 4300.10 On what types of public land can I obtain a reindeer grazing permit?

(a) You may apply for public lands that are vacant and unappropriated.

(b) You may apply for public lands which have been withdrawn for any purpose, but the Department or agency with administrative jurisdiction of the withdrawn lands must give its prior consent, and may impose terms or conditions on the use of the land.

(c) If the lands you apply for are within natural caribou migration routes, or if they have other important values for wildlife, BLM will consult with the Alaska Department of Fish and Game before issuing a permit. BLM may include such lands in a permit at its discretion, and a permit will contain any special terms and conditions to which the two agencies agree.

§ 4300.11 Who qualifies to apply for a permit?

Natives, groups, associations or corporations of natives as defined by the Act of September 1, 1937 (50 Stat. 900) qualify. If you are a native corporation, you must be organized under the laws of the United States or the State of Alaska. Native corporations organized under the Alaska Native Claims Settlement Act also qualify.

§ 4300.12 What is the definition of a native?

Natives are:

(a) Native Indians, Eskimos, and Aleuts of whole or part blood living in Alaska at the time of the Treaty of Cession of Alaska to the United States, and their descendants of whole or part blood; and

(b) Indians and Eskimos who, between 1867 and September 1, 1937, migrated into Alaska from Canada, and their descendants of whole or part blood.

Applying for a grazing permit

§ 4300.20 How do I apply for a permit?

You must execute a completed application for a grazing permit and file it in the BLM office with jurisdiction over the lands for which you are applying.

§ 4300.21 What must I include in my application?

(a) You must include a certification of reindeer allotment to you, signed by the Bureau of Indian Affairs, if you are to receive a herd from the Government. If you obtain reindeer from a source other than the Government, you should state the source and show evidence of purchase or option to purchase.

(b) Your initial application must list the location of and describe the improvements you own in the application area. You must have this statement verified by the Bureau of Indian Affairs before you submit it to BLM.

§ 4300.22 What fees must I pay?

You must pay a $10 filing fee per year with each application. No grazing fee will be charged.

§ 4300.23 After I file my application, can I use the land before BLM issues my permit?

No. You cannot use the land until BLM issues you a permit.

§ 4300.24 Does my filed application mean that no one else can file an application?

No. The filing of your application will not segregate the land. Anyone else may file an application and BLM may dispose of the lands under the public land laws.

§ 4300.25 Does my filed application mean I will automatically receive a permit?

No. BLM issues grazing permit at its discretion.

Protests against a grazing permit application

§ 4300.30 Can someone else protest my permit application?

(a) Yes, anyone may file a protest with BLM. This protest must:

(1) Be filed in duplicate with BLM;

(2) Contain a complete description of all facts upon which it is based;

(3) Describe the lands involved; and

(4) Be accompanied by evidence of service of a copy of the protest on the applicant.

(b) If the person protesting also wants a grazing permit for all or part of the land described in the protested application, the protest must be accompanied by a grazing permit application.

Conditions of your approved permit

§ 4300.40 How long can I graze reindeer with my permit?

BLM issues permits for a maximum of 10 years, except when you request a shorter term, or when BLM determines that a shorter period is in the public interest. The issued permit will specify the number of years you can graze reindeer.

§ 4300.41 What will the permit say about the number of reindeer and where I can graze them?

(a) The permit will indicate the maximum number of reindeer you can graze on the permit area based on range conditions. BLM can adjust this number if range conditions change, as for example, by natural causes, overgrazing, or fire.

(b) The permit will restrict grazing to a definitely described area which BLM feels is usable and adequate for your needs.

§ 4300.42 If I have existing improvements on the land, will these be allowed in the initial permit?

Yes, any improvements existing on the land will be allowed.

§ 4300.43 What should I do if I want to construct and maintain improvements on the land?

(a) You should file an application with BLM for a permit to do this. A permit will allow you to construct, maintain, and use any fence, building, corral, reservoir, well or other improvement needed for grazing under the grazing permit; and

(b) You must comply with Alaska state law in the construction and maintenance of fences, but any fence must be constructed to permit ingress and egress of miners, mineral prospectors, and other persons entitled to enter the area for lawful purposes.

§ 4300.44 Are there any major restrictions on my grazing permit that I might otherwise think are allowed?

Yes. You must not:

(a) Enclose roads, trails and highways as to disturb public travel there;

(b) Interfere with existing communication lines or other improvements;

(c) Prevent legal hunting, fishing or trapping on the land;

(d) Prevent access by persons, such as miners and mineral prospectors, entitled to lawfully enter; or

(e) Graze reindeer without complying with applicable State and Federal laws on livestock quarantine and sanitation.

§ 4300.45 Must I submit any reports?

Yes. Before April 1 of the second permit year and each year afterwards, you must submit a report in duplicate to BLM which describes your grazing operations during the preceding year.

Changes that can affect your permit

Other uses of the land

§ 4300.50 Are there other uses of the land that may affect my permit?

Yes. The lands described in your grazing permit and the subsurface can be affected by uses that BLM considers more important than grazing. Your permit can be modified or reduced in size or canceled by BLM to allow for:

(a) Protection, development and use of the natural resources, e.g., minerals, timber, and water, under applicable laws and regulations;

(b) Agricultural use;

(c) Applications for and the acquisition of homesites, easements, permits, leases or other rights and uses, or any disposal or withdrawal, under the applicable public land laws; or

(d) Temporary closing of portions of the permitted area to grazing whenever, because of improper handling of reindeer, overgrazing, fire or other cause, BLM judges this necessary to restore the range to its normal condition.

§ 4300.51 Will I be notified if another use, disposal or withdrawal occurs on the land?

Yes. If there is a settlement, location, entry, disposal, or withdrawal on any lands described in your permit, BLM will notify you and will reduce your permit area by the amount of the area involved.

§ 4300.52 Can other persons use the land in my permit for mineral exploration or production?

Yes. Unless the land is otherwise withdrawn, the land in your permit is subject to lease or leasing under the mineral leasing laws and under the Geothermal Steam Act, and it can be prospected, located, and purchased under the mining laws and applicable regulations at 43 CFR Group 3800.

Changes in the size of the permit area

§ 4300.53 Can BLM reduce the size of the land in my permit?

Yes. BLM may reduce it at any time but must notify you at least 30 days before taking this action. BLM can reduce the area when:

(a) BLM determines that the area is too large for the number of reindeer you are grazing; or

(b) When disposal, withdrawal, natural causes, such as drought or fire, or any other reason in § 4300.50 so requires.

§ 4300.54 Can BLM increase the size of the land in my permit?

Yes. BLM may increase the area on its own initiative or by your request if BLM determines that the area is too small for the number of reindeer you are grazing. BLM will give you at least 30 days notice of this action.

§ 4300.55 What if I don't agree with an adjustment of my permit area?

You must contact BLM within the notice period to show cause why the area should not be adjusted.

Permit renewals

§ 4300.57 How do I apply for a renewal of my permit?

You must submit an application for renewal between four and eight months before the permit expires. In addition, you must include a $10 filing fee per year.

§ 4300.58 Will the renewed permit be exactly the same as the old permit?

At its discretion, BLM may offer you a renewed grazing permit with such terms, conditions, and duration that it determines are in the public interest.

Assigning your permit to another party

§ 4300.59 If I want to assign my permit to another party, when must I notify BLM?

You must file a proposed assignment of your permit, in whole or in part, in duplicate with BLM within 90 days of the assignment execution date. The assignment is effective when BLM approves it.

§ 4300.60 What must be included in my assignment document?

Assignments must contain:

(a) All terms and conditions agreed to by the parties;

(b) A showing under §§ 4300.11 and 4300.12 that the assignee is qualified to hold a permit;

(c) A showing under § 4300.21(a) regarding a reindeer allotment; and

(d) The assignee's statement agreeing to be bound by the provisions of the permit.

§ 4300.61 Can I sublease any part of the land in my permit?

No.

Closing out your permit

§ 4300.70 May I relinquish my permit?

Yes. You may relinquish the permit by filing advance written notice with BLM. Your relinquishment will be effective on the date you indicate, as long as it is at least 30 days after the date you file.

§ 4300.71 Under what circumstances can BLM cancel my permit?

(a) BLM may cancel the permit if:

(1) BLM issued it improperly through error as to a material fact;

(2) You fail to comply with any of the provisions of the permit or the regulations of this part; or

(3) Disposal, withdrawal, natural causes, such as drought or fire, or any other reason in § 4300.50 so requires.

(b) BLM will not cancel the permit for your default until BLM has notified you in writing of the nature of your default, and you have been given at least 30 days to show why BLM should not cancel your permit.

§ 4300.72 May I remove my personal property or improvements when the permit expires or terminates?

(a) Yes. Within 90 days of the expiration or termination of the grazing permit, or within any extension period, you may remove all your personal property and any removable range improvements you own, such as fences, corrals, and buildings.

(b) Property that is not removed within the time allowed will become property of the United States.

Reindeer crossing permits

§ 4300.80 How can I get a permit to cross reindeer over public lands?

(a) BLM may issue a crossing permit free of charge when you file an application with BLM at least 30 days before the crossing is to begin. Lands crossed may include lands under a grazing permit.

(b) The application must show:

(1) The number of reindeer to be driven;

(2) The start date;

(3) The approximate period of time required for the crossing; and

(4) The land to be crossed.

(c) You must comply with applicable State and Federal laws on livestock quarantine and sanitation when crossing reindeer on public land.

Trespass

§ 4300.90 What is a trespass?

(a) A trespass is any use of Federal land for reindeer grazing purposes without a valid permit issued under the regulations of this part; a trespass is unlawful and is prohibited.

(b) Any person who willfully violates the regulations in this part shall be deemed guilty of a misdemeanor, and upon conviction is punishable by imprisonment for not more than one year, or by a fine of not more than $500.

[FR Doc. 96–27581 Filed 10–31–96; 8:45 am]

BILLING CODE 4310–84–P

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC32

Endangered and Threatened Wildlife and Plants, Notice of Reopening of Comment Period on Proposed Endangered Status for the Alameda Whipsnake, the Callippe Silverspot Butterfly, and the Behren's Silverspot Butterfly

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed Rule, notice of reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provides notice of reopening of the comment period on proposed endangered status for Alameda whipsnake (*Masticophis lateralis euryxanthus*), the callippe silverspot butterfly (*Speyeria callippe callippe*), and Behren's silverspot butterfly (*Speyeria zerene behrensii*). The comment period has been reopened to acquire additional information from interested parties, and to resume the proposed listing actions.

DATES: The public comment period closes December 2, 1996.

Any comments received by the closing date will be considered in the final decision on this proposal.

ADDRESSES: Written comments and materials concerning this proposal should be sent directly to the Field Supervisor, Sacramento Field Office, 3310 El Camino Ave., Suite 130, Sacramento, California 95821. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Diane Windham (see ADDRESSES section) at (916) 979–2725.

SUPPLEMENTARY INFORMATION:

Background

On February 4, 1994, the Service published a rule proposing endangered status for the Alameda whipsnake, and the callippe silverspot and Behren's silverspot butterflies. The original comment period closed on April 5, 1994.

The Alameda whipsnake occurs in northern coastal scrub, chaparral, and adjacent habitats in the inner coast ranges of western and central Contra Costa and Alameda counties. Five populations of the whipsnake are centered in the (1) Sobrante Ridge, Tilden/Wildcat Regional Parks area to the Briones Hills, in Contra Costa County; (2) Oakland Hills, Anthony Chabot area to Las Trampas Ridge, in Contra Costa County; (3) Hayward Hills, Palomares area to Pleasanton Ridge, in Alameda County; (4) Mount Diablo vicinity and the Black Hills, in Contra Costa County; and (5) Wauhag Ridge, Del Valle area to the Cedar Mountain Ridge, in Alameda County. Little or no genetic flow occurs between these population centers. The whipsnake occurs on State, county, and privately owned lands.

The callippe silverspot butterfly (*Speyeria calippe callippe*) is found in native grassland and adjacent habitats, where it lays its eggs on the dry remains of the larval foodplant, Johnny- jump-up (*Viola pedunculata*), or on surrounding debris. Populations of the callippe silverspot butterfly occur only in the San Francisco Bay area, south of the Golden Gate and Carquinez Straits. The only two known remaining colonies occur on private, county, and State lands on San Bruno Mountain in San Mateo County, and a city park in Alameda County.

The Behren's silverspot butterfly (*Speyeria zerene behrensii*) inhabits coastal terrace prairie habitat where it lays its eggs in the debris and dried stems of the larval foodplant, the western dog violet (*Viola adunca*). The single, extant population occurs on private land near Point Arena in Mendocino County.

These animals, their habitats, and the foodplants of the larval butterflies may be threatened by one or more of the following: commercial and residential development, fire suppression, overcollecting, competition from alien plants, inappropriate grazing levels, off-road vehicle use, trampling by hikers and livestock, and random chance events by virtue of their small numbers, and small, fragmented population sizes.

The Service was unable to make a final listing determination on these species because of a limited budget, other endangered species assignments driven by court orders, and higher listing priorities. In addition, a moratorium on listing actions (Public

Law 104–6), which took effect on April 10, 1995, stipulated that no funds could be used to make final listing or critical habitat determinations. Now that funding has been restored, the Service is proceeding with a final determination for these three animal species.

Due to the length of time that has elapsed since the close of the initial comment period, changing procedural and biological circumstances and the need to review the best scientific information available during the decision-making process, the comment period is being reopened. The Service now believes that the effects of fire suppression, a factor not identified in the proposed rule as a threat to the Alameda whipsnake and its habitat, may be a significant factor in the determination of the final status for the whipsnake. For this reason, the Service particularly seeks information concerning:

(1) the known or potential effects of fire suppression and general fire management practices on the Alameda whipsnake and its habitat.

In addition, the Service seeks information that has become available in the last two years concerning:

(2) other biological, commercial, or other relevant data on any threat (or lack thereof) to any of these species; and

(3) the size, number, or distribution of populations of any of these species.

Written comments may be submitted until December 2, 1996 to the Service office in the **ADDRESSES** section.

Author

The primary author of this notice is Diane Windham (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: October 25, 1996.

Thomas Dwyer,

Acting Regional Director, Region 1.

[FR Doc. 96–28058 Filed 10–31–96; 8:45 am]

BILLING CODE 4310–55–P

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50 CFR Part 36

RIN 1018–AD93

Regulations for the Administration of Special Use Permits on National Wildlife Refuges in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes these regulations to clarify, update, and add to existing regulations for the administration of all special use permits (permits) on national wildlife refuges (refuges) in Alaska. These regulations are being revised to provide the Service with the necessary regulatory authority to administer the recent changes in the refuges' commercial visitor service programs and to ensure proper and uniform management of all permits on refuges in Alaska.

DATES: For written comments to be considered, they must be received by December 31, 1996.

ADDRESSES: Comments should be sent to the Regional Director, Attention: Daryle R. Lons, U.S.F.W.S., 1011 Tudor Rd., Anchorage, AK 99503.

FOR FURTHER INFORMATION CONTACT: Daryle R. Lons, telephone (907) 786–3354.

SUPPLEMENTARY INFORMATION:

Background

The Alaska National Interest Lands Conservation Act of 1980 (ANILCA, Pub.L. 96–487; 94 Stat. 2371) and the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) authorize the Secretary of Interior to prescribe regulations as necessary to administer permits for compatible activities on refuges in Alaska.

The current regulations governing issuance of permits on units of the National Wildlife Refuge System in Alaska, codified at 50 CFR 36.41, and originally published in the Federal Register in 1981 (46 FR 40192, August 7, 1981), and were amended in 1986 (51 FR 44794, December 12, 1986). Since then, the permit administration program on refuges in Alaska has continued to evolve and grow in both size and complexity. Although special use permits were issued for a variety of economic and other privileged specialized uses, most permits issued on Alaska Refuges are for commercial visitor service activities involving guide-outfitters.

The primary purpose of the revised regulations is to provide better guidance to Service employees and permittees concerning the administration of commercial visitor service permits on refuges in Alaska. Regulations implementing Section 1307 of ANILCA (see 60 FR 20374–20378, April 25, 1995) are currently being promulgated separately from this rulemaking. The 1307 regulations will establish procedures for granting historical use, Native Corporation, and local preferences in the selection of commercial operators who provide visitor services other than hunting and fishing guiding on refuges in Alaska. The 1307 regulations will supplement these proposed regulations.

Since the original regulations were promulgated, the program has evolved due to significant changes in State of Alaska guiding regulations and programs, increases in commercial visitor services on refuges, and changes in the economic environment of the guiding industry.

The most visible and significant change in the Service's administration of refuge permits in Alaska was caused by the decision of the Alaska Supreme Court in *Owsichek* v. *State Guide Licensing and Control Board,* 763 P. 2 d 488 (Alaska 1988). That ruling overturned as unconstitutional the State of Alaska's (State) system of assigning exclusive big game guide areas. Until that ruling, the Service depended upon the State's system for selecting big game guides for use areas within refuge lands in Alaska. To allow the State an opportunity to develop a constitutionally acceptable system that would meet Service needs, the Service imposed a moratorium on issuance of permits to new big game guide applicants. After a period of operating under this moratorium, it became apparent that the State would not be able to adopt and implement a program for selection of big game guide outfitters which also would satisfy Service requirements and mandates. Therefore, the Service developed its own interim program in order to provide an equal opportunity for all registered big game guide-outfitters to compete for permits to operate on refuges in Alaska. After soliciting public comment on a draft system, and making revisions based on those comments, an interim program was implemented in June 1992. Requests for proposals were then solicited and applicants were notified of selections in January 1993. Successful applicants were awarded 5-year permits effective July 1, 1993.

It appears unlikely the State will be able to implement a suitable competitively-based system for selection of guides to start in time to allow the reissuance of permits in 1998. These revised regulations will provide the proper authority to allow the Service's big game guide permitting program to continue.

Another factor in the evolution of the permit program has been the significant increase in the number of permits being issued by the refuges. Increase in

demand for activities such as sport fish guiding and river floating reached the maximum capacity on several refuges during the late 1980's and early 1990's. Where the Service has had to limit the numbers of permittees for certain activities, this was done by awarding permits through competitive selection processes or by annually renewing permits for existing permittees until a competitive selection process could be implemented.

The existing system also needs to be modified to respond to the changing economic conditions affecting commercial visitor services. Guides started voicing their concerns in the late 1980's that changing economic factors and business requirements made it more and more difficult for commercial visitor service businesses to operate in a professional and safe manner with the limited financial security offered by annual permits. Guides have offered strong arguments that they needed the financial security associated with longer term permits and the right to transfer their permits when they retired. They also sought survivor rights for family members and business partners. The Service addressed their concerns in part by initiating programs to issue competitively awarded, 5-year permits for sport fish guides on Togiak National Wildlife Refuge in 1991 and for big game guide outfitters on all Alaska refuges in 1992. Policy was also revised to establish a right of survivorship.

As a result of the changes associated with awarding permits competitively, there has been an apparent overall improvement in permittee compliance with terms of permits, a reduction in impacts to refuge resources and other users, and an increase in the quality of visitor services provided to the public.

Early in 1995, Congress directed the Service to reinstate a short-lived and effectively unimplemented 1992 policy directive issued by former Secretary of the Interior Lujan. The 1992 policy required competitively issued hunting and fishing guide permits to have 5-year terms with 5-year renewal rights, allowed the privileges of the permits to be transferable under certain conditions, and required existing competitively awarded permits to be reissued consistent with the policy. Shortly after Secretary of the Interior Babbitt's appointment, he reviewed the 1992 policy and determined that it was inappropriate to implement such policy without public notice and comment. Subsequently, Congress supported a return to the earlier policy by including language in a conference report (H.R. 1977), regarding the Department's Fiscal Year 1996 appropriations, which directed the Service to reinstate the 1992 policy. The Service is complying with the directive by publishing these proposed regulations. To meet the intent of the directive, the proposed regulations also provide a phase-in period of the competitive system to those permittees who have been conducting a commercial activity in a refuge where the Service has historically limited the numbers of permits issued. Although the Service has only been issuing annual permits to these permittees, the Service, until recently, has given them a reasonable expectation that they would continue to receive permits each year as long as they provided good service and met the terms of their permits. Many of these permittees have invested a significant amount of time and money and built their lives around a business which is dependent upon receiving a permit.

The proposed regulations make the 1992 policy applicable to all competitively awarded commercial visitor service permits, not just sport fishing and big game hunting guide permits and will provide the Service with the proper regulatory authority to administer its permit program. The existing regulations do not address the competitive award of all big game guide-outfitter permits nor any of the other refuge-specific, competitively awarded permits. In a recent lawsuit concerning implementation of the big game guide-outfitter program, the U.S. District Court's 1994 finding in favor of the Service was influenced by the Service's commitment to developing regulations addressing administration of the program.

In summary, the goals of this rulemaking are to provide the public, commercial service industry, and Service employees with better guidance for the administration of special use permits on refuges in Alaska; to enhance the conservation of wildlife resources by establishing a system in which operators have a more direct, continuing and long-term interest in conserving and protecting these valuable resources; and to obtain the most capable operators available to provide safe, high quality services to the general public.

Analysis of Comments Received

Department of Interior policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Prior to drafting these regulations, individual letters were sent to all known interested parties and an advance notice was published in the Federal Register which requested public comments on several issues, including:

(1) Whether the existing 180-day period allowed for filing appeals of decisions by refuge managers denying permit applications to the Regional Director of the Service is appropriate under present circumstances. By way of comparison, the appeal period in the rest of the United States is 30 days (50 CFR 25.45);

(2) To what extent should the existing interim system used for selecting big game guide-outfitters be made part of the regulations;

(3) Whether a different appeal procedure should be used where permit awards are based upon a competitive selection system such as that used to select big game guide-outfitters under the existing interim system; and

(4) Whether provision should be made for suspending the Service's big game guide-outfitter selection system if the State develops and implements a system meeting Service requirements.

The Service received 14 letters in response to the advance notice. These included one letter from the State of Alaska, two letters from Alaska Native village councils, one letter from a national environmental organization, one letter from a big game guiding association, and nine letters from individuals. In addition, the Service received additional informal follow up comments, mostly from those who had responded to the advance notice with substantial comments. The following is an analysis of the written comments received in response to the notice:

Length of Appeal Period

Four comments were received on the appeal period. One respondent stated the existing 180-day period is appropriate. Two respondents recommended that the appeal period be shortened to 30–60 days. Stated rationale included that a longer period places existing permittees in an awkward position for a longer period than necessary and prevents them from committing resources to their operations until the time for filing an appeal has run or is resolved. One respondent recommended extending the appeal period up to 1-year because guide-outfitters are often in isolated areas without access to immediate communication. The proposed regulations provide for a 45-day appeal period.

Incorporation of Big Game Guide-Outfitter Selection Process Into Regulations

Six comments were received on making the existing selection process part of the regulations. Two respondents recommended suspending the existing

big game guide selection process completely in favor of the State of Alaska's existing system. Three respondents supported making the existing policy, with revisions, part of the regulations. One respondent recommended that any changes in the administration of special use permits should be made in policy form instead of revised regulations. The proposed regulations establish a framework the Service considers the minimum necessary to provide proper legal authority to administer the program.

Appeal Procedure

Three respondents commented on the appeal procedure. Two commenters urged the Service to develop a more objective appeal procedure which is less biased than the existing system. One respondent proposed that the issuance of certain types of permits should be subject to public notice with an appeal process to contest the awarding of permits which are construed to be controversial.

The regulations establish a revised appeal process including different allowed time frames from the existing regulations. The proposed regulations do not establish an appeal mechanism for the general public to contest the issuance of permits. The Service believes this would be an unjustifiable administrative burden for most routine permits. The issuance of future permits authorizing controversial activities, not within the scope of decisions made during prior public planning processes in compliance with National Environmental Protection Act (NEPA) requirements, will be subject to public comment during the development of appropriate NEPA documentation.

Provision for Suspending Big Game Guide-Outfitter Selection Provisions

Four comments favored establishing a provision in the regulations that would suspend the Service's administration of selecting big game guide-outfitters if the State of Alaska develops satisfactory competitive selection regulations. The proposed regulations include a provision for State selection of big game guide-outfitters as well as sport fishing guides.

Other

The Service received numerous other comments concerning other administrative aspects of the special use permit program. Most of these comments were more relevant to upcoming policy development issues rather than the rule itself. Examples include:

(1) Revising competitive selection criteria;

(2) Structure of selection panels;

(3) Comprehensive review of permit program;

(4) Cumulative impacts of authorized permittee activities; and

(5) Permit fees.

The Service also received several comments regarding permit terms, transferability, and renewal rights. All but one of these comments favored longer term permits with renewal rights and allowances for transferability. The proposed rule provides for 5 year terms with renewal rights and limited transferability.

One respondent recommended that the Service thoroughly assess the activities occurring under past and present permits and provide this information to the public prior to publishing this proposed rule. The Service does not feel additional assessments are needed because these regulations focus on the administrative process, not on management decisions relating to the number and types of permits to be authorized. Such assessments will be needed during the development or revision of public use management plans and/or comprehensive conservation plans for individual refuges.

One respondent recommended changes in the Service's emergency closure process. These recommendations are applicable to another section of existing regulations and do not pertain to this proposed rule.

One respondent recommended that the proposed rule require written compatibility determinations before any secondary use is allowed. Compatibility determinations are statutorily required for activities requiring a special use permit. Written determinations are routinely completed by every Refuge Manager in Alaska. If the Service determines there is a need for a regulation on this subject, it will be included in the next revision of Part 25, Subpart D of Title 50 of the Code of Federal Regulations which applies to all national wildlife refuges, not just refuges in Alaska.

Request for Additional Comments

In accordance with Department policy, interested persons may submit written comments concerning this proposed rule by any of the following:

(1) Mailing to Daryle R. Lons, U.S. Fish and Wildlife Service; 1011 East Tudor Road, Anchorage, AK 99503–6199;

(2) Faxing to Daryle Lons at (907) 786–3657; or

(3) Electronically mailing to daryle—lons@mail.fws.gov.

The Service scheduled public meetings to receive comments in Anchorage and Fairbanks, Alaska and reviewed and considered all substantive comments before this proposed rule was published.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Service has applied for its expired authorization and clearance number 1018–0077 to be re-instated by the Office of Management and Budget (OMB). The Service is applying for an emergency extension and is likewise working on a long-term 3-year authorization request which will be submitted before the emergency authorization expires. No information collection will be made until this authorization is obtained and current.

This collection of information will be achieved through the use of a USFWS Application Form, which will be modified pursuant to 50 CFR 13.12(b), to address the specific requirements of the final rule. The information collection requirements needed for the proper use and management of all Alaska National Wildlife Refuges is contained in 50 CFR 36.3. The information is being collected to assist the Service in administering economic and other privileged use programs and, particularly, in the issuance of permits and the granting of statutory or administrative benefits.

This collection of information will establish whether the applicant is fully qualified to receive the benefits of a refuge permit. The information such as name, address, phone number, depth of experience, qualifications, time in residence, knowledge of function, and affiliations requested in the application form is required to obtain a benefit.

The likely respondents to this collection of information will be individual Alaska citizens and native corporations who wish to be considered to receive a refuge permit. This information will be needed by the USFWS to determine whether a given individual or corporation qualifies. A refuge permit will be approved for 3 years, at which time renewal of approval will be considered by the Service. The public reporting burden for this collection of information is estimated to average 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. The estimated number of

likely respondents is less than ten, yielding a total annual reporting and recordkeeping burden of 15 hours or less.

Direct comments regarding the burden estimate or any other aspect of the form to the Service Information Collection Clearance officer, Fish and Wildlife Service, Mail Stop 224, Arlington Square, U.S. Department of the Interior, 1849 C Street, N.W., Washington, D.C. 20240, and to the Office of Information and Regulatory Affairs, OME, Attention: Desk officer for the Interior Department (1018–0077), Washington, D.C. 20503.

Environmental Considerations

In accordance with 516 DM 2, Appendix 2, the Service has determined that this action is categorically excluded from the NEPA process as it contains ''policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature'' that will have no potential for causing substantial environmental impact.

Economic Effects/Regulatory Flexibility Act Compliance

This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866. A review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) has revealed that this proposed rulemaking would not have a significant effect on a substantial number of small entities, which include businesses, organizations, or governmental jurisdictions. The proposed rule will maintain an overall economic status quo without changes in either the number or type of permits being issued.

Unfunded Mandates

The Service has determined and certifies pursuant to the Unfunded Mandates Act (2 U.S.C. 1502 *et seq.*), that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities.

Civil Justice Reform

The Department has determined that these proposed regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Primary Author: Daryle R. Lons, Refuge Program Specialist, Fish and Wildlife Service, Alaska Region.

List of Subjects in 50 CFR Part 36

Alaska, Recreation and recreation areas, Reporting and recordkeeping requirements, Wildlife refuges.

Accordingly, Part 36 of Chapter I of Title 50 of the Code of Federal Regulations is proposed to be amended as follows:

PART 36—[AMENDED]

1. The authority citation for Part 36 continues to read as follows:

Authority: 16 U.S.C. 460(k) *et seq.*, 668dd *et seq.*, 742(a) *et seq.*, 3101 *et seq., and 44 U.S.C. 3501 et seq.*

2. Section 36.41 is revised to read as follows:

§ 36.41 Permits.

(a) *Applicability.* The regulations contained in this section apply to the issuance and administration of competitively and noncompetitively issued permits for economic and/or other privileged uses on all national wildlife refuges in Alaska. Nothing in this section requires the refuge manager to issue a special use permit if not otherwise mandated by statute to do so. Supplemental procedures for granting historical use, Native Corporation, and local preferences in the selection of commercial operators to hold permits to provide visitor services, other than hunting and fishing guiding on refuges in Alaska, are addressed in § 36.37, Revenue Producing Visitor Services.

(b) *Definitions.* As used in this section, the term or terms:

Commercial visitor service shall mean any service or activity made available for a fee, commission, brokerage or other compensation to persons who visit a refuge, including such services as providing food, accommodations, transportation, tours, and guides. Included is any activity where one participant/member or group of participants pays more in fees than the other participants (non member fees, etc.), or fees are paid to the organization which are in excess of the bona fide expenses of the trip;

Entire business shall mean all assets including, but not limited to, equipment, facilities, and other holdings associated with the permittee's type of commercial visitor service authorized by permit. This term also includes assets held under the name of separate business entities, which provide the same type of commercial visitor services authorized by permit, that the permittee has a financial interest in. The term does not include related enterprises owned by the permittee such as taxidermy and travel services;

Operations plan shall mean a narrative description of the commercial operations which contains all required information identified in the prospectus;

Permit shall mean a special use permit issued by the refuge manager which authorizes a commercial visitor service or other activity restricted by law or regulation on a national wildlife refuge;

Prospectus shall mean the document that the Service uses in soliciting competition to award commercial visitor services on a refuge;

Subcontracting shall mean any activity in which the permittee provides financial or other remuneration to anyone other than employees to conduct the specific commercial services authorized by the Service. The permittee's primary authorized activities must be conducted in a genuine employer/employee relationship where the source of all remuneration for services provided to clients is from the permittee. Subcontracting does not apply to booking services or authorized secondary services provided to clients in support of the permittee's primary authorized activities (e.g., a guide paying a marine or air taxi operator to transport clients);

Subletting shall mean any activity in which the permittee receives financial or other remuneration in return for allowing another commercial operator to conduct any of the permittee's authorized activities in the permittee's use area; and

Use area shall mean the designated area that a permittee is authorized to conduct commercial services in.

(c) *General provisions.* In all cases where a permit is required, the permittee must abide by the conditions under which the permit was issued. Refuge managers will provide written notice to the permittee in all cases where documentation of noncompliance is prepared for use in any administrative proceeding involving the permittee.

(d) *Application.* (1) This section and other regulations in this part 36, generally applicable to the National Wildlife Refuge System require that permits be obtained from the refuge manager. For activities on the following refuges, permits are to be obtained from the respective refuge manager in the following locations:

Refuge	Office location
Alaska Peninsula National Wildlife Refuge.	King Salmon.
Alaska Maritime National Wildlife Refuge.	Homer.
Aleutian Islands Unit, Alaska Maritime NWR.	Homer.
Arctic National Wildlife Refuge.	Fairbanks.
Becharof National Wildlife Refuge.	King Salmon.

Refuge	Office location
Innoko National Wildlife Refuge.	McGrath.
Izembek National Wildlife Refuge.	Cold Bay.
Kanuti National Wildlife Refuge.	Fairbanks.
Kenai National Wildlife Refuge.	Soldotna.
Kodiak National Wildlife Refuge.	Kodiak.
Koyukuk National Wildlife Refuge.	Galena.
Nowitna National Wildlife Refuge.	Galena.
Selawik National Wildlife Refuge.	Kotzebue.
Tetlin National Wildlife Refuge.	Tok.
Togiak National Wildlife Refuge.	Dillingham.
Yukon Delta National Wildlife Refuge.	Bethel.
Yukon Flats National Wildlife Refuge.	Fairbanks.

(2) For noncompetitively issued permits, the applicant may present the application verbally if he/she is unable to prepare a written application. The refuge manager will keep a written record of such verbal application. For competitively issued permits, the applicant must submit a written application in the format delineated in the prospectus or other designated format of the Service.

(3) The refuge manager will grant or deny applications for noncompetitively issued permits in writing within 45 days, except for good cause. For competitively issued permits, the refuge manager will grant or deny applications in accordance with the time frame established in the prospectus, except for good cause.

(4) Application period deadlines for individual refuges may be established for both competitively and noncompetitively issued permits. Notification of availability for commercial opportunities and application deadlines will be sent to existing and/or the previous year's permittees, published in at least one newspaper of general circulation in the State and in at least one local newspaper if available, and made available for broadcast on local radio stations in a manner reasonably calculated to inform local prospective applicants.

(5) The Service may limit the number of applications that an individual may submit for competitively awarded offerings.

(e) *Competitively awarded permits.* (1) Where the number of available permits is limited, permits will be awarded competitively. A prospectus with invitation to bid system will be the primary competitive method used for selecting commercial visitor services. Where justified, other selection methods, including but not limited to lotteries, may be used. Such circumstances may include, but not be limited to, the timely refilling of use areas that have become vacant during regularly scheduled terms to prevent commercial visitor service opportunities from going unused, and initiating trial programs on individual refuges. The refuge manager has discretionary authority to issue noncompetitive permits on a one-time, short-term basis to accredited educational institutions and nonprofit, environmental organizations for activities in use areas where permits are otherwise limited to competitive award.

(2) Where numbers of permits have been limited for an activity prior to the promulgation of these regulations and a prospectus with invitation to bid system has not yet been developed, refuge managers may issue noncompetitive five-year permits on a one-time basis to existing permittees.

(3) All solicitations for competition will be publicly noticed in accordance with paragraph (d)(4) of this section and include reasonable application periods of not less than 60 days. When competitively selecting permittees for an activity in a use area where permits for that activity have not previously been competitively awarded, the Service will publicly notice the upcoming opportunity a minimum of 18 months prior to the effective date of the permit term.

(4) All prospectuses will identify the selection criteria that the Service will use to evaluate the proposals. Experience and performance in providing the same or similar services must be included as a criterium in all prospectuses involving commercial visitor services. In evaluating the experience of an applicant, the Service will specifically consider knowledge of the specific area covered by the prospectus and the nature of the technical skills required to provide quality service to the public.

(5) A panel of Service employees who use a scoring process based on the selection criteria will evaluate and rank applications received in response to a prospectus.

(6) The Service has discretionary authority to not evaluate or consider proposals that are incomplete or improperly submitted.

(7) The Service may establish minimum scores to qualify for the award of permits. If established, these minimum scores will be identified in the prospectus.

(8) The Service may establish limits on the number of use areas within an individual refuge, or on refuges statewide, in which a permittee is authorized to operate. This limit applies to different corporations in which the same individual has any ownership interests.

(9) When vacancies occur in competitively filled use areas, the procedure for reissuing the permits will depend on how long it has been since the permit was originally issued. If a vacancy occurs within the first 12 months of the permit's effective date, the permit will be awarded to the next highest ranking interested applicant in the original solicitation. Resolicited competition for the area will occur as soon as practicable if:

(i) A vacancy occurs after 12 months of the permits effective date; and

(ii) At least 24 months of the original permit term is available for a new permittee after completion of the solicitation, application, evaluation and awards period. If less than 24 months of the term of the permit is available, the Service has the discretion to solicit competition during the regularly scheduled solicitation period. In areas where historically there has not been significant permittee interest, a noncompetitively issued permit may be issued on an annual basis until competition can be solicited in conjunction with other solicitations for vacant areas.

(10) Terms of permits awarded under the prospectus with invitation method are valid for 5 years except in those instances where permits are issued to fill vacancies occurring during a scheduled award cycle. In these instances, the duration of the permit may be limited to the expiration date of the original award period. Permits awarded under the prospectus with invitation method may be noncompetitively renewed by the refuge manager for a period of 5 additional years upon showing permittee compliance with all applicable permit terms and conditions and a satisfactory record of performance. No other extensions or noncompetitive renewals shall be awarded after one renewal.

(11) Permit privileges may be transferred to other qualified entities that demonstrate the ability to meet Service standards, as outlined in the prospectus upon which the existing permit was based, subject to approval by the refuge manager. Requests for transfers must be made in writing to the refuge manager. A permittee who transfers his/her privileges will not be

eligible to be considered for competitively awarded permits for the same type of activity on the same national wildlife refuge for a period of 3 years following the authorized transfer. Transfers may be approved if all the following criteria are satisfied:

(i) The transfer is part of the sale or disposition of the current permittee's entire business as earlier defined;

(ii) The current permittee was: either conducting the commercial activity in the area prior to establishment of the refuge; conducting the commercial operation in the refuge under authorization of a permit for a minimum of 15 years; or owns significant real property in the area, the value of which is dependent on holding a refuge permit. Consideration of the last element will include, but not be limited to:

(A) The relationship of the real property to permitted refuge activities as documented in the operations plan;

(B) The percentage that the authorized refuge activities comprise of the total commercial use associated with the real property; and

(C) The appraised value of the real property.

(iii) The transferee is independently qualified to hold the permit under the standards of the prospectus of the original existing permit.

(iv) The transferee has an acceptable history of compliance with fish and wildlife and related permit regulations during the past 5 years. An individual with any felony conviction is considered an ineligible transferee. Transfer approval to an individual having any fish and wildlife related misdemeanor violation will be discretionary. Denial will be based on, but not limited to, whether the individual committed any violation in which the case disposition resulted in any of the following:

(A) Any jail time served;

(B) Any civil penalty or criminal fine of $250 or greater;

(C) Forfeiture of equipment or harvested animal (or parts thereof) valued at $250 or greater;

(D) Suspension of privileges or revocation of any fish and wildlife related license/permits;

(E) Other alternative sentencing that indicates the penalty is of equal severity to the foregoing elements; or

(F) Any multiple misdemeanor violations.

(12) The transferee shall follow the operations plan of the original permittee. The transferee's operations plan may be modified with the written consent of the refuge manager as long as the change does not result in increased adverse impacts to refuge resources or other refuge users.

(13) Upon timely approval of the transfer, the Service will issue the new permittee a permit for the remaining portion of the original permit term. The refuge manager retains the right to restrict, suspend, revoke, or not renew the permit for failure to comply with its terms and conditions.

(14) Privileges of permits issued under this paragraph (e) may be transferred, subject to regional director approval, to a former spouse when a court awards permit-associated business assets in a divorce settlement agreement to that person. The recipient must be independently qualified to hold the permit under the minimum standards identified by the Service when the permit was originally issued and has an acceptable history of compliance as set forth in paragraph (e)(11)(iv) of this section.

(15) Privileges of permits issued under this paragraph (e) may be transferred in the case of death or disability of the permittee, subject to regional director approval, as provided in this paragraph (e). In these cases, the permit privileges may pass to a person who was a business partner when the permit was issued, a spouse, or an immediate family member who is independently qualified to hold the permit under the minimum standards identified by the Service when the permit was originally issued, and has an acceptable history of compliance as set forth in paragraph (e)(11)(iv) of this section.

(16) Upon [the effective date of the final regulations], refuge managers shall amend existing competitively-awarded permits through the prospectus method to make the terms fully consistent with this section, including eligibility for a 5-year noncompetitive renewal. Managers must be careful not to break existing legal contracts.

(f) *Fees.* Permittees must pay fees formally established by regional and/or nation-wide Service policy. Any fee exemption must be documented by the refuge manager.

(g) *Subletting and subcontracting.* A permittee may not sublet any part of an authorized use area. Written approval from the refuge manager to subcontract any service authorized by the permit is required unless the subcontracted service is specifically identified in the permittee's approved operations plan.

(h) *Restriction, suspension and revocation of permits.* A permit may at any time be suspended, revoked, or its terms may be reasonably restricted for noncompliance with the terms and conditions thereof, or the regulations in, this subchapter C: for nonuse; for violation of any law, regulation or order applicable to the refuge; to protect public health or safety; or if the refuge manager determines the use to be incompatible with refuge purposes or is inconsistent with the Service's obligations under Title VIII of the Alaska National Interest Lands Conservation Act.

(i) *Appeals.* (1) Any person adversely affected by a refuge manager's decision or order relating to the person's permit, or application for a permit, has the right to have the decision or order reviewed by the regional director. This section does not apply to permits or applications for rights-of-way. See 50 CFR 29.22 for the hearing and appeals procedure on rights-of-way.

(2) Prior to making any adverse decision or order on a permit or application, the refuge manager will notify the permittee or applicant, verbally or in writing, of the proposed action and its effective date. The permittee or applicant of noncompetitively issued permits shall have 45 calendar days after notification in which to present to the refuge manager, orally or in writing, a statement in opposition to the proposed action or effective date. A holder of a valid permit shall be notified in writing, within 10 calendar days after receipt of the statement in opposition of the refuge manager's final decision or order. An applicant for a permit shall be notified in writing within 30 calendar days after receipt of the statement in opposition, of the refuge manager's final decision or order. Applicants, who wish to appeal permit awards made by competitive selection must appeal the refuge manager's decision directly to the regional director within the time period provided for in paragraph (i)(3) of this section.

(3) The permittee or applicant shall have 45 calendar days from the postmarked date of the refuge manager's final decision or order in which to file a written appeal to the regional director. In appeals involving applicants who were not selected during a competitive selection process, the selected applicant concurrently will be afforded the opportunity to provide information to the regional director before a final decision is made. For purposes of reconsideration, appellants shall present the following information:

(i) Any statement or documentation, in addition to that included in the initial application, permit or competitive prospectus, which demonstrates that the appellant satisfies the criteria set forth in the document

under which the permit application/award was made;

(ii) The basis for the permit applicant's disagreement with the decision or order being appealed; and

(iii) Whether or not the permit applicant requests an informal hearing before the regional director.

(4) The regional director will provide a hearing if requested by the applicant. After consideration of the written materials and oral hearing, and within a reasonable time, the regional director shall affirm, reverse, or modify the refuge manager's decision or order and shall set forth in writing the basis for the decision. A copy of the decision must promptly be forwarded to the applicant and will constitute final agency action.

(5) Compliance with any decision or order of a Refuge Manager must not be suspended if an appeal has been taken unless such suspension is authorized in writing by the Regional Director, and then only upon a determination that such suspension is not detrimental to the interests of the United States or upon submission and acceptance of a bond deemed adequate to indemnify the United States from loss or damage.

(j) *State selection of guide-outfitters.* Nothing in this section will prohibit the Service from cooperating with the State of Alaska in administering the selection of sport fishing guides and big game hunting guide-outfitters operating on national wildlife refuges should the State develop a competitive selection process which is acceptable to the Service.

Dated: September 24, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–28105 Filed 10–31–96; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 61, No. 213
Friday, November 1, 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

Agricultural Marketing Service

[Docket No. FV96–920–4 NC]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for Kiwifruit Grown in California, Marketing Order No. 920.

DATES: Comments on this notice must be received by December 31, 1996 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Charles L. Rush, Marketing Order Administration Branch, F & V, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, D.C., 20090–6456, or FAX (202) 720–5698; or Rose M. Aguayo, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax # (209) 487–5906.

SUPPLEMENTARY INFORMATION:

Title: Kiwifruit Grown in California, Marketing Order 920.

OMB Number: 0581–0149.

Expiration Date of Approval: June 30, 1997.

Type of Request: Extension and revision of currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674), industries enter into marketing order programs. The Secretary of Agriculture is authorized to oversee the order operations and issue regulations recommended by a committee of representatives from each commodity industry.

The information collection requirements in this request are essential to carry out the intent of the AMAA, to provide the respondents the type of service they request, and to administer the kiwifruit marketing order program, which has been operating since 1984.

The kiwifruit marketing order authorizes the issuance of quality regulations and inspection requirements. Regulatory provisions apply to kiwifruit shipped within and outside of the production area, except those specifically exempt. The order also has authority for production and marketing research and development projects, including paid advertising.

The order, and rules and regulations issued thereunder, authorize the Kiwifruit Administrative Committee (Committee), the agency responsible for local administration of the order, to require handlers and growers to submit certain information. Much of this information is compiled in aggregate and provided to the industry to assist in marketing decisions.

The Committee has developed forms as a means for persons to file required information with the Committee relating to kiwifruit supplies, shipments, dispositions, and other information needed to effectively carry out the purpose of the Act and order. Kiwifruit may be shipped beginning in October and ending in April, and these forms are utilized accordingly. A USDA form is used to allow growers to vote on amendments to or continuance of the marketing order. In addition, kiwifruit growers and handlers who are nominated by their peers to serve as representatives on the Committee must file nomination forms with the Secretary.

The forms covered under this information collection require the minimum information necessary to effectively carry out the requirements of the order, and their use is necessary to fulfill the intent of the Act as expressed in the order.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Division regional and headquarter's staff, and authorized employees of the Committee. Authorized Committee employees and the industry are the primary users of the information and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .335 hours per response.

Respondents: Kiwifruit growers and handlers in the designated production area in California.

Estimated Number of Respondents: 247.

Estimated Number of Responses per Respondent: 8.032.

Estimated Total Annual Burden on Respondents: 665 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the functioning of the kiwifruit marketing order program; (2) the accuracy of the collection burden estimate and the validity of methodology and assumptions used in estimating the burden of respondents; (3) ways to enhance the quality, utility, and clarity of the information requested; and (4) ways to minimize the burden, including use of automated electronic technologies.

Comments should reference OMB No. 0581–0149 and Kiwifruit Marketing Order No. 920, and be mailed to Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, D.C., 20090–6456. Comments should reference the docket number and the date and page number of this issue of the Federal Register. All comments received will be available for public inspection in the Office of the Docket Clerk during regular USDA business hours at 14th and Independence Ave. S.W., Washington, D.C., room 2525 South Building.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: October 28, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Divison.

[FR Doc. 96–28025 Filed 10–31–96; 8:45 am]

BILLING CODE 3410–02–P

Forest Service

Establishment of Wesley Chapel Gulf Purchase Unit

AGENCY: Forest Service, USDA.

ACTION: Notice of establishment of Wesley Chapel Gulf Purchase Unit.

SUMMARY: On September 26, 1996, the Deputy Under Secretary, Natural Resources and Environment, created the 189-acre Wesley Chapel Gulf Purchase Unit in Orange County, Indiana. A copy of the establishment document, which includes the legal description of the lands within the purchase unit, appears at the end of this notice.

EFFECTIVE DATE: Establishment of this purchase unit was effective September 26, 1996.

ADDRESSES: A copy of the map depicting the purchase unit is on file and available for public inspection in the office of the Director, Lands Staff, 4 South, Auditor's Building, Forest Service, USDA, 201 14th Street, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Myers, Lands Staff, telephone: (202) 205–1248.

Dated: October 28, 1996.

Janice H. McDougle,

Associate Deputy Chief.

Proposed Wesley Chapel Gulf Purchase Unit

Orange County, Indiana

Pursuant to the Secretary of Agriculture's authority under Section 17, P.L. 94–588 (90 Stat. 2949), the Wesley Chapel Gulf Purchase Unit is being created in Orange County, Indiana. The lands included within this purchase unit are described as follows:

Township 2 North, Range 1 West

2nd Principal Meridian

Orangeville Township, Orange County, Indiana

Section 9

The West Half of the Northeast Quarter (W½ NE¼) of Section 9, Township 2 North, Range 1 West of the 2nd Principal Meridian, except 20 acres in the northeast corner thereof described as follows: Beginning at the northeast corner of said Half Quarter section and running thence West 40 rods; thence South 80 rods; thence East 40 rods to the east line of said Half Quarter section; thence north along said east line 80 rods to the place of beginning, containing 20 acres, except, also, 1 acre in the northwest corner of said tract described as follows: Beginning at the northwest corner of said Quarter section and running thence east along the north line thereof 16 rods; thence South 10 rods; thence West 16 rods to the West line of said Quarter section; thence North along said West line 10 rods to the place of beginning, containing 1 acre, and containing exclusive of said exceptions, 59 acres, more or less.

Part of the Southeast Quarter (SE¼) of Section 9, Township 2 North, Range 1 West, of the 2nd Principal Meridian described as follows: Beginning at the northwest corner of said Quarter section and running south along the west line thereof 20 rods; thence East 80 rods; thence North 20 rods; thence West 80 rods to the place of beginning, containing 10 acres.

Part of the Southeast Quarter (SE¼) of Section 9, Township 2 North, Range 1 West, of the 2nd Principal Meridian, described as follows: Beginning at the northeast corner of said Quarter section and running thence West 80 rods; thence South 28 rods; thence East 80 rods to the east line of said Quarter section; thence north along said east line 28 rods to the place of beginning, containing 14 acres, more or less, containing in all 83.00 acres, more or less.

A part of the Southeast Quarter (SE¼) of Section 9, Township 2 North, Range 1 West, beginning at the Southeast corner of said Section 9, and running north along said section line 132 rods; thence West 80 rods; thence North 8 rods; thence West 80 rods; thence South along the half mile section line 140 rods; thence East along the section line of said section, 160 rods to the place of beginning, containing in all 136 acres, more or less.

Excepting Therefrom

A part of the Northwest Quarter of the Southeast Quarter (NW¼ SE¼) of Section 9, Township 2 North, Range 1 West, in Orangeville Township, Orange County, Indiana, described as follows:

Beginning at the northwest corner of property in Deed Record Book 110, pages 100–101, being also at the intersection of a fence line 20 rods south of the northwest corner of said Southeast Quarter with County Road #350–West; thence East about 990 feet along said fence line to a fence line west of the barn; thence South 470 feet along said fence to the intersection with the fence along the south line of this property; thence west about 990 feet to said Quarter line; thence North 470 feet along said line to point of beginning, containing 10.7 acres, more or less.

Also Excepting Therefrom

A part of the North Half of the Southeast Quarter (N½ SE¼) of Section 9, Township 2 North, Range 1 West, of Orangeville Township, Orange County, Indiana.

Beginning at the northwest corner of property in Deed Record Book 110, pages 100–101, being also at the intersection of a fence line 20 rods south of the northwest corner of said Southeast Quarter with County Road #350 West; thence East about 990 feet along said fence line to a fence line west of the barn to point of beginning proper; thence South 470 feet along said fence to the intersection with the fence along the south line of this property; thence East 410 feet; thence North 470 feet to the line 20 rods South of the Quarter line; thence West 410 feet to the point of beginning proper. Containing 4.42 acres, more or less.

Also Excepting Therefrom:

A part of the North Half of the Southeast Quarter (N½ SE¼) of Section 9, Township 2 North, Range 1 West, Orangeville Township, Orange County, Indiana.

Beginning on the fence line that is the south line of Deed Record Book 148, pages 748–749, that intersects County Road #350 West, which is 48 rods, more or less, south of the northwest corner of the Southeast Quarter of said Section 9; thence East 1400 feet along said fence line to the southeast corner of Deed Record Book 155, pages 254–255; thence South 470 feet along a line extended from the fence on the east line of said deed record; thence West 1400 feet along a line parallel with existing fence line to County Road #350 West and Quarter line; thence North 470 feet along said Quarter line and county road to the point of beginning. Containing 15.1 acres, more or less.

The lands within the Wesley Chapel Gulf Purchase Unit total 188.88 acres, more or less. These lands are well suited for watershed protection and meet the requirements of the Act of March 1, 1911, as amended.

Dated: October 28, 1996.

Brian Eliot Burke,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 96–28089 Filed 10–31–96; 8:45 am]

BILLING CODE 3410–11–P

Fry-Zim EIS/Basin Creek EIS; Kootenai National Forest; Lincoln County, MT; Correction of Fry-Zim Notice of Intent and Change of Name to Basin Creek EIS

AGENCY: Forest Service, USDA.

ACTION: Environmental impact statement correction and name change notice.

SUMMARY: This correction gives notice of changes to the Fry-Zim Notice of Intent published in the Federal Register March 9, 1995 (FR document is FR 95–5695 Filed 3–8–95). The Fish Lakes and Zimmerman Hill fire salvage portions of the Fry-Zim project were analyzed under the Fry-Zim Salvage Environmental Assessment, and a Decision Notice was signed on October 8, 1996. The Basin Creek portion of the Fry-Zim project will be analyzed under a separate analysis entitled the Basin Creek Environmental Impact Statement (EIS). The Basin Creek proposed action, developed in response to a mountain pine beetle infestation, remains the same as originally presented in the Fry-Zim EIS Notice of Intent.

FOR FURTHER INFORMATION CONTACT: Jeanne Higgins, Basin Creek EIS Team Leader, or Kathy Mohar, Writer-Editor, Three Rivers Ranger District (406) 295–4693.

Robert L. Schrenk,

Forest Supervisor, Kootenai National Forest.

[FR Doc. 96–27962 Filed 10–31–96; 8:45 am]

BILLING CODE 3410–11–M

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 commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 2, 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 commodities and 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 commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and 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 commodities and 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 commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Twine and Cord

4020–00–231–5860
4020–00–233–5984
4020–00–233–5990
4020–00–241–8439
4020–00–291–5901
4020–00–551–3343
4020–00–782–5574
4020–00–231–5980
4020–00–233–5987
4020–00–240–2142
4020–00–243–3156
4020–00–291–5902
4020–00–782–5573

NPA: East Texas Lighthouse for the Blind, Tyler, Texas.

Folder, Zebley Claim

7530–00–000–0430
7530–00–000–0432

NPA: Goodwill Industries of the Springfield/ Hartford Area, Inc., Springfield, Massachusetts.

Cloth, Cleaning, Aircraft Solvent

7920–01–180–0557

NPA: East Texas Lighthouse for the Blind, Tyler, Texas.

Services

Janitorial/Custodial

U.S. Courthouse, 300 S. Fourth Street, Minneapolis, Minnesota.

NPA: Tasks Unlimited, Inc., Minneapolis, Minnesota.

Operation of Postal Service Center

Nellis Air Force Base, Nevada.

NPA: Opportunity Village ARC, Las Vegas, Nevada.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–28085 Filed 10–31–96; 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 and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 2, 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 21, 28, August 16, 30, September 13 and 20, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (61 F.R. 31927, 33711, 42584, 45935, 48462 and 49436) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and 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 commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and 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 commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Disk, Flexible

7045–01–283–4362

(Remaining 85% of the Government's requirement)

Tape, Pressure-Sensitive Adhesive

7510–00–582–4771
7510–00–582–4772
7510–00–802–8311
7510–00–159–4450

Services

Administrative Services

General Services Administration, PBS, Laguna Niguel Field Offices, Laguna Niguel, California.

Commissary Shelf Stocking and Custodial

Wright-Patterson Air Force Base, Ohio.

Disposal Support Services

Columbus Air Force Base, Mississippi.

Food Service Attendant

Fort Richardson, Alaska.

Janitorial/Custodial

Child Care Center Buildings, Luke Air Force Base, Arizona

Fleet and Industrial Supply Center, Pearl Harbor, Hawaii

U.S. Customs House, New Bedford, Massachusetts

Stewart Army Subpost, New Windsor, New Windsor

Linen Management Service

Fleet and Industrial Supply Center Norfolk, Virginia.

for the following BOQs and BEQs:

Naval Security Group Activity Northwest
Naval Amphibious Base Little Creek
FCTCL Dam Neck
Naval Air Station Norfolk
Naval Weapons Station Yorktown

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. 96–28086 Filed 10–31–96; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

Notice of Extension of Time Limit for Antidumping Duty Administrative Review of Certain Circular Welded Carbon Steel Pipes and Tubes From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 1, 1996.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary and final results of the antidumping duty administrative review for the antidumping order on Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand, pursuant to the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (hereinafter, ''the Act'').

FOR FURTHER INFORMATION CONTACT: Steven Presing or Dorothy Woster, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–0194 or 482–3362, respectively.

SUPPLEMENTARY INFORMATION: Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. In the instant case, the Department has determined that it is not practicable to complete this review within the statutory time limit. *See* Memorandum from Joseph A. Spetrini to Robert S. LaRussa (October 25, 1996).

Because it is not practicable to complete this review within the time limits mandated by the Act (245 days from the last day of the anniversary month for preliminary results, 120 days after publication of the preliminary determination for final results), in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limits as follows:

Product	Country	Review period	Initiation date	Prelim due date	Final due date*
Certain Carbon Steel Pipes and Tubes (A–201–805)	Thailand	03/01/95 02/29/96	04/25/96	04/01/97	08/06/97

*The Department shall issue the final determination 120 days after the publication of the preliminary determination. This final due date is estimated based on publication of the preliminary notice five business days after signature.

Dated: October 28, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–28119 Filed 10–31–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–005]

High Power Microwave Amplifiers and Components Thereof From Japan: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances antidumping duty administrative review, and intent to revoke order in part.

SUMMARY: In response to a request by NEC Corporation and NEC America, Inc., the Department of Commerce (the Department) is initiating a changed circumstances antidumping duty administrative review and issuing an intent to revoke in part the antidumping duty order on high power microwave amplifiers (HPMAs) and components thereof from Japan. NEC requested that the Department revoke the order in part with regard to imports of traveling wave tubes (TWTs) and klystron tubes, two components of HPMAs. Based on the fact that MCL Inc., a domestic producer of HPMAs and petitioner in the less-than-fair-value (LTFV) investigation, supports NEC's request for a changed circumstances review and revocation in part of the order with regard to TWTs and Klystron tubes, we are initiating this review and we preliminarily determine to revoke the order in part with regard to this merchandise.

EFFECTIVE DATE: November 1, 1996.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Kris Campbell, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution

Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–3477/4733.

SUPPLEMENTARY INFORMATION:

Background

On June 28, 1996, NEC requested that the Department conduct a changed circumstances administrative review to determine whether to revoke the order partially with regard to TWTs and Klystron tubes, two components of HPMAs, covered by the order. NEC stated that lack of interest in the continued application order to TWTs and Klystron tubes is a sufficient changed circumstance to merit revocation under 19 CFR 353.25(d). NEC stated further that the support of the domestic industry for such partial revocation makes it appropriate for the Department to initiate and complete the review on a expedited basis pursuant to 19 CFR 353.22(f)(4).

On August 26, 1996, counsel for MCL, Inc., submitted a letter from MCL to the Department supporting NEC's request for review and partial revocation of the order. NEC stated that as a domestic producer of HPMAs it ''has no further interest in the continued application of the order on TWTs and Klystron tubes.'' However, MCL indicated that it ''is still interested in the continued application of the antidumping duty order to HPMAs and all parts thereof, other than TWTs and Klystron tubes.'' The order with regard to imports of HPMAs and other parts/components of HPMAs is not affected by this request, this changed circumstances review, or this revocation in part.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Scope of Review

The products covered by this changed circumstances review are imports of TWTs and Klystron tubes, which are components of HPMAs.

The products covered by the order are high power microwave amplifiers and components thereof. High power microwave amplifiers are radio-frequency power amplifier assemblies, and components thereof, specifically designed for uplink transmission in C, X, and Ku bands from Fixed earth stations to communications satellites and having a power output of one kilowatt or more. High power microwave amplifiers may be imported in subassembly form, as complete amplifiers, or as a component of higher level assemblies (generally Earth stations). This merchandise is currently classifiable under item 8525.10.80 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent To Revoke Order in Part

Pursuant to section 751(d)(1) of the Act, the Department may partially revoke an antidumping duty order based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances administrative review to be conducted upon receipt of a request containing information concerning changed circumstances sufficient to warrant a review.

The Department's regulations at 19 CFR 353.25(d)(2) provide that the Department will conduct a changed circumstances administrative review under 19 CFR 353.22(f) based upon an affirmative statement of no interest from the petitioner in the proceeding (*i.e.*, such a statement constitutes ''changed circumstances sufficient to warrant a review''). Section 782(h) of the Act and 19 CFR 353.25(d)(1)(i) further provide that the Department may revoke an order or revoke an order in part if it determines that the order under review is no longer of interest to domestic interested parties. In addition, in the event that the Department concludes that expedited action is warranted, 19 CFR 353.22(f)(4) permits the Department to combine the notices of initiation and preliminary results.

Therefore, in accordance with sections 751(d) and 782(h) of the Act and 19 CFR 353.25(d) and 353.22(f), based on MCL's affirmative statement of no interest in the continued application of the order to TWTs and klystron tubes, we are initiating this changed circumstances administrative review. Based on the fact that no other domestic interested parties have objected to the position taken by petitioner that it has no further interest in the order regarding TWTs and Klystron tubes from Japan, we have determined that expedited action is warranted, and we are combining these notices of initiation and preliminary results. We have preliminarily determined that there are changed circumstances sufficient to warrant partial revocation of the order on HPMAs from Japan. Therefore, we are hereby notifying the public of our intent to revoke in part the antidumping duty order as it relates to imports of TWTs and Klystron tubes from Japan.

If final revocation in part occurs, we intend to instruct the U.S. Customs Service (Customs) to liquidate without regard to antidumping duties and to refund any estimated antidumping duties collected for all unliquidated entries of TWTs and Klystron tubes from Japan on or after July 1, 1996, in accordance with 19 CFR 353.25(d)(5). We will also instruct Customs to refund interest for those entries, in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this changed circumstances review.

Public Comment

Any interested party may request a hearing within 10 days of publication of this notice. Any hearing, if requested, will be held no later than 28 days after the date of publication of this notice, or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 14 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in those comments, may be filed not later than 21 days after the date of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 353.31(e) and shall be served on all interested parties on the Department's service list in accordance with 19 CFR 353.31(g). Persons interested in attending the hearing, if one is requested, should contact the Department for the date and time of the hearing. The Department will publish the final results of this changed circumstances review, including the results of its analysis of issues raised in any written comments.

This notice is in accordance with sections 751(b)(1) and 782(h) of the Act and sections 353.22(f) and 353.25(d) of the Department's regulations.

Dated: October 24, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–28118 Filed 10–31–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–412–810]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review; certain hot-rolled lead and bismuth carbon steel products from the United Kingdom.

SUMMARY: On May 6, 1996, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom. The review covers one manufacturer/exporter and the period March 1, 1994 through February 28, 1995.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: November 1, 1996.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4733.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

On May 6, 1996, the Department published in the Federal Register (61 FR 20225) the preliminary results of its administrative review of the antidumping duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom (58 FR 15324, March 22, 1993). The Department has now completed the review in accordance with section 751 of the Act.

Scope of the Review

The products covered by this review are hot-rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this review are other alloy steels (as defined by the *Harmonized Tariff Schedule of the United States* (HTSUS) Chapter 72, note 1 (f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this review are provided for under subheadings 7213.20.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80.00. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this order remains dispositive.

This review covers one manufacturer/exporter of certain hot-rolled lead and bismuth steel products, United Engineering Steels Limited (UES), now British Steel Engineering Steels Limited (BSES), and the period March 1, 1994 through February 28, 1995.

Analysis of the Comments Received

We gave interested parties an opportunity to comment on the preliminary results of review. We received comments from UES and petitioner.

Comment 1: Petitioner contends that the Department erred in the way it matched home market products to products sold to the United States. Petitioner maintains that the language included in the concordance program keeps only the first record of the home market control number, which identifies a particular home market model, and drops other records containing the subsequent matches if the same home market control number is matched to subsequent U.S. products, or to the same U.S. products in different six-month windows. (A match is made within a window of time from three months prior to two months after the month of the U.S. sale.) As a result, petitioner claims, the Department dropped a number of legitimate home market product matches, and instead, used constructed value as the basis of normal value.

Department's Position: We agree with petitioner. The original computer program contained an inadvertent error. We have revised the computer programming language to correct this error for the final results of this review.

Comment 2: UES argues that the Department failed to match U.S. sales to home market sales in the most contemporaneous month. Instead, the Department matched each U.S. sale to all home market sales occurring within the six-month window. UES argues that, pursuant to the Department's matching rule, the most contemporaneous home market match is selected in the following order of preference: sales in the same month of the U.S. sale, sales in the month prior to the U.S. sale, sales in the second month prior to the month of the U.S. sale, sales in the third month prior to the month of the U.S. sale, sales in the month subsequent to the month of the U.S. sale, and finally, sales in the second month subsequent to the month of the U.S. sale.

Department's Position: We agree with UES and have revised our computer programming language accordingly for these final results of review.

Comment 3: UES maintains that the Department erred in its calculation of the profit in calculating constructed value. UES claims that the Department erred in calculating the ratio applied to the cost of production to calculate profit by first computing a profit percentage for each home market sales transaction, and then weight-averaging the percentages by quantity. UES contends that this methodology introduces serious distortion. UES suggests that, under the Department's normal methodology, total home market profit is divided by total home market costs to calculate the profit ratio.

Department's Position: We agree with UES and have revised our computer programming language accordingly for these final results of review.

Clerical Errors

For the preliminary results of review, the Department did not deduct U.S. brokerage and handling charges from the U.S. price. For these final results of review, we have deducted such charges from the U.S. price. *See* section 772(c)(2)(A) of the Act.

Final Results of Review

As a result of our review, we determine that the following weighted-average margin exists:

Manufacturer/exporter	Period of review	Margin (percent)
United Engineering Steels Limited (UES) (now British Steel Engineering Steels Limited)	3/1/94–2/28/95	1.56

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price and normal value may vary from the percentage stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of certain hot-rolled lead and bismuth carbon steel products from the United Kingdom entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 25.82 percent, the ''all others'' rate established in the LTFV investigation (58 FR 6207, January 27, 1993). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: October 23, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–28117 Filed 10–31–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–549–502]

Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 9, 1996, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain welded carbon steel pipes and tubes from Thailand. This review covers Saha Thai Steel Pipe Company, SAF Steel Pipe Export Company, and Pacific Pipe Company. The period of review (POR) is March 1, 1994 through February 28, 1995. We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: November 1, 1996.

FOR FURTHER INFORMATION CONTACT: James Rice or Jean Kemp, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–1374 or (202) 482–4037, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Background

On May 9, 1996, the Department published in the Federal Register the preliminary results of the administrative review of the antidumping duty order on certain welded carbon steel pipes and tubes from Thailand (61 FR 21159, May 9, 1996). The Department has now completed this administrative review in accordance with section 751 of the Act.

Scope of the Review

The products covered by this administrative review are certain welded carbon steel pipes and tubes from Thailand. The subject merchandise has an outside diameter 0.375 inches or more, but not exceeding 16 inches. These products, which are commonly referred to in the industry as ''standard pipe'' or ''structural tubing,'' are hereinafter designated as ''pipe and tube.'' The merchandise is classifiable under the Harmonized Tariff Schedule (HTS) item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085 and 7306.30.5090. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of the order is dispositive.

Verification

As provided in section 782(i) of the Act, we verified information provided by Saha Thai and SAF by using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments and rebuttal comments from Saha Thai/SAF, manufacturers/exporters of the subject merchandise (respondents), and from Allied Tube & Conduit Corporation, Sawhill Tubular Division of Armco, Inc., American Tube Company, Inc., Laclede Steel Company, Sharon Tube Company, Wheatland Tube Company, and Eagle Pipe (petitioners).

Comment 1: Petitioners contend that for Saha Thai/SAF's U.S. sales the Department used an incorrect date of sale in its margin calculation. These incorrect dates were used to determine which sales took place in the POR, for choosing exchange rates, and for product matching with home market sales. Petitioners argue that the dates provided to the Department reflect downstream sales made by parties in the United States who the Department determined were not related to Saha Thai or SAF (see memo from Joseph A. Spetrini to Susan G. Esserman dated April 29, 1996). Because respondent did not provide any sales dates reflecting the transactions between Saha Thai/SAF and U.S. importers/resellers, and because certain invoice dates for SAF sales represent sales based upon long-term contracts which may have been signed months or years in advance of the invoice date, petitioners hold that the appropriate date of sale is either the date of the underlying contract or the date of the purchase order from the U.S. customer to SAF. However, since neither date appears in SAF's sales listing, petitioners contend that it is impossible to determine which sales are appropriately in the POR.

In addition, petitioners argue that there is an unknown universe of sales contracts and purchase orders made during the POR which would have been sold by the importers after the POR. These sales were not reported as Saha Thai sales because the basis for reporting Saha Thai's U.S. sales was the importers' sales to downstream customers. These sales may or may not have had SAF invoice dates or entry dates within the POR. The only other date reported by Saha Thai is the shipment date, but again, this date does not reflect the date of the sales contract or purchase order date.

As a result of this failure to place the necessary date of sale information on the record of this review, petitioners argue that the Department should base its final results on facts available, pursuant to 19 U.S.C. 1677e(a), which states that the Department shall base its determination on the facts available, subject to certain qualifications, ''if: (1) necessary information is not available on the record, or (2) an interested party or other person—(A) withholds information that has been requested by the administering authority * * * (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 1677m of this title, (C) significantly impedes a proceeding under this subtitle, or (D) provides such information but the information cannot be verified. * * *''

Petitioners contend that respondents have clearly withheld information requested by the Department which, if provided, would have allowed the Department to complete its statutorily mandated tasks in this review. Specifically, the Department requested information regarding the sales process between Saha Thai and its customers. According to petitioners, Saha Thai failed to provide a complete explanation of its sales process and did not clearly state that it enters into contracts for the sale of pipe, either directly or through SAF, to the importers. It provided no details of any such contracts, and did not provide an example of a contract prior to verification. In addition, the Department warned Saha Thai in a letter of January 11, 1996 that it should ''be prepared to reclassify these SAF-related sales if the Department determines that they should be treated as EP sales.'' Petitioners assert that this is an unambiguous request for Saha Thai to ensure that the proper information was on the record to perform an EP sales analysis. Saha Thai responded by simply stating that ''there is no legal basis for reclassification of SAF-based U.S. sales.'' Petitioners contend that the information currently existing on record cannot be used for the final results under 19 U.S.C. 1677m(e) since the response is so incomplete that it cannot serve as a reliable basis for reaching the final results and cannot be used without undue difficulty. Consistent with sections 1677e(b) (3) and (5), the Department should apply the 17.28 percent margin found in the amended final results of the 1992–93 administrative review. Petitioners add that resorting to facts available would be consistent with Departmental practice, as evidenced by *Circular Welded Non-Alloy Steel Pipe from South Africa* (61 FR 24271, 24272–3, May 14, 1996) and *Circular Welded Non-Alloy Steel Pipe from Brazil* (57 FR 42940, September 17, 1992), affirmed sub nom. Persico Pizzamiglio S.A. v. United States, Slip Op. 94–61 (CIT 1994).

Respondents argue that they prepared their questionnaire response based on the assumption that the Department would accept their arguments that Saha Thai's U.S. sales would be considered CEP sales due to the relationship which existed between the producer/exporter and importer/reseller in the U.S. The respondents did not anticipate the Department's contrary decision. Saha Thai argues that neither the Department nor petitioners raised any significant concerns over the dates of sale reported in Saha Thai's responses, and did not advise Saha Thai that it should report two dates of sale in its supplemental questionnaire response, one for the resale in the United States and one for the sale from Saha Thai to SAF. Respondents add that petitioners' call for the use of facts available is an ''extraordinarily harsh'' result, considering the circumstances involved in this case.

Respondents agree with petitioners that the incorrect date of sale was used in the preliminary determination and that a date of sale, using pre-URAA methodologies, does not appear in the response. Respondents propose that the Department use Saha Thai's invoice date as the date of sale for purposes of its final determination. According to Saha Thai, the proposed antidumping duty regulations make invoice date the date of sale in most circumstances, including those prevailing in this administrative review. Proposed section 351.401(i) states that ''in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporters or producer's records kept in the ordinary course of business.'' As an alternative, Saha Thai suggests that the Department reopen the administrative record for the limited purpose of permitting Saha Thai to submit the dates of sale for all sales subject to review.

Respondents also disagree with petitioners' concerns that certain sales subject to the review are missing from the data base. Respondents assert they

reported all sales which entered the U.S. during the period of review.

Department's Position: In its questionnaire response, Saha Thai asserted that because it and its two primary U.S. customers shared an ownership interest in SAF Steel Export Company, the importers/resellers in the United States were related to the producer/manufacturer by means of this common ownership of SAF. Saha Thai reported the subsequent downstream sales as constructed export price (CEP) sales made to the first unrelated party in the United States. However, in our preliminary results, we treated Saha Thai and SAF as a single enterprise and determined that this enterprise was not related to the importers/resellers in the United States, and we instead used Saha Thai/SAF's export price (EP) sales to these importers/resellers as the United States sales. As a result of this decision by the Department to review the EP sales made by Saha Thai/SAF rather that the downstream sales originally reported as CEP, the Department finds that the record of this review does not contain the information normally required to determine the date of sale to be used to compare these EP sales to normal value. Given this background, the Department agrees with both parties that an incorrect date of sale was used in the preliminary results of this administrative review for these sales.

However, the Department disagrees with petitioners' assertion that resorting to facts available is appropriate for our final results. Although respondents contend that they had no expectation that the Department would examine Saha Thai/SAF's sales to the U.S. importers, respondents should have reported the contract date of the sales in question. Notwithstanding the deficient content of Saha Thai's response, the Department determines that resorting to facts available in this review would not be appropriate because Saha Thai's response is otherwise usable within the meaning of section 782(e) of the Act. Saha Thai's response was timely and verifiable. The response also listed the invoice dates of sales made by Saha Thai/SAF to the U.S. importers/resellers, which the Department has found to be a reliable alternative for the missing date of sale information. Moreover, the Department does not consider respondents to have withheld ''information that has been requested'' by the Department, as the Department did not clearly instruct Saha Thai/SAF to report the date of sale for its sales to the U.S. importers.

Although the dates of sale of transactions between Saha Thai/SAF and the primary U.S. importers/resellers are not on the record of this proceeding, the respondent did provide, and the Department verified, the invoice date pertaining to these sales made by Saha Thai/SAF to the importers/resellers in the United States. Because the Department has determined that the use of facts available is not appropriate, the Department has determined to use invoice date as date of sale. Using invoice date as date of sale is consistent with the Department's proposed antidumping regulations and represents a reasonable surrogate for the actual date of sale when the essential terms of the sale were established: as stated in the Department's *Notice of Proposed Rulemaking and Request for Public Comment* (61 FR 7308, 7330, February 27, 1996), the Department ''will rely on the date of invoices as date of sale.''

The Department acknowledges that certain U.S. sales were made pursuant to long-term contracts between Saha Thai/SAF and the U.S. purchasers/resellers and that there may be a substantial lag between the contract date and invoice date. However, the Department verified that Saha Thai/SAF reported all invoices during the POR that were issued pursuant to these contracts and that these invoices contain the price, quantity, specifications, and the terms of sale established in the long-term contracts. We are assured that we analyzed all sales of subject merchandise which were shipped to the United States during the POR. Therefore, after extensive consideration of the date of sale issue, we conclude that for the sales in question it is reasonable to utilize date of invoice as date of sale.

Comment 2: Petitioners allege that the Department has incorrectly reduced the amount of ocean freight to be deducted from export price by multiplying that value by the exchange rate. Saha Thai's reported ocean freight was reported in U.S. dollars/MT. Therefore, the Department erred by multiplying this value by the exchange rate. Respondents did not address this issue.

Department's Position: We agree with petitioners, and the final results incorporate this correction to the program.

Comment 3: Petitioners contend that the Department erred by deducting indirect selling expenses and inventory carrying costs from both export price and normal value. Such deductions are appropriate only in a constructed export price scenario (see 19 USC 1677a(d)).

Saha Thai states that U.S. direct selling expenses should not have been deducted from export price, in accordance with section 772 of the URAA.

Department's Position: The Department agrees with both parties that, in accordance with section 772 of the Act, direct and indirect selling expenses should not have been deducted from export price. Also, indirect selling expenses should not have been deducted from NV, in accordance with section 773 of the Act. These corrections are reflected in the final results.

Comment 4: Petitioners argue that, in calculating constructed value (CV) for four products not sold in the home market, the Department applied an incorrect methodology to calculate profit. Petitioners allege that the department calculated CV profit based upon the average profit of all the products sold in the home market. Petitioners contend that the Department should have calculated the profit on these four product codes using the average profit of those home market sales that passed the arms-length test and exclusive of sales made at below cost of production. Petitioners add that 19 USC 1667b(e)(2)(A) requires that CV profit be calculated using ''actual amounts incurred and realized * * * for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country. * * *'' According to petitioners, the statutes states that sales disregarded pursuant to 19 USC 1667b(b)(1) as being made at below the cost of production shall be outside the ordinary course of trade (see 19 USC 1677(15)).

Respondents contend that the Department's calculation of profit for merchandise sold in the United States but not in the home market is correct. Respondents state that the Tariff Act of 1930 as amended by the URAA and the accompanying Statement of Administrative Action (SAA) clearly state that the exclusion of below-cost sales is not required nor is contemplated by the statute to calculate the profit for products not sold in the home market. According to respondents, 19 USC 1677b(e)(2)(A) states that the profit used in constructed value shall be based on the ''actual amounts incurred and realized'' by the producer ''in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country. * * *'' In such cases where there are no home market sales of the foreign like product, 19 USC 1677b(e)(2)(B) sets forth three alternatives for determining a CV profit: (1) The actual amount of profit incurred or realized by the same producer on home market sales of the same general

category of products; (2) the weighted-average of actual amounts incurred or realized by other investigated companies on home market sales of the foreign like product; or (3) any other reasonable method, provided that the amount of profit does not exceed the profit normally realized by other companies on home market sales of the same general category of profits. Respondents argue that 19 USC 1677b(e)(2)(B)(i) contains no limitations on the universe of sales to be used by the Department in calculating average profit, except that the sales must be from the same ''general category of products.'' Respondents continue by stating that the prohibition against below-cost sales contained in 19 USC 1677b(e)(2)(A) is not applicable to the alternative methodologies contained in 19 USC 1677b(e)(2)(B). While both these sections make reference to the calculation of profit, the SAA makes clear that these provisions are separate and distinct and can only be used in narrowly defined circumstances. Respondents contend that if Congress had contemplated the exclusion of below-cost sales in such circumstances, a specific reference would have appeared in the statute or in the SAA.

Department's Position: When calculating profit for purposes of CV, we have excluded below-cost sales in accordance with section 773(e)(2)(A) only when we have disregarded home market sales because they failed the cost test. *See* Statement of Administrative Action Accompanying the URAA, *reprinted in* H.R. Doc. No. 316, 103rd Cong., 2nd Sess. 834, 839–840 (1994). We have not calculated CV profit in accordance with section 773(e)(2)(B) because that provision applies only when there are no home market sales of the foreign like product or when all such sales are at below-cost prices (SAA at 840). In this review, we have determined that all products produced by the respondent and sold in the home market during the POR are foreign like products within the meaning of section 771(16). Moreover, we have determined that there are sufficient above-cost sales upon which to base CV profit. Accordingly, section 773(e)(2)(B) is not applicable in this review.

Comment 5: Petitioners argue that Saha Thai's duty drawback calculation is incorrect, and that the adjustment to export price should be denied. Petitioners contend that at verification, the Department discovered for the first time that the reported drawback for 1995 sales was based upon December 1994 data because Saha Thai had not received the correct data in time for the response. According to petitioners, this information was not disclosed to the Department until verification. Petitioners contend that Saha Thai is eligible for a drawback only in the amount of duties actually paid and rebated, in accordance with 19 U.S.C. 1677a(c)(1)(B). Because that amount was unknown as late as April, 1996, when Saha Thai submitted its final revisions to its response, the duty drawback adjustment made to 1995 sales should be denied.

In addition, petitioners argue that Saha Thai has overstated the duty drawback adjustment it is entitled to on all U.S. sales by the amount of the back guarantees posted to the Thai government. According to petitioners, Saha Thai is required to post a cash deposit equal to the value of the import duties plus an additional 20 percent. Petitioners contend that Saha Thai is not entitled to claim the entire amount as a drawback of duties. It is argued that the additional 20 percent does not represent a drawback within the meaning of section 772(c)(1)(B) because this 20 percent represents a premium owed to the government as a penalty if the merchandise is not exported in the required time period. The statute states that an exporter is eligible for an adjustment only for import duties paid and rebated, thus Saha Thai's claim for an adjustment for the entire amount paid plus 20 percent overstates what Saha Thai is eligible to claim.

Respondents agree with petitioners that its reported 1995 duty drawback figures were necessarily based upon its December 1994 actual drawback experience. Saha Thai states that it did not have access to drawback documentation for shipments made in 1995 until well after its response was due to the Department.

Regarding petitioners' concern that respondent overstated its drawback figures to include the 20 percent bank guarantee, Saha Thai states petitioners are in error. Saha Thai asserts that the Department thoroughly verified petitioners' concerns regarding this issue, and found Saha Thai's claims to be consistent with information in Saha Thai's records. At verification, the Department reviewed Saha Thai's bank guarantees, Customs Department duty refund documentation, and various import documents which demonstrate that the duty drawback figures reported to the Department do not include the additional 20 percent premium charged on bank guarantees.

Department's Position: For both 1994 and 1995 (for which documentation was not available at the time of the questionnaire responses, but was available to respondent and the Department at verification), the Department verified that Saha Thai correctly reported its claimed duty drawback adjustment and that Saha Thai did not include the additional 20 percent bank premium. For further information, please see the Department's verification report (Memo to File from James Rice and Rick Johnson, April 30, 1996).

Comment 6: Petitioners argue that the Department should disregard Saha Thai's claimed theoretical weight adjustment. Petitioners note that the Department's verification report indicates that Saha Thai has the ability to calculate a product-specific weight adjustment, and argue that respondent should have done so rather that calculate an average weight adjustment. Petitioners contend that in previous reviews, Saha Thai has provided the information necessary to make this calculation. Use of a single ratio is, according to petitioners, unjustified where the respondent has demonstrated the ability to compile the necessary information in a similar review.

Saha Thai argues that the Department has accepted a weighted-average adjustment in previous reviews (1992–93 administrative review). Additionally, previously calculated product-specific theoretical weight adjustments varied with factors that occur randomly by size and by time period. Saha Thai can often use coils of two or three different thicknesses to produce a given size and grade of pipe. The use of thicker or thinner coils depends on the coil in stock, and the unit price affects the weighted-average theoretical weight adjustment in ways that are unpredictable and not intrinsically related to the physical characteristics of the merchandise. Moreover, there is no evidence on the record indicating that Saha Thai takes such variations into account in pricing its product in any market.

Department's Position: As stated in the Department's verification report, we reviewed Saha Thai's theoretical weight adjustment calculation and found it consistent with previous administrative reviews (*see Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand: Amended Final Results of Antidumping Duty Administrative Review in Accordance with Decision on Remand* 61 FR 29533 (June 11, 1996) and *Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand* 56 FR 58355 (November 19, 1991), which were accepted by the Department. In addition, it was determined by the Department that coils of varying thicknesses are used by Saha Thai to produce a particular size and grade pipe

product. In addition, even though the final product may incorporate various thicknesses of coil (representing different coil costs), there was no evidence found a verification that such different coil costs affected the final price of the subject merchandise.

Comment 7: Petitioners object to Saha Thai's practice of shifting the interest expense embedded in the cost of coil to SG&A. Petitioners contend that this practice of deducting interest expense from the coil cost and adding it to SG&A has the effect of reducing Saha Thai's reported cost of production. Petitioners contend that these interest costs are a part of the direct acquisition cost of the coil and are properly included in raw materials costs.

Saha Thai argues that the Department resolved this issue in the final results of the 1992–93 administrative review, finding that interest expenses are fungible and therefore should be treated as a general expense of the corporation. Consistent with that determination, respondent holds that it is appropriate to transfer interest expenses from raw material cost to SG&A. Such expenses should be included either in SG&A, as provided in Saha Thai's supplemental questionnaire response, or in interest expense.

Department's Position: As stated in the final results of the 1992–93 administrative review of this case, we consider the cost of raw materials to be the price reflected in the supplier's invoice for those materials. Any financing charges itemized on the supplier's invoice are properly regarded as interest expenses, not material costs. *See, Oil Country Tubular Goods From Israel; Final Results of Antidumping Duty Administrative Review,* 57 FR 1140 (April 3, 1992). We consider the expenses Saha Thai incurs to finance its material purchases through its supplier to be fungible and, therefore, a general expense of operating the company. *See, Circular Welded Carbon Steel Pipes and Tubes from Thailand; Final Determination of Sales at Less Than Fair Value,* 51 FR 3384 (January 27, 1986), *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review,* 61 FR 1328 (January 19, 1996). Therefore we have continued to classify Saha Thai's interest expenses as SG&A expenses for these final results of review.

Comment 8: Petitioner states that the Department incorrectly calculated total cost of production (TOTCOP) and net sales price (NPRICOP) for its below cost sales test. 19 USC 1677b(b)(3) requires that cost of production include (1) to the cost of materials, fabrication and processing, (2) an amount for selling, administrative and general expenses, and (3) the cost of containers (packing). Petitioners argue that the Department failed to include selling expenses in its calculation of TOTCOP. Petitioners contend that the Department improperly deducted selling expenses from NPRICOP rather than properly adding them to TOTCOP in accordance with the statute.

Respondents note that petitioners' arguments are not reflective of the Department's standard policy regarding the calculation of TOTCOP and NPRICOP. Saha Thai asserts that if selling expenses are included in TOTCOP, then domestic transportation and selling expenses should not be deducted from the NPRICOP in order to ensure that there is an apples-to-apples comparison.

Department's Position: The Department agrees that our comparison of net sales price and cost of production was incorrect. In order to ensure an ''apples to apples'' comparison between the net home market selling price and the total cost of production of the subject merchandise, for the final results of this administrative review, in accordance with section 773(b)(3)(B) we included selling expenses in the calculation of total cost of production and did not deduct domestic transportation expenses from NPRICOP.

Comment 9: Saha Thai argues that the Department departed from established practice when it immediately resorted to constructed value rather than moving on to the next most similar home market sale where an appropriate (identical or first most similar) match could not be found. Respondents cite *Certain Forged Steel Crankshafts from the United Kingdom* (56 FR 5975, 5977, February 14, 1991) (*Crankshafts from the United Kingdom*) in which the Department stated ''In the first review, when there were no contemporaneous sales of the most similar home market model to compare with sales of a U.S. model, we examined the other similar models for contemporaneity. As a result of this examination, we found that none of those other sales was contemporaneous. As a result, we had to rely on CV as the basis for FMV. However, the facts are different in this review. In this review [the second administrative review of *Crankshafts from the United Kingdom*], when there were no contemporaneous sales of the most similar model match, there were often contemporaneous sales of the next most similar models.'' Saha Thai adds that this policy was followed in previous reviews in this proceeding, and that the Department should use the suggested model matches as submitted by Saha Thai.

Petitioners argue that the Department correctly resorted to CV, and is acting in accordance with longstanding Departmental policy in accordance with precedent of the Court of International Trade. Petitioners cite 19 U.S.C. 1677(16), which provides for only one foreign like product for each U.S. product sold. Petitioners contend that this provision sets up a hierarchy of three choices for foreign like product in order of preference and dictates that the foreign like product is the first category for which a determination may be made, indicating that once a foreign like product is established, that choice cannot be altered by the operation of the 90/60 window. The foreign like product cannot be different during different 90/60 day periods of the same review period.

Petitioners contend that 19 U.S.C. 1677(a)(4) directs the Department to apply constructed value whenever a duly chosen foreign like product cannot be used to determine normal value under section 1677(a)(1)(B). Citing *Color Television Receivers from the Republic of Korea* (58 FR 52262, 52263 (October 7, 1993)), petitioners assert that both the Department and the CIT have adhered strictly to the plain language of the statute by refusing to read into the hierarchy such factors as whether a sale is in the ordinary course of trade (see, *Cyanuric Acid and its Chlorinated Derivatives from Japan Used in the Swimming Pool Trade,* 49 FR 7424 (February 29, 1984), which was sustained in *Monsanto Co.* v. *United States,* 698 F. Supp. 275 (CIT 1988), at the same level of trade (citing *Timken Co.* v. *United States,* 673 F. Supp. 495 (CIT 1987) and *NTN Bearing Co.* v. *United States,* 747 F. Supp. 726, 736 (CIT 1990)), or whether the price is below the cost of production (citing *Antifriction Bearings from France et al.,* 57 FR 28360, 28373 (June 24, 1992)). The same considerations of statutory interpretation also prevent the 90/60 contemporaneity test from being insinuated into section 1677(16).

Petitioners hold that attaching the 90/60 contemporaneity test to section 1677(16) would not only be inconsistent with Departmental practice and the CIT, but would also reach beyond the scope of the Department's statutory authority. Petitioners state that the Department is bound by the plain language of the statute—a conclusion that it must base normal value on CV pursuant to 19 U.S.C. 1677b.

Department's Position: In this review, we used the following model match methodology: in the model match

program, we compared U.S. sales to contemporaneous home market sales of the comparison model that was physically ''most similar'' and which passed the 20 percent difmer test (which often resulted in an identical match). In the margin calculation program, we used the results of the model match program to merge a U.S. sale with the ''most similar'' home market sale within the 90–60 window. If no match was found, either because the model match program found no contemporaneous sale of an identical or similar product or because the appropriate home market sales failed the COP test, the U.S. sale was compared to CV.

We disagree with the respondents' contention that this methodology is a departure from ''established practice.'' Our model match methodology is consistent with our practice of determining the foreign like product based upon the similarity of the merchandise and resorting to CV only when the sale of the identical or most similar merchandise fails our COP test. *See, e.g., Antifriction bearings (Other than Tapered Roller Bearings and Parts Thereof from France et al.*, 58 FR 39729, 39764–66 (July 26, 1993). We also disagree with the respondents' contention that we must use the ''next most similar'' match before resorting to CV. Section 771(16) of the Act provides the Department with discretion to determine which merchandise (foreign like product) may be reasonably compared to subject merchandise and provides a hierarchy of preferences for determining which merchandise sold in the foreign market is most similar to merchandise sold in the United States. The model match methodology we used in this review identified the ''most similar'' foreign like product taking into account the contemporaneity of the match. After identifying the ''most similar'' foreign like product, we apply the cost test under § 773(b) because the COP test should not be part of the basis for determining the ''most similar'' foreign like product. Section 771(16) does not direct us to the ''next most similar'' foreign like product if the first match is sold below cost. Therefore, we use CV when the ''most similar'' foreign like product is sold below cost. This methodology, which the Court of International Trade affirmed in *Federal Mogul Corp.* v. *United States*, 918 F. Supp. 386, 396–97 (CIT 1996), is consistent with the requirement in section 771(16) that the determination of the foreign like product be based solely upon the similarity of the merchandise and not whether the merchandise is sold below cost. The methodology used in *Crankshafts from the United Kingdom* was a deviation from our standard practice that was necessitated by the unique model matching issues and home market price fluctuations which occurred in that review. The facts on the record in this review do not warrant a similar deviation from our standard practice.

Although petitioners agree with the Department's use of CV, we disagree with petitioners' contention that section 771(16) provides for only one foreign like product for each U.S. product sold throughout the POR. Under the URAA, the term ''foreign like product'' was substituted for ''such or similar'' to conform with terminology used in the Antidumping Agreement. By this substitution Congress did not intend to affect the interpretation or practice followed by the Department in administering the antidumping duty statute. SAA at 820. Accordingly, depending on the nature of the product subject to examination, there may be various models that qualify as the ''foreign like product'' within the meaning of section 771(16) just as there may be various models of ''similar'' merchandise under the pre-URAA statute. Nor do we agree, as petitioners' suggest, that the 90/60 day test is irrelevant to selecting the foreign like product under section 771(16). The Department must identify an appropriate universe of transactions from which it can select the best model match. Because section 773(a)(1) requires that price comparisons be based on reasonably contemporaneous sales, it is the Department's practice to select matches from the universe of contemporaneous sales. The cases cited by the petitioners in support of its proposition do not demonstrate that this application of our contemporaneity test is unreasonable because none of those cases involved the question of an appropriate comparison based on the date of sale.

Comment 10: Saha Thai contends that the Department improperly deducted packing costs from the net U.S. price and from net home market price, but also added U.S. packing costs to normal value, thus comparing an unpacked U.S. price to a packed price in the home market. Petitioners agree with Saha Thai that U.S. packing should not be deducted from U.S. price.

Department's Position: The Department agrees that in accordance with section 772(c)(1), U.S. packing should not be deducted from U.S. price. U.S. packing should instead be added to normal value in accordance with section 773(a)(6)(A).

Comment 11: Saha Thai alleges that the Department's margin program erroneously compares a total cost of production (TOTCOM) inclusive of packing costs to a net price (NPRICOP) from which packing costs have been deducted. The Department should have compared RCOP (total COP exclusive of packing) to NPRICOP.

Petitioners disagree with Saha Thai, and argue that section 1677(b)(3)(C) specifically requires the cost of packing be included in the cost of production for comparison to the home market price.

Department's Position: In accordance with section 773(b)(3)(C), we have included packing costs in our calculation of the cost of production. Consistent with our practice described in Comment 8, we have included these packing expenses costs in NPRICOP to obtain an ''apples-to-apples'' comparison between TOTCOP and NPRICOP.

Comment 12: Saha Thai argues that the Department erred in calculating export price by deducting U.S. direct selling expenses. Respondent contends that U.S. direct selling expenses should have been added to the normal value as a circumstance of sale adjustment, citing *Koyo Seiko Co.*, v. *United States*, 796 F. Supp. 1526, 1531 (CIT 1992).

Petitioners disagree with Saha Thai's assertion that U.S. direct selling expenses should be added to normal value as a circumstance of sale adjustment. Petitioners contend that it has been long-standing Departmental policy to deduct direct selling expenses from U.S. price (export price) rather than add it to FMV (normal value), as proposed by Saha Thai. According to petitioners, the court reviewed the matter *de novo* after finding out that, because it was the Department's policy, it would have been futile for Koyo Seiko to have raised the issue before the agency. Moreover, petitioners hold that the court's position on direct selling expenses was subsequently vacated by the CIT after remand, citing *Koyo Seiko Co.* v. *United States*, 806 F. Supp. 1008 (CIT 1992).

Department's Position: As stated in *Stainless Steel Cookware from the Republic of Korea; Final Results of Administrative Review*, 59 FR 10788 (March 8, 1994), it is the Department's policy, when purchase price (EP) sales are examined, to add U.S. direct selling expenses to FMV (NV) as a circumstance-of-sale adjustment, pursuant to section 773 of the Act. The URAA did not change this policy. The *Koyo Seiko* decisions are irrelevant to this determination because these cases involved exporter's sales price (CEP) sales which are not subject to

examination in this review. Therefore, we have corrected this error.

Comment 13: Saha Thai contends that the Department erred in deducting inventory carrying expenses from net price for purposes of comparing selling price with cost of production. Saha Thai argues that this value is included in its reported general and administrative expenses and is included in its total cost of production. Therefore, the Department should not have deducted inventory carrying expenses from the net price before comparing that net price to Saha Thai's cost of production. Saha Thai holds that this deduction is contrary to the Department's policy (*see* Import Administration Policy Bulletin, No. 94.6, March 25, 1994). Petitioners did not comment on this issue.

Department's Position: The Department agrees with respondent because the deduction of inventory carrying expenses from net price does not result in an apples-to-apples comparison. The Department does not make adjustments for imputed costs in comparing prices to COP. To deduct inventory carrying expenses from the net price without a similar adjustment to total cost of production would distort the Department's cost test.

Comment 14: Saha Thai argues that the Department double counted respondents' interest expense for both total cost of production and constructed value. The Department created the variable INTEX, which represents Saha Thai's net interest expense as a percentage of its total cost of goods sold. Saha Thai holds that its actual interest expense is already reported in its general and administrative expenses. This addition of an imputed interest factor, according to respondent, is in violation of section 773(e)(2)(A) of the Act, which requires that the Department base selling, general, and administrative expenses on ''actual amounts incurred and realized'' by the respondent. In computing CV these costs may not be based on imputed amounts or an arbitrary minimum.

Petitioners contend that it is appropriate for the Department to use the higher INTEX value as a substitute for Saha Thai's reported interest expense as an adverse inference because Saha Thai failed to report the correct sales for the POR.

Department's Position: The Department agrees with respondents, because the inclusion of the imputed interest expense factor INTEX has the effect of double counting Saha Thai's reported, and verified, interest expense. We have deleted the variable INTEX from the margin calculation program.

Comment 15: Saha Thai argues that the Department erred in computing the import-specific assessment rate by multiplying the margin by U.S. quantity twice. Petitioners did not comment on this issue.

Department's Position: We agree with respondent, and this error as been corrected.

Final Results of Review

As a result of our review, we have determined that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Saha Thai/SAF	3/1/94–2/28/95	5.95
Pacific Pipe Co.	3/1/94–2/28/95	([1])

[1] No sales during the review period.

The Department shall determine, and the Customs Service shall access, antidumping duties on all appropriate entries. Individual differences between United States price and normal value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of certain welded carbon steel pipes and tubes from Thailand entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be the rates for those firms as stated above; (2) for previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 15.67 percent, all other rates established in the LTFV investigation. See *Final Determination and Antidumping Duty Order: Certain Welded Carbon Steel Pipes and Tubes from Thailand,* (51 FR 8341, March 11, 1986).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties incurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: October 23, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–28116 Filed 10–31–96; 8:45 am]

BILLING CODE 3510–DS–M

National Institute of Standards and Technology

Announcement of an Opportunity To Join a Cooperative Research and Development Consortium for CD-Metrology Below 0.25 Microns

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Institute of Standards and Technology invites interested parties to attend a meeting on November 12, 1996 to discuss setting up a cooperative research consortium. The goal of the consortium is to achieve commercially available reference standards to support CD-metrology below 0.25 microns. Parties participating in the consortium will be loaned a premeasured prototype sample for evaluation.

The program will be within the scope and confines of The Federal Technology Transfer Act of 1986 (Public Law 99–502, 15 U.S.C. 3710a), which provides federal laboratories including NIST, with the authority to enter into cooperative research agreements with

qualified parties. Under this law, NIST may contribute personnel, equipment, and facilities—but no funds—to the cooperative research program.

Members will be expected to make a contribution to the consortium's efforts in the form of personnel, and/or funds. This is not a grant program.

DATES: Interested parties should contact NIST to confirm their interest at the address, telephone number or FAX number shown below.

ADDRESSES: Technology Building, Room B360, National Institute of Standards and Technology, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT:

Dr. Michael W. Cresswell, Telephone: 301–975–2072; FAX: 301–948–4081.

SUPPLEMENTARY INFORMATION: NIST and Sandia National Laboratories have successfully fabricated and tested prototypes of a new class of reference materials to support CD-metrology below 0.25 m. This work has the long-term goal of the commercial availability of certified physical standards traceable to NIST. As a result of the multiple requests for sample prototypes for evaluative purposes that they have received, NIST and Sandia management have proposed a Consortium to maximize the benefits of exchanging measurement results made independently by a diverse group of participants, each of whom will be loaned a pre-measured prototype sample for evaluation. The purpose of the above meeting is to describe the chip layout and reference-feature construction, to review the CD-measurement results already extracted from the different chips by NIST and Sandia, and to explain the CRADA (Cooperative Research and Development Agreement) rules which will apply to the Consortium. The distribution of samples will begin as soon as signed CRADA documents are returned to NIST. Each participating organization will be requested to make an illustrated presentation of its CD-measurement results at a closed meeting to be held in conjunction with SEMICON/West 97.

Organizations not members of SEMATECH may be asked to contribute a nominal fee in order to participate.

Dated: October 28, 1996.

Samuel Kramer,

Associate Director.

[FR Doc. 96–28113 Filed 10–31–96; 8:45 am]

BILLING CODE 3510–13–M

National Technical Information Service

NTIS Advisory Board Meeting

AGENCY: National Technical Information Service, Technology Administration, U.S. Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Technical Information Service Advisory Board (the ''Board'') will meet on Tuesday, December 10, 1996, from 9:00 a.m. to 4:00 p.m. This meeting will be closed to the public.

The Board was established under the authority of 15 U.S.C. 3704b(c), and was Chartered on September 15, 1989. The Board is composed of five members appointed by the Secretary of Commerce who are eminent in such fields as information resources management, information technology, and library and information services. The purpose of the meeting is to review and make recommendations regarding general policies and operations of NTIS, including policies in connection with fees and charges for its services. The session will be closed because premature disclosure of the information to be discussed would be likely to significantly frustrate implementation of NTIS' business plans.

DATES: The meeting will convene on December 10, 1996, at 9:00 a.m. and adjourn at 4:00 p.m.

ADDRESS: The meeting will be held in Room 2029 Sills Building, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

PUBLIC PARTICIPATION: This one-day meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT:

Linda Lucas, NTIS Advisory Board Secretary, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Telephone: (703) 487–4636; Fax (703) 487–4093.

Dated: October 28, 1996.

Donald R. Johnson,

Director.

[FR Doc. 96–28065 Filed 10–31–96; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Mauritius

October 28, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The import restraint limits for textile products, produced or manufactured in the Mauritius and exported during the period January 1, 1997 through December 31, 1997 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1997 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995). Information regarding the 1997 CORRELATION will be published in the Federal Register at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the

implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 28, 1996.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1997, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Mauritius and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Knit Group	
345, 438, 445, 446, 645 and 646, as a group.	165,952 dozen.
Levels not in a group	
237	214,005 dozen.
335/835	85,068 dozen.
336	100,105 dozen.
338/339	400,759 dozen.
340/640	652,206 dozen of which not more than 397,014 dozen shall be in Categories 340–Y/640–Y [1].
341/641	451,798 dozen.
347/348	843,579 dozen.
351/651	198,399 dozen.
352/652	1,682,422 dozen of which not more than 1,430,061 dozen shall be in Category 352.
442	11,800 dozen.
604–A [2]	378,379 kilograms.
638/639	460,874 dozen.
647/648/847	621,460 dozen.

[1] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[2] Category 604–A: only HTS number 5509.32.0000.

Imports charged to these category limits for the period January 1, 1996 through December 31, 1996 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–28043 Filed 10–31–96; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

October 28, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6716. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The import restraint limits for textile products, produced or manufactured in Singapore and exported during the period January 1, 1997 through December 31, 1997 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1997 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995). Information regarding the 1997 CORRELATION will be published in the Federal Register at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 28, 1996.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1997, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Singapore and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
222	463,457 kilograms.
237	264,858 dozen.
239	521,911 kilograms.
331	470,414 dozen pairs.
334	71,794 dozen.
335	215,960 dozen.
338/339	1,292,577 dozen of which not more than 755,394 dozen shall be in Category 338 and not more than 839,904 dozen shall be in Category 339.
340	904,613 dozen.
341	227,466 dozen.
342	139,978 dozen.

Category	Twelve-month restraint limit
347/348	1,010,647 dozen of which not more than 631,654 dozen shall be in Category 347 and not more than 491,287 dozen shall be in Category 348.
435	6,813 dozen.
604	904,109 kilograms.
631	524,920 dozen pairs.
634	274,100 dozen.
635	280,497 dozen
638	1,006,724 dozen.
639	3,454,120 dozen.
640	192,855 dozen.
641	314,567 dozen.
642	304,753 dozen.
645/646	154,405 dozen.
647	594,397 dozen.
648	1,529,794 dozen.

Imports charged to these category limits for the period January 1, 1996 through December 31, 1996 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the ATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–28042 Filed 10–31–96; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Thursday, November 7, 1996.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a record message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207, (301) 504–0800.

Dated: October 30, 1996.

Sadye E. Dunn,

Secretary.

[FR Doc. 96–28287 Filed 10–30–96; 2:12 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Intent To Prepare a Environmental Impact Statement (EIS) for the Dallas Floodway Extension, Flood Control Project, Dallas County, Dallas, Texas

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

ACTION: Notice of Intent.

SUMMARY: The Fort Worth District is preparing an EIS for the Proposed Dallas Floodway Extension Flood Control Project, Dallas County, Dallas, Texas. The tentatively selected plan of improvement consists of a combination chain-of-wetlands and floodway levees which would provide up to Standard Project Flood level of protection for some study reaches.

FOR FURTHER INFORMATION CONTACT: Mr. Gene T. Rice, Jr., CESWF–PL–M, U.S. Army Engineer District, Fort Worth, P.O. Box 17300 Fort Worth, Texas 76102–0300, phone (817) 978–2187.

SUPPLEMENTARY INFORMATION: A Notice of Intent (NOI) for a Supplemental Environmental Impact Statement (SEIS) was previously published in the Volume 56, Number 94 of the Federal Register, May 15, 1991. This NOI supersedes the previously published notice.

Federal Authority for construction of water resource development features described in the Comprehensive Survey Report on Trinity River and Tributaries, Texas (reprinted as House Document 276/89/1) is contained in Section 301 of the Rivers and Harbors Act approved October 27, 1965 (Public Law 89–298). The authority granted by the resolution is commonly known as the Trinity River and Tributaries Basin-wide Study Authority. All studies conducted under this authority serve as an interim response to the basin-wide authority, and do not close out the granted authority.

The Dallas Floodway Extension is one of five local flood damage reduction projects authorized for construction in 1965 as part of a basin-wide plan of improvement for the Trinity River and Tributaries in Texas. The proposed plan would consist of constructing a chain-of-wetlands beginning just upstream of Martin Luther King, Jr. Blvd. and extending approximately 4.5 miles in length, downstream adjacent to the Trinity River. Currently, the planned widths of areas affected by wetland construction would be approximately 300 ft. in the upstream section and 500 ft. in the downstream section. Plans potentially include 1.5 miles of levee along Lamar Street, and 1.5 miles of levee in the Cadillac Heights Section of Dallas, Texas.

1. Proposed Action

The tentatively selected plan of improvement consists of a combination chain-of-wetlands and floodway levees which would provide up to Standard Project Flood level of protection and some study reaches.

2. Alternatives

Alternatives to the project which have been considered include the authorized plan in House Document 279 and numerous structural and non-structural measures, in addition to the ''No Action'' alternative.

3. The Corps' scoping process and public involvement for the EIS under consideration is described as follows:

a. The public involvement program for this study will consist of at least one public information meeting to be scheduled at a later date. The public information meeting would be scheduled at the conclusion of the study to present the study results to local interest. Additional public workshops would be scheduled as necessary.

b. Some of the significant issues that will be analyzed in depth include: (1) Impacts of flooding and construction on biological resources (bottomland hardwoods, wetlands, etc.), water quality, and socio-economic factors: (2) Potential effects of this project on State Parks: and, (3) Mitigation and environmental restoration opportunities.

c. No other Federal agencies have been invited to participate in the development of the EIS at this time.

d. The U.S. Fish and Wildlife Service will furnish information on endangered and threatened species in accordance with the Endangered Species Act. The State Historic Preservation Officer and the Advisory Council on Historic Preservation will be consulted for

information in accordance with Section 106 of the Historic Preservation Act.

4. A scoping meeting has been tentatively scheduled for December 10, 1996. Information regarding the scoping meeting for the EIS will be distributed through public notice and media releases.

5. The EIS is scheduled for public review December 1997.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–28047 Filed 10–31–96; 8:45 am]

BILLING CODE 3710–20–M

DEPARTMENT OF ENERGY

Withdrawal of Notice of Intent To Prepare an Environmental Impact Statement for the Decontamination and Waste Treatment Facility at Lawrence Livermore National Laboratory, California

AGENCY: Department of Energy.

ACTION: Withdrawal of notice of intent to prepare an environmental impact statement.

SUMMARY: The U.S. Department of Energy today withdraws its Notice of Intent published on March 18, 1987 (52 FR 8503) to prepare an Environmental Impact Statement (EIS) for the Decontamination and Waste Treatment Facility (DWTF) at Lawrence Livermore National Laboratory (LLNL).

Copies of the 1996 DWTF EA and FONSI are available at the DOE/Oakland Operations Office: Office of Public Affairs, Department of Energy, 1301 Clay St. 100N, Oakland, CA 94612, 510–637–1762.

SUPPLEMENTARY INFORMATION: The Notice of Intent was first published in 1987 and was based on the original DWTF design. This design provided 8 new buildings totaling approximately 95,000 sq. ft. of new construction, including a liquid waste processing building, decontamination building, solid waste processing building, reactive materials building, storage building, operations support building, boiler/chiller building, and rotary kiln waste incinerator. The planned incinerator in the proposed project was the primary factor contributing to the decision in 1987 to prepare an EIS.

In 1993, the DWTF project design was significantly down-sized. The currently proposed DWTF project will upgrade and consolidate existing waste management operations at LLNL into new, more efficient facilities. There will be 5 buildings totaling 58,000 sq. ft. of new construction, including an operation support building, liquid waste processing building, solid waste processing building, classified waste storage building, and a chemical exchange building. No incinerator is proposed to be built.

Because of these significant project design changes for the DWTF, an Environmental Assessment (EA) was prepared to determine whether the impacts of the project as now proposed would be significant, and, therefore warrant the preparation of an EIS. A Draft EA analyzing the impact of the DWTF as currently proposed was distributed for public review and comments on March 25, 1996, based on the final EA, which incorporates the public comments, as appropriate. A Finding of No Significant Impact (FONSI) was signed by the Manager of the Oakland Operations Office on June 12, 1996. The completion of the EA and the FONSI were advertised in the local newspaper. Both documents are available at the DOE reading room at 1301 Clay St., Oakland, CA; or will be mailed to interested parties upon request.

In the FONSI the Department has determined that an EIS is not required, and, therefore is withdrawing the March 18, 1987 Notice of Intent.

FOR FURTHER INFORMATION CONTACT: For further information on the DWTF project please contact: Mr. Phillip E. Hill, Director, Waste Management Division, Oakland Operations Office, U.S. Department of Energy, 1301 Clay St. 700N, Oakland, CA 94612–5208, 510–637–1625.

For general information on the DOE National Environmental Policy Act process, please contact: Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), 1000 Independence Ave, SW, Washington, D.C. 20585, 202–586–4600 or leave a message at 1–800–472–2756.

James M. Turner,

Manager; Oakland Operations Office.

[FR Doc. 96–28102 Filed 10–31–96; 8:45 am]

BILLING CODE 6450–01–P

Office of the Secretary

Federal Energy Regulatory Commission Relating to Certain Authorizations To Export Electricity and Construct and Operate Related Facilities

AGENCY: Department of Energy.

ACTION: Notice of delegation and assignment.

SUMMARY: Notice is hereby given of the delegation and assignment by the Secretary of Energy to the Federal Energy Regulatory Commission of the authority to carry out functions vested in the Secretary relating to certain authorizations issued by the Secretary to construct, operate, maintain or connect border transmission facilities and to transmit electricity to a foreign country.

EFFECTIVE DATE: November 1, 1996.

FOR FURTHER INFORMATION CONTACT: Anthony J. Como, Department of Energy, Office of Fossil Energy. Telephone: (202) 586–9624.

SUPPLEMENTARY INFORMATION: The Secretary of Energy (Secretary) has the authority under the Department of Energy Organization Act (DOE Act) (Pub. L. 95–91) to approve or disapprove applications to transmit electricity to a foreign country pursuant to section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)). Moreover, the Secretary has the authority to approve or disapprove applications to construct, operate, maintain, or connect transmission facilities at the border between the United States and a foreign country pursuant to Executive Order 10485 as amended by Executive Order 12038.

Both of these functions were originally vested in the Federal Power Commission. Subsection 301(b) of the DOE Act transferred to, and vested in, the Secretary all the functions of the Federal Power Commission not specifically vested by the DOE Act in the Federal Energy Regulatory Commission (Commission). Sections 401–407, 503, and 504 of the DOE Act set forth the jurisdiction and authority of the Commission, an independent body within the Department of Energy (DOE). The Federal Power Commission's functions with respect to transmission of electricity to a foreign country and transmission facilities at the border were not specifically vested in the Commission. Furthermore, subsection 402(f) of the DOE Act provides that no function vested in the Commission which regulates the export or import of electricity shall be within the jurisdiction of the Commission unless the Secretary assigns such a function to the Commission.

As a general matter, section 642 of the DOE Act permits the Secretary to delegate any of the Secretary's functions to any officer or employee of the Department the Secretary may designate, including the Commission. More specifically, the Secretary's authority to regulate exports of electricity may be assigned in whole or in part to the Commission under subsections 402 (e) and (f) of the DOE Act, after public notice of the assignment.

Pursuant to these provisions of the DOE Act, public notice is hereby given that the Secretary delegates and assigns to the Commission the authority to carry out certain functions vested in the Secretary. The assignment is in the form of a delegation.

The Commission, on October 4, 1996, issued an order in FERC Docket No. EL96–74–000 responding to a request from Enron Power Marketing, Inc. (EPMI) for transmission access across transmission facilities of El Paso Electric Company (EPE). In that order, the Commission required EPE to comply with its open access tariff by providing EPMI with transmission service from EPMI's designated points of receipt on EPE's transmission system to EPE's Diablo and Ascarate substations near the United States-Mexico border. The Commission further concluded that the Secretary has the jurisdiction, under section 202(e) of the Federal Power Act (FPA) and under the Executive Orders authorizing issuance of Presidential Permits for construction, operation, maintenance or connection of border facilities, to act on requests for transmission access over the U.S. portion of the lines connecting the Diablo and Ascarate substations in the United States with the Insurgentes and Riverena substations in Mexico.

In its Order No. 888, the Commission required open and comparable transmission access across the transmission lines of public utilities in order to promote competition. The Commission's October 4 order found a gap in the Commission's authority to require open access directly to the border of the United States with Mexico. As a matter of policy, the Department strongly supports the emergence of a more competitive wholesale electricity market and considers open and comparable transmission access a critical factor in creating and sustaining a competitive market, and thus the Department supports the Commission's policy in this area. Because the Commission, under its current jurisdiction, regulates transmission access and the rates, terms and conditions of transmission service for most of the transmission facilities owned by EPE, and to permit uniform implementation of the Commission's open access policy, the Department has concluded that the Commission is the most appropriate agency to address the transmission access and related regulatory issues with respect to the EPE border facilities. Accordingly, the Secretary is delegating to the Commission her authority under the Federal Power Act and Executive Order 10485, as amended by Executive Order 12038, to modify or condition EPE's Presidential Permits for its border facilities (DOE Docket No. PP–48–3 and PP–92) or EPE's authorization to export (DOE Docket No. EA–48–I) or both to provide for third-party access to transmission service over the facilities covered by the Presidential Permits, and to regulate the rates, terms and conditions for such service. Specifically, the delegation order authorizes the Commission to impose terms and conditions, and to issue such supplemental orders, as the Commission deems necessary and appropriate in the following DOE dockets:

El Paso Electric Company

DOE Docket No. PP–48–3—Presidential Permit

DOE Docket No. PP–92—Presidential Permit

DOE Docket No. EA–48–I—Export Authorization

The delegation amends to this limited extent, but does not otherwise rescind or supersede, the Secretary's prior delegation of authority to regulate exports of electricity to the Assistant Secretary for Fossil Energy (DOE Delegation Order No. 0204–127, February 7, 1989), subdelegated to the Director of the Office of Coal and Electricity (Delegation Order dated September 24, 1993).

DOE has issued export authorizations to four entities (other than EPE), including EPMI, that authorize export over EPE's border facilities. Further applications from other parties for authorization to export over these facilities may be received. DOE will retain its jurisdiction over these authorizations, and will consider making modifications, if necessary, to reflect any action taken by the Commission with regard to this matter.

Issued in Washington, D.C. on October 29, 1996.

Hazel R. O'Leary,

Secretary.

Delegation Order No. 0204–163

Pursuant to the authority vested in me as the Secretary of Energy (Secretary) by sections 642 and 402(e) of the Department of Energy Organization Act (Pub. L. 95–91) (DOE Act), there is hereby delegated and assigned to the Federal Energy Regulatory Commission (Commission) the authority to carry out such functions as are vested in the Secretary to regulate access to, and the rates, terms and conditions for, transmission services over facilities owned, controlled or operated by the El Paso Electric Company and covered by Presidential Permits PP–48–3 and PP–92.

In exercising the authority delegated by this Order the Commission is specifically authorized to modify, revoke, or attach terms and conditions to Presidential Permits PP–48–3 and PP–92 and Export Authorization EA–48–I under Executive Order 10485, as amended by Executive Order 12038, and section 202(e) of the Federal Power Act (FPA) and such other sections of the FPA vested in the Secretary as may be relevant, and to issue such supplemental orders in these dockets, as the Commission finds necessary and appropriate to the public interest. This authority is delegated to the Commission for the sole purpose of authorizing the Commission to take actions necessary, if any, to effectuate open access transmission over the United States portion of the lines connecting the Diablo and Ascarate substations in the United States with the Insurgentes and Riverena substations in Mexico.

The authority delegated to the Commission may be further delegated within the Commission, in whole or in part, as may be appropriate.

All actions taken pursuant to authority delegated prior to this Order or pursuant to any authority delegated by this Order taken prior to and in effect on the date of this Order are hereby confirmed and ratified, and shall remain in full force and effect as if taken under this Order, unless and until rescinded, amended, or superseded.

Nothing in this Order shall preclude the Secretary from exercising or further delegating any of the authority hereby delegated, whenever, in the Secretary's judgment, the exercise or further delegation of such authority is necessary or appropriate to administer the functions vested in the Secretary.

This Order is effective on November 1, 1996.

Hazel R. O'Leary,

Secretary of Energy.

[FR Doc. 96–28278 Filed 10–30–96; 2:50 pm]

BILLING CODE 6450–01–P

Energy Information Administration

Inventory of Current DOE Reporting and Recordkeeping Requirements

AGENCY: Energy Information Administration, DOE.

ACTION: Department of Energy's inventory of energy information collections, including reporting and recordkeeping requirements.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) herein publishes an inventory of energy information collections (including reporting and recordkeeping requirements) which had Office of Management and Budget (OMB) approval on October 1, 1996, the first day of Fiscal Year (FY) 1997. The inventory is published for the use of respondents and other interested parties. DOE's management and procurement collections are the responsibility of DOE's Assistant Secretary for Human Resources and Administration and are not included in these notices.

The listing that is attached, hereto, includes DOE energy information collections that had OMB approval as of October 1, 1996. For each information collection utilizing a structured form, Part I lists the current DOE control or form number, the title of the requirement, the OMB control number, and the OMB approval expiration date. Part II lists those information collections which do not utilize structured forms and the corresponding citations from the Code of Federal Regulations.

FOR FURTHER INFORMATION CONTACT: Herbert Miller, Energy Information Administration (EI–73), 1000 Independence Avenue, SW., Washington, D.C. 20585, telephone: (202) 426–1103; fax: (202) 426–1081; or internet: hmiller@eia.doe.gov. Information on the availability of single, blank copies of those information collections utilizing structured forms can be obtained by contacting the National Energy Information Center (EI–30), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8800.

SUPPLEMENTARY INFORMATION: As DOE's energy information collections are submitted for review and approval to OMB during FY 1997 (October 1, 1996 through September 30, 1997), Federal Register notices will be published informing the public. Such notices not only provide an opportunity for the public to review and comment on the collections, but also notify the public of proposed changes to the inventory. Questions concerning the inventory or the changes that take place during FY 1997 may be directed to Mr. Miller at the address above.

Statutory Authority: Section 2(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), which amended Chapter 35 of Title 44 United States Code (See 44 U.S.C. § 3506 (a) and (c),(1).

Issued in Washington, DC, October 28, 1996.

Yvonne M. Bishop,

Director, Office of Statistical Standards, Energy Information Administration.

OCTOBER 1, 1996, INVENTORY
PART I.—DOE ACTIVE INFORMATION COLLECTIONS

DOE No.	Title	OMB control No.	Expiration date
	Civilian Radioactive Waste Management		
NWPA–830R–A–G	Standard Contract for Disposal of Spent Nuclear Fuel and/or High Level Waste	19010260	05/31/97
RW–859	Nuclear Fuel Data	19010287	12/31/98
RW–859S	Nuclear Fuel Data Survey Supplement	19010287	12/31/98
	Department of Energy		
DOE–887	DOE Customer Surveys	19010302	05/31/97
	Energy Information Administration		
EIA–1	Weekly Coal Monitoring Report—General Industries and Blast Furnaces (Standby Form).	19050167	04/30/99
EIA–3	Quarterly Coal Consumption Report—Manufacturing Plants	19050167	04/30/99
EIA–3A	Annual Coal Quality Report—Manufacturing Plants	19050167	04/30/99
EIA–4	Weekly Coal Monitoring Report—Coke Plants (Standby Form)	19050167	04/30/99
EIA–5	Coke Plant Report—Quarterly	19050167	04/30/99
EIA–5A	Annual Coal Quality Report—Coke Plants	19050167	04/30/99
EIA–6	Coal Distribution Report	19050167	04/30/99
EIA–6Q	Quarterly Coal Report	19050167	04/30/99
EIA–7A	Coal Production Report	19050167	04/30/99
EIA–14	Refiners' Monthly Cost Report	19050174	12/31/96
EIA–20	Weekly Telephone Survey of Coal Burning Utilities (Standby Form)	19050167	04/30/99
EIA–23	Annual Survey of Domestic Oil and Gas Reserves	19050057	12/31/97
EIA–23P	Oil and Gas Well Operator List Update Report	19050057	12/31/97
EIA–28	Financial Reporting System	19050149	12/31/96
EIA–63A/B	Annual Solar Thermal Collector Manufacturers Survey and Annual Photovoltaic Module/Cell Manufacturers Survey.	19050196	08/31/98
EIA–64A	Annual Report of the Origin of Natural Gas Liquids Production	19050057	12/31/97
EIA–176	Annual Report of Natural and Supplemental Gas Supply and Disposition	19050175	12/31/96
EIA–182	Domestic Crude Oil First Purchase Report	19050174	12/31/96
EIA–191	Monthly Underground Gas Storage Report	19050175	12/31/96
EIA–191S	Weekly Underground Gas Storage Report (Standby Form)	19050175	12/31/96
EIA–254	Semiannual Report on Status of Reactor Construction	19050160	12/31/97
EIA–411	Coordinated Bulk Power Supply Program Report	19050195	10/31/96
EIA–412	Annual Report of Public Electric Utilities	19050129	12/31/98
EIA–457A/H	Residential Energy Consumption Survey	19050092	06/30/97
EIA–627	Annual Quantity and Value of Natural Gas Report	19050175	12/31/96
EIA–759	Monthly Power Plant Report	19050129	12/31/98

OCTOBER 1, 1996, INVENTORY—Continued

PART I.—DOE ACTIVE INFORMATION COLLECTIONS

DOE No.	Title	OMB control No.	Expiration date
EIA–782A	Refiners'/Gas Plant Operators' Monthly Petroleum Product Sales Report	19050174	12/31/96
EIA–782B	Resellers'/Retailers' Monthly Petroleum Product Sales Report	19050174	12/31/96
EIA–782C	Monthly Report of Prime Supplier Sales of Petroleum Products Sold for Local Consumption.	19050174	12/31/96
EIA–800	Weekly Refinery Report	19050165	01/31/98
EIA–801	Weekly Bulk Terminal Report	19050165	01/31/98
EIA–802	Weekly Product Pipeline Report	19050165	01/31/98
EIA–803	Weekly Crude Oil Stocks Report	19050165	01/31/98
EIA–804	Weekly Imports Report	19050165	01/31/98
EIA–807	Propane Telephone Report	19050165	01/31/98
EIA–810	Monthly Refinery Report	19050165	01/31/98
EIA–811	Monthly Bulk Terminal Report	19050165	01/31/98
EIA–812	Monthly Product Pipeline Report	19050165	01/31/98
EIA–813	Monthly Crude Oil Report	19050165	01/31/98
EIA–814	Monthly Imports Report	19050165	01/31/98
EIA–816	Monthly Natural Gas Liquids Report	19050165	01/31/98
EIA–817	Monthly Tanker and Barge Movement Report	19050165	01/31/98
EIA–819A	Annual Oxygenate Capacity Report	19050165	01/31/98
EIA–820	Biennial Refinery Report	19050165	01/31/98
EIA–821	Annual Fuel Oil and Kerosene Sales Report	19050174	12/31/96
EIA–826	Monthly Electric Utility Sales and Revenue Report with State Distributions	19050129	12/31/98
EIA–846(A,B,C)	Manufacturing Energy Consumption Survey	19050169	04/30/98
EIA–851	Domestic Uranium Mining Production Report	19050160	12/31/97
EIA–856	Monthly Foreign Crude Oil Acquisition Report	19050174	12/31/96
EIA–857	Monthly Report of Natural Gas Purchases and Deliveries to Consumers	19050175	12/31/96
EIA–857S	Weekly Report of Natural Gas Supplies and Deliveries to Consumers (Standby Form)	19050175	12/31/96
EIA–858	Uranium Industry Annual Survey	19050160	12/31/97
EIA–860	Annual Electric Generator Report	19050129	12/31/98
EIA–861	Annual Electric Utility Report	19050129	12/31/98
EIA–863	Petroleum Product Sales Identification Survey	19050174	12/31/96
EIA–867	Annual Nonutility Power Producer Report	19050129	12/31/98
EIA–871A/F	Commercial Buildings Energy Consumption Survey	19050145	07/31/98
EIA–876A/E	Residential Transportation Energy Consumption Survey	19050068	01/31/97
EIA–877	Winter Heating Fuels Telephone Survey	19050174	12/31/96
EIA–878	Motor Gasoline Price Survey	19050174	12/31/98
EIA–882T	Generic Clearance for Questionnaire Testing, Evaluation, and Research	19050186	07/31/99
EIA–885	Propane Provider Fleet Survey	19050187	04/30/97
EIA–886	Alternative Fuel Vehicles Suppliers' Annual Report	19050191	01/31/98
EIA–888	On-Highway Diesel Fuel Price Survey	19050174	12/31/96
EIA–890	Clean City Vehicle Fleet Survey	19050189	06/30/97
EIA–895	Monthly Quantity of Natural Gas Report	19050192	12/31/97
EIA–900	Monthly Nonutility Sales for Resale Report	19050129	12/31/98
EIA–1605	Voluntary Reporting of Greenhouse Gases	19050194	05/31/98
EIA–1605EZ	Voluntary Reporting of Greenhouse Gases (Short Form)	19050194	05/31/98
Fossil Energy			
EIA–767(3)	Steam Electric Plant Operation and Design Report	19010298	05/31/97
FE–781R	Annual Report of International Electrical Export/Import Data	19010296	12/31/97
Nonproliferation and National Security			
NN–417R	Power System Emergency Reporting Procedures	19010288	08/31/98
Policy, Safety, and Environment			
EIA–767(2)	Steam Electric Plant Operation and Design Report	19010267	05/31/97

PART II.—DOE ACTIVE INFORMATION COLLECTIONS

[Not utilizing structured forms]

DOE No.	Title	OMB Control No.	Expiration date	CFR citation
	Economic Regulatory Administration			
ERA–766R ...	Recordkeeping Requirements of DOE's General Allocation and Price Rules.	19030073	10/31/96	10 CFR 210.1.
	Fossil Energy			
FE–329R	Regulatory Reporting and Recordkeeping Requirements Pursuant to 10 CFR 500, 501, 503, and 504.	19010297	08/31/98	10 CFR 500, 501, 503, 504, 505, 508, 515.
FE–746R	Import and Export of Natural Gas	19010294	04/30/99	10 CFR 205, 590.

[FR Doc. 96–28104 Filed 10–31–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. PR97–1–000]

Consumers Power Company; Notice of Statement Explaining Separate Charge for Non-Physical Title Transfers of Gas

October 28, 1996.

Take notice that on October 1, 1996, Consumers Power Company (Consumers) tendered for filing a statement pursuant to Section 284.123(e) of the Commission's Regulations. Consumers states that, beginning October 1, 1996, it will charge a separate, nominal rate for non-physical gas and title transfers of gas occurring prior to the gas being physically transported under Section 284.224 of the Federal Energy Regulatory Commission's Regulations.

Consumers proposes that those who make a non-physical transfer will, in the month following the transfer, be billed fifty dollars ($50.00), or such higher amount, if any, determined using the following schedule:

$0.005/MMBtu for the first 10,000 MMBtu transferred/month
$0.004/MMBtu for the next 40,000 MMBtu transferred/month
$0.002/MMBtu for all additional MMBtu transferred/month

Consumers indicates that a copy of the filing was served upon the affected state regulatory commission.

Any person desiring to be heard or 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 384.214). All such petitions or protests should be filed on or before November 12, 1996. Protests will be considered by the Commission in determining the appropriate action to 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 petition to intervene. Copies of the Consumers Power Company filing in this matter are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–28031 Filed 10–31–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–3064–000]

EnerZ Corporation; Notice of Issuance of Order

October 29, 1996.

EnerZ Corporation (EnerZ) submitted for filing a rate schedule under which EnerZ will engage in wholesale electric power and energy transactions as a marketer. EnerZ also requested waiver of various Commission regulations. In particular, EnerZ requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by EnerZ.

On October 21, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by EnerZ 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 385.214).

Absent a request for hearing within this period, EnerZ is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of EnerZ's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 20, 1996. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–28067 Filed 10–31–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–46–000]

Equitrans, Inc.; Notice of Request Under Blanket Authorization

October 28, 1996.

Take notice that on October 18, 1996, Equitrans, Inc. (Equitrans), 3500 Park Lane, Pittsburgh, Pennsylvania 15275, filed in Docket No. CP97–46–000 a

request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install one delivery tap under Equitrans's blanket certificate issued in Docket No. CP83–508–000 and CP86–676–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans proposes to install the proposed delivery tap on Equitrans field gathering pipeline No. F–598 in Wetzel County, West Virginia. The tap will be instituted to provide transportation deliveries to Equitable Gas for ultimate distribution to one residential customer. Equitrans will charge Equitable the applicable transportation rate contained in Equitrans FERC Gas Tariff on file with and approved by the Commission. Equitrans projects that the 1 Mcf per day of peak service requested is within the entitlements of Equitable Gas, and will not impact Equitrans peak day and annual deliveries. Equitrans has sufficient capacity to accomplish the deliveries described herein without deteriment to its other customers.

Equitrans states that the new delivery tap is not prohibited by its existing tariff and the total volumes delivered to Equitable Gas will not exceed total volumes authorized prior to the request.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–28027 Filed 10–31–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–60–000]

Equitrans, L.P.; Notice of Request Under Blanket Authorization

October 28, 1996.

Take notice that on October 21, 1996, Equitrans, L.P. (Equitrans), 3500 Park Lane, Pittsburgh, Pennsylvania 15275–1102 filed in Docket No. CP97–60–000 a request pursuant to §§ 157.205, and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for approval and permission to install a delivery tap for Equitable Gas Company (Equitable) for ultimate distribution to a residential customer, under the blanket certificate issued in Docket No. CP83–508–000 and transferred to Equitrans in Docket No. CP86–676–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Equitrans states that it proposes to install a delivery tap for the ultimate distribution to Ronald and Debra McNemar, 7 Oakridge Drive, Buckhannon, West Virginia. Equitrans indicates that the quantity of gas to be delivered through the proposed tap will be approximately 1 Mcf on a peak day. Equitrans asserts that the total volumes to be delivered to Equitable after this request do not exceed the total volumes authorized prior to this request. Equitrans also asserts that its tariff does not prohibit this type of service.

Any person or the Commission's Staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–28029 Filed 10–31–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–52–000]

Florida Gas Transmission Company; Notice of Application for Abandonment

October 28, 1996.

Take notice that on October 22, 1996, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed, in Docket No. CP97–52–000, an abbreviated application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order authorizing FGT to abandon by sale to Copano Field Services/Copano Bay, L.P. (Copano), the Blind Pass Facilities, consisting of 36 miles of various diameter pipeline (ranging from 3 inches to 6 inches in diameter) and measurement facilities, with appurtenances, located in San Patricio, Aransas, and Nueces Counties, Texas, all as more fully set forth in the application.

FGT relates that the Blind Pass Facilities have not been fully utilized for several years. FGT states they were designed to move approximately 10,000 Mcf per day of natural gas to the Florida market, but the most recent twelve-month period ending May 1996, shows an average daily volume of 500 Mcf/d, less than 5% of the design capacity. FGT asserts that because it is an interstate pipeline, subject to the Commission's regulatory authority, it cannot compete effectively with the non-jurisdictional entities providing gathering services. FGT maintains that it has been unsuccessful in connecting any significant additional supplies, even though this is a production area where new reserves and production are being added each year.

FGT, therefore, proposes to sell the Blind Pass Facilities to Copano, which will operate the facilities on a non-jurisdictional basis. Copano anticipates attaching additional supplies to the Blind Pass Facilities, which will increase the throughput through FGT's Station No. 3. FGT states that inasmuch as the facilities are to be sold to Copano, the capital and operating costs of the facilities will be removed from FGT's rate base and cost-of-service, and there will be no stranded facility costs associated with the proposed abandonment. FGT believes that Copano, as a non-jurisdictional entity, will have competitive flexibility, which FGT does not, which will allow Copano to compete on a level playing field with other unregulated gathering service providers. FGT asserts that approval of the abandonment should increase the supply options available to FGT's customers, increase competition in the

gas supply market and enhance the value of firm capacity on FGT's system.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 18, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) 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 in any proceeding herein 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 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 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 FGT to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–28028 Filed 10–31–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP96–341–002 and CP94–327–004]

Koch Gateway Pipeline Company; Notice of Revised Compliance Filing

October 28, 1996.

Take notice that on October 23, 1996, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets to be effective October 1, 1996:

Fifth Revised Sheet No. 1
Substitute Fifth Revised Sheet No. 1
Substitute First Revised Sheet No. 701

Koch states that the revised tariff sheets are being filed to revise the pagination on these tariff sheets which were filed to comply with the Commission's ''Order Accepting Tariff Sheets Subject to Conditions'' issued September 27, 1996 in Docket Nos. RP96–341–000 and CP94–327–002.

Koch states that a copy of this filing is being served upon all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's 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 appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–28033 Filed 10–31–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–701–003]

Mid Louisiana Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 28, 1996.

Take notice that on October 24, 1996, Mid Louisiana Gas Company (Mid Louisiana) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 2, the following tariff sheets, with an effective date of November 24, 1996:

Sixth Revised Sheet No. 1
First Revised Sheet No. 58

Mid Louisiana states that the filing of the Revised Tariff Sheet is in response to Commission Order, dated October 8, 1996 in Docket No. CP96–701–000 wherein the Commission granted the abandonment of certain previously certificated services.

Pursuant to Section 154.7(a)(7) of the Commission's Regulations, Mid Louisiana respectfully requests waiver of any requirement of the Regulations in order to permit the tendered tariff sheets to become effective November 24, 1996, as submitted.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this compliance filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–28026 Filed 10–31–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–197–019 and RP96–44–003]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 28, 1996.

Take notice that on October 23, 1996 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fourth Substitute Ninth Revised First Revised Sheet No. 52. The tariff sheet is proposed to be effective on September 1, 1995.

Transco states that the purpose of the instant filing is to supplement Transco's filing of October 9, 1996 in Docket Nos. RP95–197–000, RP95–197–001, and RP96–44–000 (October 9 filing) which included an incorrectly paginated tariff sheet. Fourth Substitute Ninth Revised First Revised Sheet No. 52, which is to be effective September 1, 1995 is included in the instant filing to replace the incorrect sheet.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–28032 Filed 10–31–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–2–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 28, 1996.

Take notice that on October 22, 1996 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 which tariff sheets are enumerated in Appendix A attached to the filing.

Transco states that the purpose of the instant filing is to track rate changes attributable to (1) storage service purchased from National Fuel Gas Supply Corporation (National Fuel) under its Rate Schedule SS–1, the costs of which are included in the rates and charges payable under Transco's Rate Schedules LSS and SS–2, (2) storage service purchased from CNG Transmission Corporation (CNG) under its Rate Schedule GSS the costs of which are included in the rates and charges payable under Transco's Rate Schedules GSS and LSS, (3) transportation service purchased from National Fuel under its Rate Schedule X–54 the costs of which are included in the rates and charges payable under Transco's Rate Schedule SS–2, (4) transportation service purchased from National Fuel under its rate schedule X–58 the costs of which are included in the rates and charges payable under Transco's Niagara Import Point Project—System Expansion (NIPPs–SE) transportation service, (5) transportation service purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT, (6) transportation service purchased from CNG under its Rate Schedule X–74 the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT, (7) storage service purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X–28 the costs of which are included in the rates and charges payable under Transco's Rate Schedule S–2, and (8) storage service purchased from North Penn Gas Company (North Penn) under its Rate Schedule S the costs of which are included in the rates and charges payable under Transco's Rate Schedule SS–1. The tracking filing is being made pursuant to Section 4 of Transco's Rate Schedule LSS, Section 4 of Transco's Rate Schedule SS–2, Section 8.01(i) of Transco's NIPPs–SE Rate Schedule X–315, Section 4 of Transco's Rate Schedule FT–NT, Section 3 of Transco's Rate Schedule GSS, Section 26 of the General Terms and Conditions of Transco's Volume No. 1 Tariff and Section 5 of Transco's Rate Schedule SS–1.

Transco states that included in Appendices B through G attached to the filing are explanations of the rate changes and details regarding the computation of the revised Rate Schedule LSS, GSS, SS–2, FT–NT, NIPPs–SE (X–315), S–2 and SS–1 rates.

Transco states that copies of the filing are being mailed to each of its LSS, GSS, SS–2, FT–NT, NIPPs–SE (X–315), S–2 and SS–1 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, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–28034 Filed 10–31–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–2830–000]

Washington Gas Energy Services, Inc.; Notice of Issuance of Order

October 29, 1996.

Washington Gas Energy Services, Inc. (Washington GES) submitted for filing a rate schedule under which Washington GES will engage in wholesale electric power and energy transactions as a marketer.Washington GES also requested waiver of various Commission regulations. In particular, Washington GES requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Washington GES.

On October 18, 1996, the Commission issued a letter order that granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Washington GES 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 385.214).

Absent a request for hearing within this period, Washington GES is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Washington GES's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 18, 1996. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–28066 Filed 10–31–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG97–1–000]

Williams Natural Gas Company; Notice of Filing

October 28, 1996.

Take notice that on October 18, 1996, Williams Natural Gas Company submitted revised standards of conduct under Order Nos. 497 *et seq.*[1] and Order Nos. 566 *et seq.*[2]

[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992), Order No. 497–D, *order on remand and extending sunset date*, III FERC Stats. & Regs. Preambles ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993), Order No. 497–F (*order denying rehearing and granting clarification*), 66 FERC ¶ 61,347 (March 24, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707, (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994).

Williams states that it served copies of its standards of conduct on all of its jurisdictional 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 Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before November 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 this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–28030 Filed 10–31–96; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Final Filing Deadline in Special Refund Proceeding

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of setting final filing deadline for filing Applications for Refund in Special Refund Proceeding KEF–0116, Enron Corporation.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) has set the final deadline for filing Applications for Refund from the escrow account established pursuant to a consent order entered into between the DOE and Enron Corporation. Enron Corporation Special Refund Proceeding, No. KEF–0116. This refund proceeding covers the following subsidiaries of Enron Corporation: UPG, Inc.; Northern Propane Gas Company; and Florida Hydrocarbons Company. The previous deadline was April 30, 1992. The new final deadline is December 2, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, 1000 Independence Ave. SW., Washington, DC 20585–0107. Telephone No. (202) 426–1527.

SUPPLEMENTARY INFORMATION: On July 10, 1991, the Office of Hearings and Appeals of the Department of Energy issued a Decision and Order setting forth final refund procedures to distribute the monies in the oil and natural gas liquids overcharge escrow account established in accordance with the terms of a Consent Order entered into by the Department of Energy and Enron Corporation. Enron Corporation, 21 DOE ¶ 85,323 (1991), 56 FR 33749 (July 23, 1991). That Decision established April 30, 1992 as the filing deadline for the submission of refund applications for direct restitution by purchasers of Enron Corporation's (Enron's) refined petroleum products. 21 DOE at 88,963, 56 FR 33756.

We commenced accepting refund applications in the Enron refund proceeding on July 16, 1991, more than five years ago. While the originally announced deadline for such submissions was April 30, 1992, we have continued to liberally accept applications after the deadline. However, we have now concluded that eligible applicants have been provided with more than ample time to file. Therefore, we will not accept applications that are postmarked after December 2, 1996. All Applications for Refund from the Enron Consent Order fund postmarked after the final filing date of December 2, 1996, will be summarily dismissed. Any unclaimed funds remaining after all pending claims are resolved will be made available for indirect restitution pursuant to the Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501.

Dated: October 17, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 96–28099 Filed 10–31–96; 8:45 am]

BILLING CODE 6450–01–P

Final Filing Deadline in Special Refund Proceeding

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of setting final filing deadline for filing applications for refund in special refund proceeding LEF–0040, Eason Oil Company.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) has set the final deadline for filing Applications for Refund from the escrow account established pursuant to a consent order entered into between the DOE and Eason Drilling Company (formerly Eason Oil Company) and ITT Corporation. Eason Oil Company Special Refund Proceeding, No. LEF–0040. The previous deadline was August 1, 1994. The new final deadline is December 2, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, 1000 Independence Ave., SW., Washington, DC 20585–0107, Telephone No. (202) 426–1527.

SUPPLEMENTARY INFORMATION: On June 1, 1993, the Office of Hearings and Appeals of the Department of Energy issued a Decision and Order setting forth final refund procedures to distribute the monies in the oil and natural gas liquids overcharge escrow account established in accordance with the terms of a Consent Order entered into by the Department of Energy and Eason Drilling Company (formerly Eason Oil Company) and ITT Corporation. Eason Oil Company, 23 DOE ¶ 85,073 (1993), 58 FR 32349 (June 9, 1993). That Decision established August 1, 1994 as the filing deadline for the submission of refund applications for direct restitution by purchasers of Eason Oil Company's (Eason's) refined petroleum products. 23 DOE at 88,187. 58 FR 32354.

We commenced accepting refund applications in the Eason refund proceeding on July 7, 1993, more than three years ago. While the originally announced deadline for such submissions was August 1, 1994, we have continued to liberally accept applications after the deadline. However, we have now concluded that eligible applicants have been provided with more than ample time to file. Therefore, we will not accept applications that are postmarked after December 2, 1996. All Applications for Refund from the Eason Consent Order fund postmarked after the final filing date of December 2, 1996, will be summarily dismissed. Any unclaimed funds remaining after all pending claims

are resolved will be made available for indirect restitution pursuant to the Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501.

Dated: October 17, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 96–28100 Filed 10–31–96; 8:45 am]

BILLING CODE 6450–01–P

Western Area Power Administration

Record of Decision for the Salt Lake City Area Integrated Projects Electric Power Marketing Program.

AGENCY: Western Area Power Administration, DOE.

ACTION: Record of decision.

SUMMARY: The Department of Energy (DOE), Western Area Power Administration (Western), has completed a draft and final environmental impact statement (EIS), DOE/EIS–0150, on its Salt Lake City Area Integrated Projects (SLCA/IP) Electric Power Marketing Program. Western is publishing this Record of Decision (ROD) regarding the level of its commitment of electrical power and energy to be sold through the SLCA/IP long-term firm electrical power contracts.

DATES: Western will implement this decision at the beginning of the 1997 Summer marketing season, April 1, 1997.

DOCUMENTS AVAILABLE: For a copy of this ROD or a copy of the SLCA/IP Electric Power Marketing EIS and supporting documents, write to the address below.

FOR FURTHER INFORMATION CONTACT: Dave Sabo,Western Area Power Administration, CRSP Customer Service Center, P.O. Box 11606, Salt Lake City, Utah 84147, (801) 524–5497.

SUPPLEMENTARY INFORMATION: Western has prepared this ROD pursuant to the National Environmental Policy Act of 1969 (NEPA), Council on Environmental Quality NEPA implementing regulations (40 CFR Parts 1500–1508), and DOE NEPA implementing regulations (10 CFR Part 1021). This ROD is based on information contained in the ''SLCA/IP Electric Power Marketing Environmental Impact Statement,'' DOE/EIS–0150. Western has considered all comments received on its commitment-level alternatives and the other aspects of the EIS in preparing this ROD.

Background

Western is a power marketing administration within the DOE. Western's Colorado River Storage Project Customer Service Center (CRSP–CSC) is responsible for marketing power from the Colorado River Storage Project (CRSP), Collbran Project and Rio Grande Project (known collectively as the SLCA/IP), and the Provo River Project.

The SLCA/IP power marketing criteria specify terms and conditions for long-term firm capacity and energy sales contracts. In 1980, Western began examining its marketing criteria for long-term capacity and energy from the SLCA/IP because the existing long-term firm contracts were to expire in 1989. Through this process, Western developed the proposed ''Post-1989 Criteria.'' Western prepared an environmental assessment (EA) for implementation of the Post-1989 Criteria, and DOE approved a Finding of No Significant Impact (FONSI). In 1988, the National Wildlife Federation and others filed suit against Western regarding the adequacy of the EA and FONSI.

At that time, Western determined that it would prepare an EIS on the Post-1989 Criteria to end the litigation and to respond to public concerns about the operation of Glen Canyon Dam. The court entered an order requiring SLCA/IP long-term firm contractual commitments of capacity and energy to remain the same as current (1978) levels until Western had completed an EIS. The court was concerned that an increase in commitment, which was a principal feature of the Post-1989 Criteria, might result in changed operation of the SLCA/IP powerplants and changes in downstream environmental impacts. The EIS assessed potential downstream impacts of power generation at SLCA/IP facilities in compliance with that court order. After publication of the final EIS, the court dismissed the lawsuit.

Purpose and Need

Western needs to determine the level of long-term firm capacity and energy commitment from the SLCA/IP that will be made available to its customers and that will form the basis for its SLCA/IP power marketing program.

The commitment level selected must be consistent with its statutory obligations and legal constraints. This necessarily requires a weighing of economic, environmental, and other public considerations. Western's action will have to achieve a balanced mix of purposes including providing the greatest practicable amount of long-term firm capacity and energy at the lowest possible rates consistent with sound business principles, providing for long-term resource stability, having the lowest practicable adverse environmental impacts, and being responsive and adaptable to future operations of the SLCA/IP facilities.

Public Process

Public involvement in the EIS began with the publication of a Federal Register notice of intent to prepare an EIS in April 1990. Western held seven scoping meetings and received more than 21,000 written comments (mostly preprinted postcards) during the formal scoping period. Western also developed a newsletter and mailing list to keep the public informed about the EIS process and to enhance the opportunity for review and comment.

After receiving comments from the public, Western developed a scoping report to assist in characterizing and understanding the scoping comments. From this report, Western developed a statement of scope and a purpose and need statement for the EIS. Western described the statement of scope and the purpose and need in public newsletters requesting review and comment. Western proposed draft commitment-level alternatives and analyzed hydropower operational scenarios for those facilities which Western influences and exercises some measure of operational control (Glen Canyon and Flaming Gorge Powerplants and the Aspinall Units). These draft alternatives and operational scenarios were submitted to the public for review and comment. After considering the comments received, Western published a reasonable range of alternatives and operational scenarios in advance of the draft EIS.

The draft EIS was made available to the public for review in March 1994. It was mailed to over 700 individuals and organizations. A notice of availability was also published in the Federal Register. A newsletter announcing both the availability of the draft EIS and the schedule for public information hearings was sent to approximately 2,100 individuals. The draft EIS and all supporting documents were made available for public review in regional libraries and in 11 reading rooms.

Comments on the draft EIS were received from the public in written, mailed-in form and at the five public hearings. During the comment period, a total of 41 comment letters were received. Western visited with coordinating agencies, cooperating agencies, environmental groups, and customer groups before issuing the statement of scope, and determining the range of commitment-level alternatives and hydropower operational scenarios that would be considered. The

cooperating agencies were the Bureau of Reclamation (Reclamation), the National Park Service (NPS), and the U.S. Fish and Wildlife Service (Service). The coordinating agencies were the states of Utah, Wyoming, New Mexico, Colorado, and Arizona.

In addition, Western carried on a continuous dialogue with the Service and NPS regarding the technical adequacy of the analyses upon which the EIS is based. The dialogue with the Service resulted in the issuance of a Fish and Wildlife Coordination Act Report by the Service.

The final EIS was distributed to the public during late December 1995 and January 1996. The EPA notice of availability was published on February 16, 1996 (61 FR 6242). A letter on the final EIS was received from the Service reiterating previous concerns about water releases from Flaming Gorge Dam. Concerns raised in the letter will be addressed by Western, Reclamation, and the Service in the ongoing Section 7 consultation process on the operation of Flaming Gorge, the appropriate forum for the resolution of water release issues.

Alternatives

Western's hydroelectric generation is highly variable among seasons and years because of variation in natural hydrology. To create a firm level of marketable electric resource and enhance its value as a reliable source of electricity, Western markets hydroelectricity supplemented with energy purchased from other utilities and non-utility electrical generators.

The principal and determining feature of the SLCA/IP marketing program is the sale of long-term firm capacity and energy at long-term firm power rates. The amount of capacity and energy sold under long-term firm contract is called the level of commitment, as this is the amount of capacity and energy Western must generate and/or purchase to meet contract requirements. The alternatives examined in the EIS were based upon a reasonable range of levels of long-term firm commitments and are called commitment-level alternatives.

The range of commitment-level alternatives evaluated in the EIS was determined on the basis of a reasonable range of possible levels of SLCA/IP generation of both capacity (which is equivalent to the instantaneous output of a generator, usually stated in megawatts [MW]) and energy (the amount of power generated over a period of time, usually stated in gigawatt-hours [GWh]). Within constraints set by Reclamation, Western will schedule and release water on an hourly and daily basis from the SLCA/IP in coordination with Reclamation and make purchases as needed to meet the contractual commitments defined by the alternatives.

The commitment-level alternatives considered in the EIS span the range of commitments necessary and possible for Western to fulfill its statutory obligations. Seven combinations of capacity and energy commitments characterize the entire range of commitments that could be offered by Western. Capacity commitments range from a low of 550 MW (less than 40% of the historical commitment) to a high of 1,450 MW. Energy commitments range from a low of 3,300 GWh (less than 60 percent of the historical commitment) to a high of 6,200 GWh.

The major characteristics of the commitment-level alternatives considered in the EIS are described in Table 1. In addition to two moderate capacity and energy alternatives (3 and 6), the alternatives include high capacity and energy (alternative 1, the preferred alternative), low capacity and energy (alternative 4), high capacity and low energy (alternative 2), and low capacity and high energy (alternative 5) combinations.

TABLE 1.—ELECTRIC POWER MARKETING EIS COMMITMENT-LEVEL ALTERNATIVES

Alternative	Capacity commitment (MW)	Energy commitment (GWh)	Load factor (%)	Minimum schedule requirement (%)	Description
No action	1291	5700	50	35	Moderate capacity and high energy (the 1978 marketing program commitment level).
1 (preferred alternative).	1449	6156	48.5	35	High capacity and high energy (the post-1989 commitment level).
2	1450	3300	26	10	High capacity and low energy.
3	1225	4000	37	15	Moderate capacity and moderate energy.
4	550	3300	68	52	Low capacity and low energy.
5	625	5475	100	100	Low capacity and high energy.
6	1000	4750	54	33	Moderate capacity and moderate energy.

TABLE 2.—RELATIVE IMPACTS OF THE COMMITMENT-LEVEL ALTERNATIVES [a]

Commitment-level alternative	Financial viability and retail rates	Regional economic activity	Agricultural production	Air resources	Water, ecological, cultural, recreation, land use, and visual resources
No action (1978 Marketing Criteria).	Slight impacts on financial viability of Western's customers and the retail rates charged to end-users.	No impacts in any of the nine subregions or in the two high-reliance counties.	No impacts on agricultural production.	No impacts on local or regional air quality or noise.	Impacts dependent on hydropower operations.
Commitment-level alternative 1 (preferred alternative).	No impact on financial viability; slight impact on retail rates.	No impacts in any of the nine subregions; slight impacts in the two high- reliance counties.	Slight impact on agricultural production.	Slight impact on local or regional air quality or noise.	Same as above.

TABLE 2.—RELATIVE IMPACTS OF THE COMMITMENT-LEVEL ALTERNATIVES [a]—Continued

Commitment-level alternative	Financial viability and retail rates	Regional economic activity	Agricultural production	Air resources	Water, ecological, cultural, recreation, land use, and visual resources
Commitment-level alternative 2.	Slight impact on financial viability; moderate impact on retail rates.	Same as above	Same as above	Same as above	Same as above.
Commitment-level alternative 3.	Slight impact on financial viability; moderate impact on retail rates.	Same as above	Same as above	Same as above	Same as above.
Commitment-level alternative 4.	No impact on financial viability; moderate or large impacts on retail rates.	Same as above	Same as above	Same as above	Same as above.
Commitment-level alternative 5.	Slight impact on financial viability; moderate to large impact on retail rates.	Same as above	Same as above	Same as above	Same as above.
Commitment-level alternative 6.	Slight impact on financial viability; moderate impact on retail rates.	Same as above	Same as above	Same as above	Same as above.

Western's Preferred Alternative and the Environmentally Preferred Alternative

Commitment-level alternative No. 1, the post-1989 commitment level, was developed and chosen as Western's preferred alternative during an extended public process involving SLCA/IP customers and other interested parties. This alternative was also identified as the environmentally preferred alternative on the basis of the results of the analyses in the EIS (see Table 2). This choice was made because, under the preferred alternative, socioeconomic impacts, including impacts to financial viability, retail rates, and regional and agricultural economies, would be minimized. Furthermore, an analysis cited in the EIS indicates that potential impacts to natural and cultural resources result almost exclusively from hydropower operations rather than from commitment levels. In other words, the preferred alternative has no significant impacts to natural and cultural resources and is the alternative which minimizes impacts to socioeconomic resources.

Hydropower Operational Scenarios

In addition to analyzing the impacts of commitment-level alternatives, the EIS evaluated the potential impacts of a reasonable range of hydropower operations at Glen Canyon Dam, Flaming Gorge Dam, and the Aspinall Unit (which includes the powerplants at the Blue Mesa, Morrow Point, and Crystal dams). These are the three SLCA/IP facilities that provide most of the hydropower marketed by Western, and over which Western exercises some measure of hourly or daily control. The array of potential hydropower operations—referred to as operational scenarios—ranges from historical high hourly fluctuations to no hourly fluctuation (baseload or steady flows) at each facility.

By considering both commitment-level alternatives and operational scenarios together, examination of a full range of operations and commitment levels and their combined impacts was possible. Actual hydropower operations within the range of scenarios examined may come about as a result of management decisions by Western and Reclamation. Reclamation determines operational constraints (including minimum and maximum release rates and monthly release volumes) for Federal hydropower facilities, and Western makes operational decisions within those constraints at Glen Canyon, Flaming Gorge, and the Aspinall Unit.

Environmental Consequences of Commitment-Level Alternatives

The impacts of commitment-level alternatives on water resources, ecological resources, cultural resources, and recreation would depend on the operational scenarios implemented at the hydropower facilities under consideration (see Environmental Consequences of Hydropower Operational Scenarios, below). No impacts on these environmental resources were associated with the commitment-level alternatives themselves.

Local and regional air quality and noise levels would be affected only slightly by any of the commitment-level alternatives. Slight impacts would result from differences in emission factors associated with different types of electric generation and would be related to shifts from hydroelectric generation to various types of thermal power generation.

Commitment-level alternatives were analyzed for their potential impacts on the financial viability of Western's utility customers, the retail rates charged to the end-users of electricity, regional economic variables (including population, employment, disposable income, and gross regional product), agricultural production, and the use value of recreational activities. In addition, the analysis considered the potential effects that a change in Western's commitment levels could have on the need for additional capacity and energy and on the mix of generation options used to supply electricity to the affected region and the resulting impacts on local and regional air quality. The selection of a commitment level was determined to have no discernible effect on other environmental resources.

Hydropower operational scenarios could affect socioeconomic conditions through their effects on purchases and exchanges and the resultant cost of electricity. Thus, it was necessary to specify both an operational scenario and a commitment-level alternative to assess

overall socioeconomic and air resource impacts. Commitment-level alternatives were paired with specific supply options, which consisted of the full range of possible operational scenarios at each of the three facilities considered in the EIS, combined with the power purchases needed to meet a particular commitment level.

The environmental consequences of the combinations of commitment-level alternatives and supply options considered in the EIS are summarized in Table 2. None of the combinations of commitment-level alternatives and supply options are expected to have a significant effect in any of the nine subregions or any of the four regional socioeconomic variables. Only slight impacts are likely on conservation and renewable energy programs as measured in terms of consumption efficiency and load management. These results are partly a reflection of the fact that the power marketed by Western accounts for only about 10 percent of the total electricity consumed in the affected region. In addition, much of the affected region has an excess supply of generating capacity. This excess capacity would serve to offset the adverse price effects of a reduction in the amount of Western's long-term firm commitment of capacity and energy and thus blunt the regional economic impacts of any increase in electricity prices.

A change in Western's long-term firm commitments is expected to have a small effect on agricultural production, as measured by net income to the agricultural sector at the state level. At the state level, most of the impacts would consist of shifts from irrigated to dry land farming methods for individual crops and some substitution among crops. The largest impact indicated by the analysis was a decrease in net agricultural income by about 1.2 percent in Utah in the final year of the forecast period. This impact would occur under commitment-level alternative No. 4, which represents the lowest long-term firm commitment of capacity and energy.

Different combinations of commitment-level alternatives and supply options could affect the financial viability of Western's utility customers and the retail rates charged to end-users. The combination of commitment-level alternative No. 2 with the full-range of dam operations at the three affected facilities would leave the financial viability of affected utilities unchanged. In addition, with this combination, many of Western's utility customers would experience a decline in their retail rates. However, the remaining combinations of commitment-level alternatives and operational scenarios could result in negative rate impacts. Commitment-level alternatives 4 and 5 combined with steady flows at each dam would result in the largest weighted average increase in retail rates (15 percent) across affected utilities. The combination of alternative No. 4 and steady flows would also result in the largest rate increase. Under these conditions, it is estimated that the retail rates charged by municipal utilities in Utah that rely on Western for more than 25 percent of their supply would increase by 41 percent.

Overall, municipals in Utah and New Mexico, which have high reliance on Western power, would experience the largest retail rate impacts under any of the commitment-level alternatives. Utility customers in Arizona, Colorado, and Nevada (which have low reliance levels) would experience slight to moderate impacts on retail rates under most alternatives. Utility customers in Wyoming, which have very low reliance levels, would be largely unaffected.

Environmental Consequences of Hydropower Operational Scenarios

Most of the hydropower marketed by Western from the SLCA/IP is generated at Glen Canyon Dam, Flaming Gorge Dam, and the Aspinall Unit. At these CRSP facilities, Western has some discretion over hourly and daily releases within Reclamation flow constraints. Impacts of hydropower operational scenarios at these facilities are discussed in this section.

Glen Canyon Dam

The operating scenarios described below are the alternatives examined by the Department of the Interior in the Glen Canyon Dam EIS. The description of the environmental consequences of these scenarios is consistent with the analyses summarized in that EIS.

Continuation of historical operations and maximum power plant capacity operational scenarios would have impacts on most environmental resources similar to those that have occurred since the dam was completed in 1963. Installation of the dam and, to a lesser extent, its operations have affected most natural resources dependent on the river and have produced the existing conditions for these resources.

Moderate and low fluctuating flow operational scenarios would potentially produce moderate benefits for water resources (moderate increases in the probability of a net gain in riverbed sand), cultural resources, and white-water boating. These operational scenarios could result in slight or moderate benefits to trout, native fish, angling, and Federally-listed species: the peregrine falcon, bald eagle, and southwestern willow flycatcher. Slight adverse impacts could occur to the humpback chub, and adverse impact could occur to the Kanab ambersnail.

Although steady flow scenarios could result in benefits to a number of resources, some benefits may require occasional high flows to build beaches and maintain fish habitats. Benefits could occur for water resources (moderate increases in the probability of a net gain in riverbed sand), aquatic ecology, terrestrial ecology, cultural resources, and recreation. Benefits would potentially be expected for Federally-listed species: the humpback chub, bald eagle, peregrine falcon, and southwestern willow flycatcher. Marsh vegetation could decrease under all of the steady flow scenarios. Beach and habitat maintenance flows could have adverse effects on the Kanab ambersnail, an endangered species.

Flaming Gorge Dam

The year-round high fluctuating flow operational scenario for Flaming Gorge Dam features higher maximum releases and greater daily flow fluctuations than occurred under historical operations. These higher flows and daily fluctuations could result in adverse impacts to some ecological resources, including trout, native fish, endangered fish, and riparian vegetation. Since this scenario has a higher erosion rate than steady flows, adverse impacts to cultural resources would potentially be expected.

The remaining three operational scenarios at Flaming Gorge Dam are seasonally adjusted and feature periods of restricted flow to meet requirements of the U.S. Fish and Wildlife Service Biological Opinion for operation of the facility. These scenarios exhibit a high sustained flow in May or June, reduced fluctuations and lower flows in summer and autumn, and steady flows when ice cover is present on the river. These flows are intended to be protective of endangered fish in the system and could result in benefits to these species, as well as to other resources. Some adverse impacts could result from seasonal adjustment, however. The spring peak in flows would potentially result in large adverse impacts to anglers. The bald eagle and over-wintering waterfowl could be adversely affected by steady flows in the winter. With steady flows, less open ice-free water would be available for these species.

Seasonally-adjusted high fluctuations would potentially result in moderate

changes to flow and stage patterns, but would potentially have erosion rates similar to those of year-round high fluctuations. Slight to moderate benefits are expected to native fish. This scenario would potentially result in slight benefits to angling in mid-summer through autumn (when fluctuations are reduced) and moderate benefits to white-water boating during the spring peak flows. Slight adverse impacts are expected to terrestrial ecology because of the inundation of some riparian vegetation. Slight adverse impacts are also expected to trout under year-round high fluctuations.

Although seasonally-adjusted moderate and steady flows are relatively similar in their impacts to most resources, seasonally-adjusted steady flows generally would potentially provide greater levels of environmental benefits. Both scenarios would potentially have reduced erosion rates and, thus, would potentially benefit water resources and cultural resources. Slight or moderate benefits to trout and moderate to large benefits to native and endangered fish, angling, and white-water boating are also expected under these scenarios because of reduced daily fluctuations. Seasonally-adjusted moderate fluctuations are expected to have slight adverse impacts on terrestrial resources because some existing riparian vegetation would be inundated and lost.

Aspinall Unit

Because Crystal Dam reregulates flows from the Aspinall Unit, flows in the Gunnison River below the Unit and the resources that depend on those flows would not be affected by changes in hydropower operations. Slight to moderate changes to flow and stage in Blue Mesa and Morrow Point reservoirs would potentially occur because of seasonal adjustments in releases and daily fluctuations. Despite these changes in flow and stage, neither operational scenario is expected to result in impacts to sediment, most ecological resources (aquatic ecology, threatened and endangered species), cultural resources, land use, or visual resources. Both scenarios would potentially result in slight benefits to terrestrial resources in the headwaters of Crystal Reservoir in the form of an increase in riparian vegetation. Slight adverse impacts to the bald eagle are expected under the seasonally-adjusted steady flow scenario because the reservoirs would freeze earlier in the winter with reduced fluctuations. Slight adverse impacts to boaters on Morrow Point and Crystal reservoirs could occur at low water under the seasonally-adjusted high fluctuation scenario.

Summary of Public Comments

A number of specific issues were raised by agencies and the public during the public review period of the draft EIS. Most Western customers who commented on the draft EIS recommended that Western select as the preferred alternative commitment-level alternative No. 1, a high-capacity, high-energy alternative. Since publication of the draft EIS, Western has chosen this commitment level alternative as the preferred alternative and has also identified it as the environmentally preferred alternative in the final EIS.

These customers also wrote that they agreed with the major findings of the draft EIS, but were concerned that Western had relied on studies (e.g.,Glen Canyon Environmental Studies) that were incomplete at the time. Western's final EIS has been updated to incorporate the most recent information available from these studies.

Concerns raised by the Service and NPS that the preferred alternative would result in operations at hydropower facilities that were more damaging to natural resources are not borne out by the analyses in the EIS. The weak relationship between hydropower operations and commitment levels allows a decoupling of selections of commitment level and operational restrictions.

These same Federal agencies also expressed concern that fluctuations at hydropower facilities would result in detrimental impacts on downstream ecological resources. These impacts have been fully considered and presented in the EIS. Western's decision regarding a commitment level will not present an obstacle to any future decision to change the operation of a hydropower facility by either Reclamation or Western.

Finally, these agencies expressed concern that protection of natural resources would require occasional releases that are above powerplant capacity. Such releases would be under the jurisdiction of Reclamation and are beyond the scope of Western's control of these facilities.

Environmental groups commented that if Western made a high commitment of electrical power, the bulk electrical purchases that would be required would exceed Western's legal authority. Western has determined that the alternatives included in the EIS are all lawful.

Environmental groups also mentioned that the analyses summarized in the EIS were methodologically accurate, but expressed their preference for a process that included interested publics in more detailed aspects of the analysis process. Finally, environmental groups were concerned about Western's treatment of air resource impacts and commented that Western should be concerned with the absolute value of decreases in air pollution that results from changed dam operation and not just with the percentage change. The final EIS presented the absolute value of expected air quality changes as well as the percentage change.

Decision

SLCA/IP Electric Power Program Commitment Level

Western has elected to implement the preferred alternative, Alternative No. 1, as described in the final EIS and summarized in this ROD at the beginning of the Summer marketing season- April 1, 1997. This alternative best meets Western's purpose and needs and the needs of Western's customers, while being responsive to the comments received. The preferred alternative has no significant environmental impacts. Its economic impacts are beneficial, relative to the no-action alternative.

Hydropower Operational Scenarios:

Glen Canyon Powerplant: Western supports the preferred alternative as identified in Reclamation's Glen Canyon Dam—Environmental Impact Statement (GCD-EIS). This alternative was painstakingly crafted by the cooperating agencies involved in the preparation of the GCD-EIS and represents years of collaborative scientific effort. Western will comply with the operational parameters specified in Reclamation's preferred alternative.

Flaming Gorge Powerplant: A revised biological opinion on the operation of Flaming Gorge Dam is anticipated to be issued to Western and Reclamation in 1997. This biological opinion will represent the conclusions of 5 years of study required by the first biological opinion issued in 1991. Moreover, Reclamation has announced its intention to prepare an EIS on the operation of Flaming Gorge Dam.

Because of these ongoing processes, considerable uncertainty exists regarding the hydroelectric power resource at Flaming Gorge Dam. Western will, therefore, coordinate with Reclamation to operate Flaming Gorge Dam in compliance with the 1991 biological opinion and the current operational criteria specified for this facility and will make no further adjustments in its operation pending the environmental reviews noted above.

Aspinall Powerplants: A 5-year study of operations of the Aspinall powerplants is scheduled to be completed in 1997. A resulting biological opinion on its operation will be prepared which will likely require permanent changes in the operation of the three powerplants. The change would be required to improve habitat for endangered fish species. Therefore, uncertainty also exists with regard to the hydroelectric power resource at the Aspinall units. Western will make no further adjustments in their operation pending this biological opinion.

Mitigation Action Plan

No Mitigation Action Plan will be prepared, as the proposed action involves no construction, has no significant impacts to natural resources, and has positive socioeconomic impacts.

Issued at Golden, Colorado, October 17, 1996.

J. M. Shafer,

Administrator.

[FR Doc. 96–28101 Filed 10–31–96; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5644–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; Hazardous Waste Management System: Land Disposal Restrictions ''No-Migration'' Variances

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 Information Collection Request (ICR) to the Office of Management and Budget (OMB): Hazardous Waste Management System: Land Disposal Restrictions ''No-Migration'' Variances, EPA ICR Number 1353, and OMB Control Number 2050–0062. 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 December 31, 1996.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–96–NMIP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address below. Comments may also be submitted electronically through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–96–NMIP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public 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 $0.15/page.

FOR FURTHER INFORMATION CONTACT: Chris Rhyne, USEPA, Office of Solid Waste (5303W), 401 M Street, SW., Washington, D.C. 20460; Phone (703) 308–8658; FAX (703) 308–8609.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those that treat, store or dispose of hazardous waste on the land, and are subject to the land disposal restrictions at 40 CFR part 268.

Title: Hazardous Waste Management Systems: Land Disposal Restrictions ''No-Migration'' Variances (OMB Control No. 2050–0062; EPA ICR No. 1353), expiring 4/30/97.

Abstract: The 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act (RCRA) of 1976 created substantial new requirements for those who manage hazardous waste. (See 42 USC 6905, 6912(a), 6921, 6924, 6925, and 6935.) The amendments prohibit land disposal of hazardous wastes beyond specified dates unless, as provided in RCRA Sections 3004 (d), (e), and (g), the owner/operator of a hazardous waste storage or disposal facility demonstrates to the Administrator of the Environmental Protection Agency (EPA) that there will be no migration of hazardous constituents from the land disposal unit for as long as the waste remains hazardous.

To receive a variance from the hazardous waste land disposal prohibitions, owner/operators of hazardous waste storage or disposal facilities may petition the Environmental Protection Agency to allow land disposal of a specific restricted waste at a specific site. The Permits and State Programs Division, Office of Solid Waste, will review the petitions and determine if they successfully demonstrate ''no migration.'' The applicant must demonstrate that hazardous wastes can be managed safely in a particular land disposal unit, so that ''no migration'' of any hazardous constituents occurs from the unit for as long as the waste remains hazardous. (See 40 CFR 268.6.) If EPA grants the variance, the waste is no longer prohibited from land disposal in that particular unit. If the owner/operator fails to make this demonstration, or chooses not to petition for the variance, best demonstrated available technology (BDAT) requirements of 40 CFR 268.40 *et seq.* must be met before the hazardous wastes are placed in a land disposal unit. Responses to the collection of information are voluntary.

The information collected is not of a personal nature nor is it subject to the Privacy Act of 1974 or Office of Management and Budget Circular A–108. EPA expects that owners and operators may wish to maintain the confidentiality of certain information. Provisions for confidentiality are found in Section 3007(b) of RCRA and in 40 CFR Part 2, which establishes EPA's general policy regarding public disclosure of information. Provisions for confidentiality have also been included in 40 CFR Part 260, the general rule of the RCRA hazardous waste management system.

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 would like to solicit 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 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.

Burden Statement: The respondent burden imposed by the no-migration petition is estimated to be 9,506 hours at a cost of $471,490 for each facility planning to request a variance. This cost and hour burden is based on a proposed frequency of response of one per year, and an estimated likely number of respondents of one per year. The cost burden includes a total capital and start-up cost component annualized over its expected useful life, and a total operation and maintenance component, and a purchase of services component. 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: October 25, 1996.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 96–28097 Filed 10–31–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5645–7]

National Drinking Water Advisory Council; Request for Nominations

The U.S. Environmental Protection Agency (EPA) invites all interested persons to nominate qualified individuals to serve as members of the National Drinking Water Advisory Council. This Advisory Council was established to provide practical and independent advice, consultation and recommendations to the Agency on the activities, functions and policies related to the implementation of the Safe Drinking Water Act as amended. The Council consists of fifteen members, including a Chairperson. Five members represent the general public; five members represent appropriate state and local agencies concerned with water hygiene and public water supply; and five members represent private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply. Each member holds office for a term of three years and is eligible for reappointment. On December 15 of each year, five members complete their appointment. Due to the resignation of one member, an additional vacancy is available. Therefore, this notice solicits names to fill six vacancies as of December 16, 1996.

Any interested person or organization may nominate qualified individuals for membership. Nominees should be identified by name, occupation, position, address and telephone number. Nominations must include a current résumé providing the nominee's background, experience, and qualifications.

Persons selected for membership will receive compensation for travel and a nominal daily compensation while attending meetings.

Nominations should be submitted to Charlene E. Shaw, Designated Federal Officer, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (4601), 401 M Street SW, Washington, D.C. 20460, no later than 30 days after publication of this notice in the Federal Register. The agency will not formally acknowledge or respond to nominations. E-Mail your questions to Shaw.Charlene@epamail.epa.gov or call 202/260–2285.

Dated: October 23, 1996.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 96–28093 Filed 10–31–96; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–5474–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7176 or (202) 564–7153. Weekly receipt of Environmental Impact Statements Filed October 21, 1996 Through October 25, 1996 Pursuant to 40 CFR 1506.9.

EIS No. 960504, Final Supplement, BIA, WA, Swinomish Marina and Associated Facilities Development, Lease Approval, Swinomish Channel, Skagit County, WA, Due: December 02, 1996, Contact: Donald Sutherland (202) 208–4791.

EIS No. 960505, Final EIS, AFS, MT, Checkerboard Land Exchange, Plan of Approval and Implementation, Kootenai, Lolo and Flathead National Forests, Lincoln, Flathead and Sanders Counties, MT, Due: December 02, 1996, Contact: Ted Anderson (406) 293–6211.

EIS No. 960506, Draft EIS, BLM, NV, Denton-Rawhide Mine Expansion Project, Plan of Operation Approval, Implementation, Minerial County, NV, Due: January 03, 1997, Contact: Terri Knutson (702) 885–6156.

EIS No. 960507, Draft EIS, AFS, OR, Stewart Mining Operation, Plan of Operation Approval, Implementation, City Creek, North Umpqua Ranger District, Umpqua National Forest, Forest, Douglas and Lane Counties, OR, Due: December 16, 1996, Contact: Debbie Anderson (541) 496–3532.

EIS No. 960508, Draft EIS, FTA, MD, Metrorail Extension—Addison Road Station to the Largo Town Center, Transportation Improvements, Prince George's County, MD, Due: December 27, 1996, Contact: Alfred Lebeau (215) 656–6900.

EIS No. 960509, Final EIS, SFW, WA, Washington State Department of Natural Resources (WDNR) Habitat Conservation Plan (HCP), Issuance of a Permit for Incidental Take of Federally-Listed Species and Implementation of the Multi-Species Plan for Lands Managed by WDNR, WA, Due: December 02, 1996, Contact: William Vogel (360) 534–9330.

EIS No. 960510, Draft EIS, FHW, MN, MN TH–100 Reconstruction, between Glenwood Avenue in the City of Golden Valley extending to North of 50th Avenue North in Brooklyn Center, COE Section 404 Permit, Hennepin County, MN, Due: December 18, 1996, Contact: Cheryl Martin (612) 291–6120.

EIS No. 960511, Draft EIS, BLM, CA, Imperial Open-Pit Heap Leach Precious Metal Mine Project, Plan of Operation, Right-of-Way Approval, Conditional-Use-Permit and Reclamation Program Approval, Imperial County, CA, Due: December 31, 1996, Contact: Keith Shone (619) 337–4412.

Dated: October 29, 1996.

William D. Dickerson,

Director, NEPA Compliance Division Office of Federal Activities.

[FR Doc. 96–28114 Filed 10–31–96; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–5474–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 7, 1996 through October 11, 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 5, 1996 (61 FR 15251).

Draft EISs

ERP No. D–DOE–K05218–00, Rating EC2, Sierra Nevada Region 2004 Power Marketing Program, Implementation, 1,480 megawatts (MW) Power from the Central Valley and Washoe Project, NV and CA.

Summary: EPA expressed environmental concerns and requested additional information to establish the limited effect of hydropower operations downstream of facilities, the basis for estimated future peak power demand, the role of demand-side management, and the relationship of the proposed action with other referenced regional activities.

ERP No. D–GSA–E60015–GA, Rating LO, Clifton Road Campus of the Centers for Disease Control and Prevention, Acquisition of Additional Property, DeKalb County, GA.

Summary: EPA had no objection to the action as proposed.

ERP No. D–TVA–E39037–00, Rating EC2, Shoreline Management Initiative: An Assessment of Residential Shoreline Development Impacts in the Tennessee Valley, Mainstream Tennessee River and Tributary Rerservoirs in AL, KY, NC, TN, GA, MS and VA.

Summary: EPA believed that alternative D and C2 offer greater environmental benefits than the preferred alternative C1 which would open much of the shoreline to residential development. The PFEIS should consider existing water quality problems of some TVA reservoirs relative to prospective additional developments.

ERP No. DS–FHW–E40739–NC, Rating EC2, US 17, New Bern Bypass Construction, Jones-Craven County Line to NC–1438 near Vanceboro, Additional Information Concerning Three Additional Alternatives, Funding, COE Section 404 and US Coast Guard Bridge Permits Issuance, Craven County, NC.

Summary: EPA expressed environmental concern regarding floodplains and wetland impacts. EPA requested that these issues be addressed in more detail in the final EIS.

Final EISs

ERP No. F–AFS–G65065–AR, Renewal of the Shortleaf Pine/Bluestem Grass Ecosystem and Recovery of the Red-cockaded Woodpecker, Amendment No. 22 to the Ouachita National Forest Land and Resource Management Plan, Scott and Polk Counties, AR.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory. No formal comment letter was sent to the preparing agency.

ERP No. F–DOE–L91010–OR, Hood River Fisheries Project, Construction, Operation and Maintenance; Habitat Improvement and Research Program Development, Funding, Hood River Basin, Hood River County, OR.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory. No formal comment letter was sent to the preparing agency.

ERP No. F–FRC–K09806–CA, New Don Pedro Reservoir Project (NDPP) (FERC. No. 2299–024), Reservoir Release Requirements for Fish, Continuation and Maintenance, Issuance of Licenses, Tuolumne River and San Joaquin River Turlock and Malesto Irrigation Districts, Stanislaus County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–FTA–C51014–NJ, Hudson River Waterfront Transportation Corridor Improvements, Funding, Transportation Systems Management, Light Rail Transit, Hudson and Bergen Counties, NJ.

Summary: EPA continued to express concern regarding wetland impacts. EPA requested additional wetland acreage and description information be submitted prior to the issuance of the Record of Decision.

ERP No. F–USA–A21035–OR, Umatilla Depot Activity, On-Site Facility for Disposal of Stockpiled Chemical Agents and Munitions, Construction and Operation, Morrow and Umatilla Counties, OR.

Summary: EPA continued to have environmental concerns regarding emergency preparedness, risk assessment, and meteorological data. In addition, EPA is concerned about the apparent lack of effective government-to-government consultation between the Confederated Tribes of the Umatilla and the US Army.

Dated: October 29, 1996.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–28115 Filed 10–31–96; 8:45 am]

BILLING CODE 6560–50–U

[OPPTS–00201; FRL–5571–1]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting and chemicals to be addressed.

SUMMARY: A meeting of the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL) will be held on December 16–18, 1996, in Washington, D.C. At this meeting, the committee will continue deliberations on various aspects of the acute toxicology and development of Acute Exposure Guideline Levels (AEGLs) for the following chemicals: ammonia, cyanogen chloride, and nitric acid. In addition, as time permits, the committee intends to address the development of AEGLs for the following chemicals: dimethyl hydrazine, methyl hydrazine, ethylene oxide, phosgene, chlorine, and phosphine.

DATES: A meeting of the NAC/AEGL will be held from 10 a.m. to 5 p.m. on Monday, December 16; from 8:30 a.m. to 5:00 p.m. on December 17; and from 8:30 a.m. to 2 p.m. on December 18, 1996.

ADDRESSES: The meeting will be held at the Green Room on the third floor of the Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington D.C.

FOR FURTHER INFORMATION CONTACT: Paul S. Tobin, Designated Federal Officer (DFO), Office of Prevention, Pesticides and Toxic Substances (7406), 401 M St., SW., Washington, D.C. 20460, (202) 260–1736, e-mail: tobin.paul@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The meeting of the NAC/AEGL will be open to the public. Oral presentations and statements by interested parties will be limited to ten minutes. Since space is

limitied, those wishing to attend as observers should contact the NAC/AEGL DFO at the earliest possible date to insure adequate seating arrangements. Inquiries regarding oral presentaions and the submission of written statements or chemical specific information should also be directed to the DFO.

Another meeting of the NAC/AEGL is expected to be held in Washington, D.C. in March 1997. It is anticipated that chemicals to be addressed at this meeting will include, but not necessarily be limited to the following: carbon tetrachloride, aniline, toluene 2,6-diisocyanate and 2,4-isomer, isopropyl chloroformate, ethyleneimine, methyl isocyanate, and hydrogen chloride. Inquiries regarding the submission of data, written statements or chemical-specific information on these chemicals should be directed to the DFO at the earliest date possible to allow for consideration of this information in the preparation of committee materials.

List of Subjects

Environmental protection.

Dated: October 24, 1996.

William H. Sanders, III,

Director, Office Pollution Prevention and Toxics.

[FR Doc. 96–28098 Filed 10–31–96; 8:45 am]

BILLING CODE 6560–50–F

[FRL 5645–9]

Science Advisory Board, Notification of Public Advisory Committee Open Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that several committees of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Time. All meetings are open to the public. Due to limited space, seating at meetings will be on a first-come basis. For further information concerning specific meetings, please contact the individuals listed below. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are *not* available from the SAB Office.

1. Clean Air Scientific Advisory Committee

The Clean Air Scientific Advisory Committee (CASAC) of the Science Advisory Board (SAB) will meet on Monday and Tuesday, November 18 and 19, 1996 at the Omni Europa Hotel, One Europa Drive, Chapel Hill, NC, 27514. The hotel phone number is (919) 968–4900. The meeting will begin at 9:00 a.m., and end no later than 5:00 p.m. on November 18th and begin at 8:30 a.m. on November 19th and end no later than 4:00 p.m. (times noted are Eastern Time). The meeting is open to the public. Due to limited space, seating at the meeting will be on a first-come first-serve basis. Important Notice: Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning document availability from the relevant Program area is included below.

PURPOSE OF THE MEETING: At this meeting, the Committee will review and provide advice to EPA on two draft documents: a) Particulate Matter Research Needs for Human Health Risk Assessment and b) Particulate Matter Research Program Strategy. The first draft document characterizes major data gaps and issues, as well as research needed to address them, to reduce uncertainties and improve the scientific basis for assessment of airborne particulate matter (PM) health risks, especially as related to future periodic review and revision, as appropriate, by EPA of the criteria and National Ambient Air Quality Standards (NAAQS) for Particulate Matter. The second draft document presents information on EPA's Office of Research and Development (ORD) PM Research Strategy, which discusses identification of key research issues to be addressed by ORD, associated planned research efforts, and relative prioritization of research to be undertaken by ORD. The Committee will consider presentations from Agency staff and the interested public prior to making recommendations to the Administrator.

AVAILABILITY OF REVIEW MATERIALS: Interested parties may obtain a copy of the Particulate Matter Research Needs for Human Health Risk Assessment (NCEA–R–0973) by contacting Ms. Diane Ray (Phone: 919–541–3637; FAX: 919–541–1818), being sure to specify document title and number as stated here. Technical questions on this document should be addressed to Dr. William Wilson (Phone: 919–541–2551; FAX: 919–541–0245). A copy of the Particulate Matter Research Program Strategy (NHEERL MS–97–019) can also be obtained by contacting Ms. Ray at the above phone and fax numbers. Technical questions regarding this second document should be directed to Dr. John Vandenberg (Phone: 919–541–4527; FAX: 919–541–0642) of EPA's National Health and Environmental Effects Research Laboratory (NHEERL). The documents will be available upon request on or about November 1, 1996, and the Agency will accept written comments on each of them through November 30, 1996. Written comments on each should be submitted to Ms. Ray (postmarked by November 30, 1996) at the following address: Ms. Diane Ray, NCEA–RTP (MC–52), U.S. EPA, Research Triangle Park, NC 27711.

FOR FURTHER INFORMATION: Members of the public desiring additional information about the meeting should contact Mr. Robert Flaak, Designated Federal Official, Clean Air Scientific Advisory Committee, Science Advisory Board (1400), Room 2812M, U.S. EPA, 401 M Street, SW, Washington, DC 20460; telephone/voice mail at (202) 260–5133; fax at (202) 260–7118; or via the INTERNET at FLAAK.ROBERT@EPAMAIL.EPA.GOV. Those individuals requiring a copy of the draft Agenda should contact Ms. Dorothy Clark at (202) 260–6552 or by FAX at (202) 260–7118 or via the INTERNET at CLARK.DOROTHY@EPAMAIL.EPA.GOV. Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found in The Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 260–8414.

Members of the public who wish to make a brief oral presentation to the Committee must contact Mr. Flaak in writing (by letter or by fax—see previously stated information) no later than 12 noon Eastern Time, Tuesday, November 12, 1996 in order to be included on the Agenda. Public comments will be limited to five minutes per speaker or organization. The request should identify the name of the individual who will make the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (e.g., overhead projector, 35mm projector, chalkboard, etc), and at least 35 copies of an outline of the issues to be addressed or the presentation itself.

2. Integrated Risk Project Steering Committee

The Integrated Risk Project (IRP) Steering Committee, an ad hoc committee established by the Executive Committee of the Science Advisory Board, will meet on November 22, 1996, in the Administrator's Conference Room, Room 1103, West Tower, U.S. Environmental Protection Agency Headquarters Building, 401 M St. SW, Washington, DC 20460. The meeting

will begin at 8:30 a.m. and end no later than 5:30 p.m. Seating will be limited and available on a first-come, first-served basis. The purpose of the meeting is to receive reports from the Subcommittees of the IRP and to discuss an integrated model for environmental decision-making that incorporates information on risks to ecosystems and humans, risk reduction options, and their economic implications.

BACKGROUND ON THE INTEGRATED RISK PROJECT: In a letter dated October 25, 1995, to Dr. Matanoski, Chair of the SAB Executive Committee, Deputy Administrator Fred Hansen charged the SAB to: (1) Develop an updated ranking of the relative risk of different environmental problems based upon explicit scientific criteria; (2) provide an assessment of techniques and criteria that could be used to discriminate among emerging environmental risks and identify those that merit serious, near-term Agency attention; (3) assess the potential for risk reduction and propose alternative technical risk reduction strategies for the environmental problems identified; and (4) identify the uncertainties and data quality issues associated with the relative rankings. Since that time, five SAB panels, working at the direction of an ad hoc Steering Committee established by the Executive Committee, have been discussing methods for: (1) Assessing relative risks; (2) selecting suites of risk reduction options; and (3) conducting economic analysis of various risk management options. A final report is expected in early summer of 1997.

Single copies of Reducing Risk can be obtained by contacting the SAB's Committee Evaluation and Support Staff (1400), 401 M Street, SW, Washington, DC 20460, telephone (202) 260–8414, or fax (202) 260–1889. Members of the public desiring additional information about the meeting, including an agenda, should contact Ms. Constance Valentine, Staff Secretary, Science Advisory Board (1400F), US EPA, 401 M Street, SW, Washington DC 20460, by telephone at (202) 260–6552, fax at (202) 260–7118, or via The INTERNET at: Valentine.Connie@EPAMAIL.EPA.GOV.

Anyone wishing to make an oral presentation at the meeting should contact Stephanie Sanzone, Designated Federal Official for the Steering Committee, no later than 4:00 p.m., November 15, 1996, at (202) 260–6557 or via the Internet at Sanzone.Stephanie@epamail.epa.gov. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to Ms. Sanzone no later than the time of the presentation for distribution to the Committee and the interested public. See below for additional information on providing comments to the SAB.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. For conference call meetings, opportunities for oral comment will be limited to no more than five minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Dated: October 25, 1996.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 96–28239 Filed 10–31–96; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 95–2119]

Waiver of General Category Channel Freeze

AGENCY: Federal Communications Commission.

ACTION: Public notice.

SUMMARY: This action seeks comment on the State of Florida's Bureau of Communications Engineering (''Florida'') two separate requests for waiver of the freeze on General Category channels. It is necessary and it is important for the Commission to receive public comment on Florida's requests. The effect of the action will be to seek comment on whether Florida's requests for waivers to the General Category channel freeze ought to be granted.

DATES: Comments are to be filed on or before November 7, 1996; reply comments are to be filed on or before November 12, 1996.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kathryn Hosford at (202) 418–0652 or khosford@fcc.gov (Internet); Jane Halprin at (202) 418–1366 or jhalprin@fcc.gov (Internet).

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, released October 23, 1996. The complete (but unofficial) text of this Commission Public Notice is available on the Internet at: http://www.fcc.gov/Bureaus/Wireless/Public__Notices and for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of this Public Notice is available and may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 2100 Street, NW., Suite 140, Washington, DC 20037, Telephone number (202) 857–3800.

Summary of Public Notice

1. The State of Florida's Bureau of Communications Engineering (''Florida'') filed two separate requests for waiver of the freeze on General Category channels. *See Order*, 10 FCC Rcd 13190, 60 FR 61554, November 30, 1995; (Wireless Telecommunications Bureau 1995). The Wireless Telecommunications Bureau (''Bureau'') placed this freeze on new applications for General Category Frequencies. The channels for which the waivers are sought are used in Florida's state-wide public safety system and the Bureau seeks comment on Florida's waiver requests.

2. On August 7, 1996, Florida asked that the freeze *Order* be waived to allow consideration of its application for modification of WNAY604, File Number D02612, which comprises part of Florida's 800 MHz trunked radio system. The request involves six (6) of the twenty (20) General Category channels used in its state-wide radio system, i.e., Channels 114, 115, 116, 124, 125, and 126 for stations located in Fort Lauderdale, Coconut Creek, and Sunrise, Florida. Florida concedes that its application does not meet the requirements of the freeze *Order* in that at least one of the proposed stations expands existing service areas. Florida states that it was licensed under rules in force prior to the implementation of the freeze Order, which allowed it to modify station parameters without regard to previously licensed coverage areas.

3. On September 9, 1996, Florida submitted a requested for a general waiver of the freeze *Order* for all twenty (20) General Category channels numbered 114 through 133 thoughout the state of Florida. It also requested that channel number 96, which is licensed for statewide mutual aid use, not be subject to the freeze *Order* for the State of Florida 800 MHz radio system and for all public safety applicants within the state. Florida asserts that the continued success of the implementation of their statewide radio system ''critically depends on the construction of new or modified stations.'' Florida argues that the freeze *Order* unfairly prohibits Florida from altering its statewide radio system. In order to avoid what it argues is the inevitable and burdensome task of seeking waivers of the freeze *Order* on a case-by-case basis (e.g., the August 7, 1996, request), Florida requests the waiver apply to the entire geographic area of its statewide radio system and for all twenty-one (21) of the above-noted General Category channels.

4. Interested parties may file comments concerning the Request For Waiver on or before November 7, 1996. Reply comments are due on or before November 12, 1996. Comments and reply comments should be sent or delivered to: Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, DC 20554, Att'n Private Wireless Division, Wireless Telecommunications Bureau. A copy should also be sent or delivered to: Private Wireless Division, Wireless Telecommunications Bureau, Room 8010, Stop Code 2000–F, Federal Communications Commission, 2025 M Street, NW., Washington, DC 20554. Finally, a copy should be sent or delivered to the Commission's duplicating contractor: International Transcription Services, Inc. (ITS), 2100 M Street, NW., Suite 140, Washington, DC 20037 (telephone number: (202) 857–3800). Copies of the waiver request may be obtained from ITS. Copies are also available for public inspection during regular business hours in the Private Wireless Division, Wireless Telecommunications Bureau, Room 8010, 2025 M Street, NW., Washington, DC 20554.

5. We will treat this proceeding as non-restricted for purposes of the Commission's *ex parte* rules. *See generally*, 47 CFR 1.1200–1.1206. However, if this waiver petition is opposed, then it will be treated as a restricted proceeding under the Commission's *ex parte* rules. *See generally*, 47 CFR 1.1208–1.1216.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 96–27820 Filed 10–31–96; 8:45 am]

BILLING CODE 6712–01–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 10:00 a.m. on Tuesday, October 29, 1996, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Ms. Judith A. Walter, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Director Nicolas P. Retsinas (Director, Office of Thrift Supervision), Director Joseph H. Neely (Appointive), and Chairman Ricki Helfer, 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)(2), (c)(6), (c)(8), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

Dated: October 29, 1996.

Federal Deposit Insurance Corporation

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 96–28237 Filed 10–30–96; 2:08 pm]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed extension of a collection of information. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments on two forms used by FEMA's National Emergency Training Center (NETC) to approve and coordinate the use of the NETC facility for extracurricular training activities.

SUPPLEMENTARY INFORMATION: The NETC is a FEMA facility that houses the Emergency Management Institute and the National Fire Academy. It provides training and education programs for Federal, State, and local personnel in hazard mitigation, emergency response and preparedness, fire prevention and control, disaster response, and long-term disaster recovery. Special groups sponsored by the EMI, NFA, or other FEMA organizations may use NETC facilities to conduct activities closely related to and in direct support of the their activities. Such groups include other Federal departments and agencies, groups chartered by Congress such as the American Red Cross, State and local governments, volunteer groups and national and international associations representing State and local governments.

Collection of Information

Title. Approval and Coordination of Requirements to Use the NETC for Extracurricular Training Activities.

Type of Information Collection. Extension.

OMB Number: 3067–0219.

Form Numbers. FEMA Form 75–10, Request for Housing Accommodations; and FEMA Form 75–11, Request for Use of NETC Facilities.

Abstract. Data will be obtained from special groups that request to use NETC facilities for extracurricular training activities. Extracurricular training is training over and above regularly scheduled training sessions of NFA and EMI. The policy of the NETC is to accommodate other training activities on a space available basis at the Emmitsburg campus. In order for NETC to approve and schedule the use of its facilities, information must be provided by special group organizations. A written or telephone request for use of NETC facilities is initially made to determine availability of the facilities. If space is available, the contact person for the special group must follow up by completing FEMA Form 75–11 to provide information on the number of participants, meals, and special requirements. The information is used to assign classrooms, schedule equipment, and arrange for food service.

FEMA Form 75–10 is completed by the group's contact person to provide information on the participants who will be staying on campus. The information is used to assign dormitory rooms.

Affected Public: Individuals and households, Business or other for-profit, Not-for-profit, Federal Government, and State, Local or Tribal Government.

Estimated Total Annual Burden Hours.

FEMA forms	No. of responses (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A×B×C)
75–10	1,100	1	6 minutes	110 hours.
75–11	100	1	12 minutes	20 hours.
Total	1,200	1	Avg. 9 minutes	130 hours.

Estimated Cost. $3,000 per year.

COMMENTS: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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 should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW., Room 311, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Anderson for additional information or copies of the proposed collection of information at (202) 646–2625 or facsimile number (202) 646–3524.

Dated: October 21, 1996.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 96–28071 Filed 10–31–96; 8:45 am]

BILLING CODE 6718–01–P

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Claims for National Flood Insurance Program.

Type of Information Collection: Extension.

OMB Number: 3067–0021.

Abstract: The National Flood Insurance Program (NFIP) authorized by Public Law 90–448 (1968) and expanded by P.L. 93–234 (1973) provides low-cost federally subsidized flood insurance for existing buildings exposed to flood risk. In return, communities must enact and administer construction safeguards to ensure that new construction in the flood plain will be built to eliminate or minimize future flood damage. In accordance with Public Law 93–234, the purchase of flood insurance is mandatory when Federal or federally-related financial assistance is being provided for acquisition or construction of buildings located, or to be located, within FEMA-identified special flood hazard areas of communities which are participating in the NFIP. The following forms, which are included in this collection of information, are necessary for the continued proper performance of the Agency's functions related to indemnifying policyholders for flood damages to their properties.

FEMA Form 81–40, Worksheet-Contents-Personal Property, is used by the insured to assess personal property damage. Estimated burden is 2.5 hours.

FEMA Form 81–41, Worksheet-Building, is used by the adjuster to determine the scope of damage to a building. Estimated burden is 2.5 hours.

FEMA Form 81–41A, Worksheet-Building (Cont'd), is a continuation of form 81–41. Estimated burden is 1 hour.

FEMA Form 81–42, Proof of Loss, is used to establish a settlement on the amount the insured will receive. Estimated burden is 5.6 minutes.

FEMA Form 81–43, Notice of Loss, is used to gather loss information. Estimated burden is 4 minutes.

FEMA Form 81–44, Statement as to Full Cost of Repair or Replacement Cost Coverage, Subject to the Terms and Conditions of This Policy, is used by the insured to determine if the structure can be repaired or qualify for replacement cost. Estimated burden is 6–7 minutes.

FEMA Form 81–57, National Flood Insurance Program Preliminary Report, is used to identify the insured and the address of risk. Estimated burden is 4 minutes.

FEMA Form 81–58, National Flood Insurance Program Final Report, is used to document and review overall damages to the property, and to provide a breakdown on claims information. Estimated burden is 4 minutes.

FEMA Form 81–59, National Flood Insurance Program Narrative Report, is used to write a narrative report on the loss. Estimated burden is 5–6 minutes.

FEMA Form 81–63, Cause of Loss and Subrogation Report, is used to identify a potential subrogation loss. Estimated burden is 1 hour.

A Mobile Home Worksheet is used to obtain data to specifically identify a flood damaged mobile home and to determine whether it will be repaired, replaced, or salvaged. The data includes the manufacturer, year, size, model, serial number of a mobile home, the individual from whom the mobile home was purchased, and its repair cost or salvage value. Estimated burden is 30 minutes.

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit, Farms, Federal government, State, Local or Tribal Government.

Number of Respondents: 73,437.

Estimated Time per Respondent: 3.8 hours per claim.

Estimated Total Annual Burden Hours: 279,060.

Frequency of Response. Claims are filed and adjusted for each flooding event. The frequency and number of responses depend on weather and related flooding conditions.

COMMENTS: Interested persons are invited to submit written comments on the proposed information collection to Victoria Wassmer, Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Contact James S.P. Shortley, Federal Insurance Administration, at (202) 646–3418 for additional information on this collection of information. For copies of the clearance package contact Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 311, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524.

Dated: October 21, 1996.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 96–28072 Filed 10–31–96; 8:45 am]

BILLING CODE 6718–01–P

[FEMA–1134–DR]

North Carolina; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina (FEMA–1134–DR), dated September 6, 1996, and related determinations.

EFFECTIVE DATE: October 18, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of North Carolina is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 6, 1996:

Chowan County for Individual Assistance, Public Assistance and Hazard Mitigation (already designated for direct Federal assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 96–28073 Filed 10–31–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1134–DR]

North Carolina; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina (FEMA–1134–DR), dated September 6, 1996, and related determinations.

EFFECTIVE DATE: October 18, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of North Carolina is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 6, 1996:

Davidson County for Individual Assistance (already designated for direct Federal assistance, Public Assistance and Hazard Mitigation).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 96–28074 Filed 10–31–96; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting; Announcing an Open Meeting of the Board

TIME AND DATE: 10:00 a.m. Thursday, November 7, 1996.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Proposed Revised Community Support Regulation
- FHLBank of Cincinnati Request to Increase the AHP Award to PNC Bank
- FHLBank of Cincinnati Request to Increase the AHP Award to Charter One Bank
- Interim Final Rule Amending Finance Board's Book Entry Regulation, 12 CFR, Part 912, to Conform to Recent Department of Treasury Changes
- Interim Final Rule Revising Finance Board Regulation, 12 CFR, Part 950, Financing Corporation Operations to Reflect Recent Statutory Changes

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 96–28326 Filed 10–30–96; 4:17 pm]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 61 FR 55000.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m.—November 6, 1996.

CHANGE IN THE MEETING:

Addition of Item 2 to the Closed Session—Port Restrictions and Requirements in the United States/Japan Trade

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 96–28249 Filed 10–30–96; 2:10 pm]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice

or to the offices of the Board of Governors. Comments must be received not later than November 15, 1996.

A. Federal Reserve Bank of San Francisco, (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. James N. Koury, La Habra Heights, California; to acquire an additional 11.49 percent, for a total of 24.99 percent, of the voting shares of Cerritos Valley Bancorp, Norwalk, California, and thereby indirectly acquire Cerritos Valley Bank, Norwalk, California.

Board of Governors of the Federal Reserve System, October 28, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–28052 Filed 10-31-96; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 25, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Carolina Financial Corporation, Charleston, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Community FirstBank of Charleston, Charleston, South Carolina (in organization).

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Magna Group, Inc., St. Louis, Missouri, and HBC Acquisition Sub, Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of Homeland Bankshares Corporation, Waterloo, Iowa, and thereby indirectly acquire Homeland Bank, N.A., Waterloo, Iowa; Homeland Bank, Indianola, Iowa; Homeland Bank, Oelwein, Iowa; and Homeland Bank, Monticello, Iowa.

In connection with this application, HBC Acquisition Sub, Inc., St. Louis, Missouri, also has applied to become a bank holding company.

In connection with this application, Magna Group, Inc., St. Louis, Missouri also has applied to acquire Homeland Savings Bank, FSB, Des Moines, Iowa, and thereby engage in owning and operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y; Homeland Trust Company, Des Moines, Iowa, and thereby engage in performing functions and or activities that may be performed by a trust company (including activities of a fiduciary, agency, or custodial nature), pursuant to § 225.25(b)(3) of the Board's Regulation Y; and Homeland Student Loan Company, West Des Moines, Iowa, and thereby engage in making, acquiring, or servicing loans or other extensions of credit, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Diboll State Bancshares, Inc., Diboll, Texas, and Diboll State Bancshares of Delaware, Inc., Wilmington, Delaware; to acquire 100 percent of the voting shares of First State Bank, Jasper, Texas.

Board of Governors of the Federal Reserve System, October 28, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–28051 Filed 10-31-96; 8:45 am]

BILLING CODE 6210-01-F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 15, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261, and Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Barnett Bank, Inc., Jacksonville, Florida; Crestar Financial Corporation, Richmond, Virginia; First Union Corporation, Charlotte, North Carolina; NationsBank Corporation, Charlotte, North Carolina; Southern National Corporation, Winston-Salem, North Carolina; Wachovia Corporation, Winston-Salem, North Carolina (collectively, Applicants), to acquire or retain control of 5 percent or more of the voting shares of Southeast Switch, Inc. (SES), after its merger with Internet, Inc. (Internet). SES currently operates the HONOR electronic funds transfer (EFT) network, and Internet currently operates the MOST EFT network. The merged company (Company) proposes to provide data processing services, pursuant to § 225.25(b)(7) of the Board's Regulation Y, and management consulting services to depository institutions for EFT-related activities, pursuant to § 225.25(b)(11)of the Board's Regulation Y. Applicants state that Company's data processing activities will consist of automated teller machine (ATM), point of sale (POS), point of banking, scrip and gateway services, group purchasing for participants, ATM and POS terminal driving, card authorization services, card production and issuance and related functions, electronic benefit transfer services, automated clearinghouse services processing, electronic bill payment, check verification, proprietary ATM services for non-financial entities, private financial network services, and card fraud detection services. Applicant have prior authority to engage in these activities.

Applicants seek approval to conduct the proposed activities throughout the United States, Bermuda, Canada, Mexico, Central America and the Caribbean.

Board of Governors of the Federal Reserve System, October 28, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–28050 Filed 10-31-96; 8:45 am]

BILLING CODE 6210-01-F

Sunshine Meeting Notice

TIME AND DATE: 10:00 a.m., Wednesday, November 6, 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. Proposals relating to Federal Reserve System benefits.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. 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: October 30, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–28221 Filed 10–30–96; 10:23 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clarification of Human Immunodeficiency Virus Screening Practices for Organ Donors

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In 1994, the Centers for Disease Control and Prevention (CDC) published revised guidelines for preventing transmission of human immunodeficiency virus through transplantation of human tissue and organs.[1] The guidelines were developed to minimize the risk of HIV transmission to transplant recipients while maintaining the availability of suitable donor organs/tissue. In developing the document, CDC sought assistance from public and private health professionals, including expert consultants involved in organ/tissue transplantation, to ensure that the diverse circumstances surrounding transplants were considered. Reports from the organ procurement and transplantation community have indicated that, in attempts to ensure the highest level of safety, the guidelines have been interpreted in a way which has further compromised the already limited supply of human organs. The purpose of this notice is to clarify the recommendations concerning the use of organs from potential donors who test HIV-antibody negative but who have behavioral risk factors for HIV infection. The provisions in this notice apply only to screening of organ donors; they do not apply to screening of tissue, blood, or other donors.

FOR FURTHER INFORMATION CONTACT: Martha F. Rogers, M.D., Division of HIV/AIDS Prevention, CDC, Mailstop E–45, 1600 Clifton Road, Atlanta, GA 30333, telephone 404–639–6130.

SUPPLEMENTARY INFORMATION: The prevention of HIV transmission from transplantation of human organs is based primarily on two considerations: (a) careful screening of potential donors for behaviors that place them at high risk of acquiring HIV infection; and (b) HIV-antibody testing of blood samples obtained from the potential donor. According to the 1994 guidelines, potential donors who test HIV-antibody negative but have one or more behavioral exclusionary criteria may be accepted as donors if

> The risk to the recipient of not performing the transplant is deemed to be greater than the risk of HIV transmission and disease (e.g., emergent, life-threatening illness requiring transplantation when no other organs/tissues are available and no other lifesaving therapies exist). In such a case, informed consent regarding the possibility of HIV transmission should be obtained from the recipient.[1]

CDC recognizes the life-extending and -enhancing properties of organ transplantation. Therefore, when a potential organ donor tests HIV-antibody negative but has behavioral risk factors for HIV infection, the decision to accept an organ for transplantation should be made after consideration of the relevant risk factors for the individual recipient and with recognition of the very low incidence of HIV transmission in such situations. CDC recognizes the need for transplant centers, not organ procurement organizations, to deal with matters of patient consent in this setting.

In accepting an organ for transplantation, transplant teams should assess immediately the medical and

[1] CDC. Guidelines for preventing transmission of human immunodeficiency virus through transplantation of human tissue and organs. *MMWR* 1994;43(No. RR–8).

social information available from the organ procurement organization regarding the potential donor. In the context of the current organ shortage, transplant teams are encouraged to accept and transplant organs from medically appropriate donors who test HIV-antibody negative but have behavioral risk criteria for HIV infection after the transplant teams have discussed the risks and benefits with potential recipients and/or their families. As recommended in the 1994 guidelines, organ transplant recipients should be tested for HIV infection three months after their organ transplant.

Dated: October 23, 1996.

Claire Broome,

Deputy Director, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–28064 Filed 10–31–96; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 96N–0394]

Notification of Plasma Product Withdrawals and Recalls; Notice of Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: The Food and Drug Administration (FDA), the National Heart, Lung, and Blood Institute of the National Institutes of Health (NHLBI), and the Centers for Disease Control and Prevention (CDC) are sponsoring a meeting to discuss public notification of withdrawals and recalls of plasma-derived products. The goals of the meeting include: Informing the public about available notification resources; describing the roles and responsibilities of public health service agencies, manufacturers, distributors, and private organizations in the notification process; stimulating discussion about improving the notification system; and soliciting public testimony regarding these issues.

DATES: The public meeting will be held on Tuesday, November 19, 1996, from 8 a.m. to 5 p.m. Registration for the public meeting is required by November 12, 1996. Written comments may be submitted at any time.

ADDRESSES: The public meeting will be held at the National Institutes of Health, Bldg. 10, Masur Auditorium, 9000 Rockville Pike, Bethesda, MD. Those persons interested in attending this meeting should fax their registration information, including name, title, firm name, address, telephone, and fax number, to the information contact person (below). Those persons interested in presenting information at the meeting should fax the above requested registration information and a copy or summary of their presentation to the information contact person (below). Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, Office of Blood Research and Review (HFM–350), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–3512, FAX 301–827–2843.

SUPPLEMENTARY INFORMATION: Notifying users and recipients of plasma derivatives that are classified as recalls or market withdrawals in a timely and meaningful manner has emerged as an issue for FDA and the public health community. Recently, questions have been raised regarding how FDA and manufacturers reach these objectives, the role of other government agencies in the notification process, who should be notified, and the role of private organizations in disseminating information. Therefore, FDA, NHLBI, and CDC will hold a public meeting to allow interested persons to present their comments on these issues. Representatives from FDA's Center for Biologics Evaluation and Research will chair the public meeting.

The main goal of this public meeting is to exchange information regarding the topics identified above. To achieve this goal, interested members of the public including patient, industrial, medical, and regulatory communities are invited to attend the meeting. Public health service agencies will describe their roles and resources available for public notification of market withdrawals and recalls of plasma derived products. Manufacturers and distributors are requested to provide information regarding their procedures and roles regarding public notification. Private organizations, including volunteer groups and companies specializing in information dissemination, are requested to discuss their potential roles.

Persons interested in participating in the public meeting are requested to present their positions, rationales, and/or experiences regarding the following areas: (1) The nature and scope of notification regarding real or potential adverse experiences; (2) the timing of information dissemination regarding adverse experiences; (3) the best means of disseminating information; and (4) the means and level of notification that are needed, once a significant problem is identified. Information presented at this meeting will assist the sponsoring public health agencies in assessing the current mechanisms and efficiency of recipient notification, and will help to determine what future action may be appropriate.

Every effort will be made to accommodate each person who wants to present information at the public meeting. However, persons who want to ensure their participation at the meeting are encouraged, by the close of business on November 12, 1996, to fax to the contact person (address and fax number above) a written request for participation with the name, address, phone number, fax number, affiliation, topic of presentation, approximate amount of time requested for the presentation, and a copy or summary of their presentation. Public presentations will be limited to 5–10 minutes due to the time constraints of the meeting.

A schedule listing the persons making presentations and all presentation information submitted will be filed with the Dockets Management Branch (address above). The meeting schedule will be mailed or faxed to each presenter before the meeting. Interested persons attending the meeting who do not request an opportunity to make a presentation will be given an opportunity to make oral presentations at the conclusion of the meeting if time permits.

Transcripts of the public meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript of the public meeting and submitted comments will be available for public examination at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 28, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–28049 Filed 10–31–96; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Program Announcement for Grant Programs Administered by the Division of Associated, Dental and Public Health Professions, Bureau of Health Professions for Fiscal Year 1997

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for eight grant programs for fiscal year (FY) 1997 under the authority of title VII of the Public Health Service (PHS) Act, as amended by the Health Professions Education Extension Amendments of 1992, Pub. L. 102–408, dated October 13, 1992. These programs include:

1. Grants for Interdisciplinary Training for Health Care for Rural Areas (section 778, PHS Act) Review criteria are proposed.

2. Grants for Residency Training and Advanced Education in the General Practice of Dentistry (section 749, PHS Act)

3. Public Health Special Project Grants (section 762, PHS Act) Review criteria are proposed.

4. Chiropractic Demonstration Project Grants (section 782, PHS Act)

5. Allied Health Grant Program (section 767, PHS Act)

6. Geriatric Education Centers (GECs) (section 777(a), PHS Act) Review criteria are proposed.

7. Grants for the Health Administration Traineeships and Special Projects Program (section 771, PHS Act)

8. Dental Public Health Specialty Training Grants (section 763, PHS Act) Review criteria and the minimum percentages for ''high rate'' and ''Significant Increase in the Rate'' for implementation of the general statutory funding preference are proposed.

The table below provides budget information for the grant programs administered by the Division of Associated, Dental and Public Health Professions in FY 1997.

Program title	Available for this program	Continuation support	Available for competing awards	Average competing award expected and number of awards
Interdisciplinary Training for Health Care for Rural Areas	$4,081,000	$1,708,276	$2,372,473	$175,000 (14 grants).
Residency Training and Advanced Education in the General Practice of Dentistry.	$3,720,000	$2,178,000	$1,542,000	$100,000 (11 grants).
Public Health Special Projects	$3,000,000	$500,000	$2,500,00	$150,000 (11 grants).
Chiropractic Demonstration Projects	$788,500	None	$788,500	$200,000 (3 grants).
Allied Health Projects	$3,767,000	$1,122,906	$2,644,095	$100,000 (26 grants).
Geriatric Education Centers	$5,778,000	$3,720,000	$1,853,000	$145,000 (12 grants).
Health Administration Traineeships and Special Projects	$1,076,000	None	$1,076,000	$25,000 (40 grants).
Dental Public Health Specialty Training	$500,000	None	$500,000	$90,000 (6 grants).

The purpose and eligibility for each of these programs are listed below as well as additional information depending on the individual program.

1. Grants for Interdisciplinary Training for Health Care for Rural Areas

Purpose

Section 778 of the Public Health Service Act, as amended, authorizes the Secretary to award grants for interdisciplinary training projects designed to provide or improve access to health care in rural areas. Specifically, projects funded under this authority shall be designed to:

(a) use new and innovative methods to train health care practitioners to provide services in rural areas;

(b) demonstrate and evaluate innovative interdisciplinary methods and models designed to provide access to cost-effective comprehensive health care;

(c) deliver health care services to individuals residing in rural areas;

(d) enhance the amount of relevant research conducted concerning health care issues in rural areas; and

(e) increase the recruitment and retention of health care practitioners in rural areas and make rural practice a more attractive career choice for health care practitioners.

A recipient of funds may use various methods in carrying out the projects described above. The legislation cites the following methods as examples:

(a) the distribution of stipends to students of eligible applicants;

(b) the establishment of a postdoctoral fellowship program;

(c) the training of faculty in the economic and logistical problems confronting rural health care delivery systems; or

(d) the purchase or rental of transportation and telecommunication equipment where the need for such equipment due to unique characteristics of the rural area is demonstrated by the recipient.

Eligibility

To be eligible for a Grant for Interdisciplinary Training for Health Care for Rural Areas, each applicant must be located in a State and be:

1. a local health department, or

2. a nonprofit organization, or

3. a public or nonprofit college, university or school of, or program that specializes in nursing, mental health practice, optometry, public health, dentistry, osteopathic medicine, physician assistants, pharmacy, podiatric medicine, allopathic medicine, chiropractic, or allied health professions.

Applicants eligible to obtain funds under this grant program shall not include for-profit entities, either directly or through a subcontract or subgrant.

Each application must be jointly submitted by at least two eligible applicants. One of the applicants must be an academic institution. Each application must demonstrate the need and demand for health care services, knowledge of available resources and the most significant service and educational gaps within its targeted geographic area. One applicant must be designated the principal organization responsible and accountable for the conduct of the proposed project. Support may be requested for this grant program for a project period of not more than three years.

Definitions

1. *Interdisciplinary training* means a planned and coordinated program of education or training aimed at preparation of functioning teams of two or more health care practitioners from different health disciplines who will coordinate their activities to provide services to a client or group of clients.

2. *Rural* means geographic areas that are located outside of standard metropolitan statistical areas.

3. *School of or program that ''specializes'' in health professions*

education means programs that provide education in nursing, mental health practice, optometry, public health, dentistry, osteopathy, physicians assistants, pharmacy, podiatry, medicine, chiropractic, and allied health professions that leads to a certificate, baccalaureate degree or associate degree (or an equivalent degree of either) or to a more advance degree which is accredited by a recognized body or bodies approved for such purposes by the Secretary of Education, or which provides to the Secretary satisfactory assurance by such accrediting body or bodies that reasonable progress is being made toward accreditation.

Statutory Project Requirements

Interdisciplinary training projects funded under section 778 must:

1. Assist individuals in academic institutions in establishing long-term collaborative relationships with health care facilities and providers in rural areas;

2. Designate a rural health care agency or agencies for clinical treatment or training, including hospitals, community health centers, migrant health centers, rural health clinics, community mental health centers, long-term care facilities, Native Hawaiian health centers, or facilities operated by the Indian Health Service or an Indian tribe or tribal organization or Indian organization under a contract with the Indian Health Service under the Indian Self-determination Act;

3. Not more than 10 percent of the individuals receiving training with section 778 funds shall be trained as doctors of medicine or osteopathic medicine; and

4. A grantee may not use more than 10 percent of the grant funds for administrative cost.

5. Funds received under this section shall be used to supplement, not supplant, amounts made available by such institution for activities of the type described in the ''Purpose.''

Established Funding Priority

The following funding priority was established in FY 1993 after public comment (58 FR 5741, January 22, 1993) and the Administration is extending this funding priority in FY 1997. In determining the order of funding of approved applications a priority will be given to applicant institutions (academic) which demonstrate either substantial progress over the last three years or a significant experience of ten or more years in enrolling and graduating trainees from those minority or low-income populations identified as at risk of poor health outcomes.

Proposed Review Criteria

The substantive content of the review criteria of the program have not changed from those previously published; however, they have been re-worded to make them more understandable. In addition, a new criterion is proposed in number (11) relating to the evaluation procedures of the program.

Applications will be reviewed and rated according to the applicant's ability to meet the following:

(1) The potential effectiveness of the proposed project in carrying out the training purposes of section 778 of the act.

(2) The extent to which the project explains the need for the project in the rural area to be served;

(3) The degree to which the proposed project adequately provides for the interdisciplinary training of health professionals to practice in the rural area to be addressed by the project;

(4) The degree to which the applicant offers interdisciplinary training experiences with at least three disciplines in rural health care settings of sufficient length and content;

(5) The degree to which the applicant demonstrates a commitment to establishing and maintaining long-term collaborative relationships between academic institutions and health care facilities and providers in rural areas;

(6) The degree to which the effectiveness of the organizational arrangements necessary to carry out the project have been documented to include the administrative and organizational relationships between and among the various academic programs, health departments, and/or nonprofit organizations and rural health care agencies;

(7) The administrative and management capability of the applicant to carry out the proposed didactic and clinical curriculum in an effective manner working with three or more health care disciplines;

(8) The capability of the proposed staff and faculty to provide the competencies/skills needed by the trainees to enhance their ability to pursue rural health practice and interdisciplinary care;

(9) The extent to which the trainee recruitment and selection process assures that qualified trainees with significant interest or background in rural health care are involved in the project;

(10) The extent to which the budget justification is reasonable and indicates that institutional and community support to the project are provided to the maximum extent possible;

(11) The adequacy of the evaluation mechanism to measure the education performance outcomes using primary, secondary and tertiary data for each objective for each grant year and to provide the basis for continual quality improvement at the academic institution and the rural health facility; and

(12) The extent to which the financial information provided indicates a cost-effective utilization of grant funds and indicates that the project will continue on a self-sustaining basis.

2. Grants for Residency Training and Advanced Education in the General Practice of Dentistry

Purpose and Legislative Authority

Section 749 of the PHS Act authorizes the Secretary to make grants to any public or nonprofit private school of dentistry or accredited postgraduate dental training institution (e.g., hospitals and medical centers):

(1) to plan, develop, and operate an approved residency program in the general practice of dentistry or an approved advanced educational program in the general practice of dentistry;

(2) to provide financial assistance to participants in such a program who are in need of financial assistance and who plan to specialize in the practice of general dentistry; and

(3) to fund innovative, nontraditional models for the provision of postdoctoral General Dentistry training.

Eligibility

To be eligible for a Grant for Residency Training and Advanced Education in the General Practice of Dentistry, the applicant shall:

(1) be a public or nonprofit private school of dentistry or an accredited postgraduate dental training institution (hospital, medical center, or other entity) and be accredited by the appropriate accrediting body, and

(2) be located in any one of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia.

To receive support, programs must meet the requirements of final regulations at 42 CFR Part 57, Subpart L. The period of Federal support may not exceed 3 years.

Categories of Program Support

There is no funding preference between residency training programs and advanced educational programs in general dentistry. Grant support will be available for three distinct categories of program development. Applications must address at least one of these categories.

Category 1: Program Initiation

An applicant may request support to assist in establishing a new program. Support may be for 3 years of program operation, or for up to 1 year of program planning and development, followed by 2 years of program operation. An applicant must show, at a minimum, preliminary provisional approval from the Commission on Dental Accreditation before the initial grant award date (grants will be effective July 1, 1997). Before a second year grant award will be made, the grantee must show an accreditation classification of Accreditation Eligible.

Category 2: Program Expansion

An applicant may request support for an existing program which has full approval accreditation classification to fund the cost of a first-year enrollment increase in the program.

Category 3: Program Improvement

An applicant may request support for an existing program which has conditional approval or provisional approval accreditation to correct deficiencies or weaknesses in order to gain full approval accreditation status.

Support is also available for an existing program which has full approval accreditation for changes or additions in faculty, curriculum and/or facilities to enhance the quality of the program.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The potential effectiveness of the proposed project in carrying out the training purposes of section 749 of the Act.
2. The degree to which the proposed project adequately provides for meeting the project requirements.
3. The administrative and managerial capability of the applicant to carry out the proposed project in a cost-effective manner.
4. The extent to which the objectives of the program are consistent with the purposes of the grant program and the extent to which the evaluation methodology will effectively assess the impact of the project.
5. The extent to which the proposal demonstrates a need for the project.
6. The extent to which present or potential problems are understood by the applicant and the extent to which solutions to these problems have been developed.
7. The extent to which the organizational and administrative relationships between institutional and programmatic components of the project enhance the achievement of project objectives.
8. The extent to which the curriculum will enhance the trainee's ability to become an efficient, effective, and competent practitioner of general dentistry.
9. The qualifications of proposed staff and faculty.
10. The extent to which the trainee recruitment and selection process assures that highly qualified trainees with a true interest in general practice are enrolled in the program.
11. The extent to which the facilities and equipment used in the training program are appropriate to the general practice of dentistry.
12. The potential of the project to continue on a self-sustaining basis after the period of grant support.
13. The extent to which the budget justification is reasonable and indicates that institutional support to the project is provided to the maximum extent possible.
14. The degree to which the proposed project proposes to attract, maintain and graduate minority and disadvantaged students.

Program Requirements

The Program Requirements referenced in Review Criterion Number 2, above, are published in 42 CFR Ch.I, § 57.1105. They are listed below.

A. The project staff must plan, develop, and/or operate an approved residency or advanced educational program in the general practice of dentistry;

B. Each project must have at least two participants enrolled in the training program;

C. If the training site provides medical care, then the medical and dental care of patients must be coordinated;

D. If a primary care medical residency program is conducted by the applicant, then joint training experiences must be provided. For purposes of this paragraph, primary care means internal medicine, family medicine, or pediatrics;

E. Each participant who receives stipend support must sign a statement of intent to work in the practice of general dentistry; and

F. The training program, the performance of each participant, and the quality of patient care must be evaluated.

Statutory General Preference

As provided in Section 791(a) of the PHS Act, preference will be given to any qualified applicant that—

(A) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or

(B) during the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings.

This preference will only be applied to applications that rank above the 20th percentile of proposals recommended for approval by the peer review group.

''High rate'' is defined as a minimum of 25 percent of graduates in academic years 1993–94, 1994–95, and 1995–96 who spend at least 50 percent of their work time in clinical practice in the specified settings. Graduates who are providing care in a medically underserved community as a part of a fellowship or other educational experience can be counted.

''Significant increase in the rate'' means that, between academic years 1994–95 and 1995–96, the rate of placing graduates in the specified settings has increased by a minimum of 50 percent and that not less than 15 percent of graduates from the most recent year are working in these settings.

Additional information concerning the implementation of this preference has been published in the Federal Register at 59 FR 15741, dated April 4, 1994.

Information Requirements Provision

Under section 791(b) of the Act, the Secretary may make an award under the Grants for Residency Training and Advanced Education in the General Practice of Dentistry program only if the applicant for the award submits to the Secretary the following information:

1. A description of rotations of preceptorships for students, or clinical training programs for residents, or clinical training programs of residents, that have the principal focus of providing health care to medically underserved communities.
2. The number of faculty on admissions committees who have a clinical practice in community-based ambulatory settings in medically underserved communities.
3. With respect to individuals who are from disadvantaged backgrounds or

from medically underserved communities, the number of such individuals who are recruited for academic programs of the applicant, the number of such individuals who are admitted to such programs, and the number of such individuals who graduate from such programs.

4. If applicable, the number of recent graduates who have chosen careers in primary health care.

5. The number of recent graduates whose practices are serving medically underserved communities.

6. A description of whether and to what extent the applicant is able to operate without Federal assistance under this title.

3. Public Health Special Project Grants

Purpose

Section 762 of the PHS Act, as amended, authorizes the Secretary to award grants to accredited schools of public health to plan, develop, demonstrate, operate and evaluate projects that further goals established by the Secretary.

As requested by section 762(e) of the Act, the Secretary established the following four goals for projects as set forth in the 1994 *Report to Congress on Evaluation of Special Projects in Public Health Program:*

- Linkages. Establishing and strengthening community-academic partnerships, including linkages with State and local health agencies; community-based organizations; health care facilities, including managed care organizations; industry; schools; and other education and training programs.
- Education. Developing strategies to make public health education more relevant to practice and more available to employed public health practitioners.
- Recruitment. Improving methods to recruit minority and disadvantaged individuals into careers in public health.
- Access and Quality. Improving access and quality in health care for vulnerable populations and the public at large.

Copies of the Report to Congress are available by contacting the Public Health and Dental Education Branch, Division of Associated, Dental and Public Health Professions, BHPr/HRSA, 5600 Fishers Lane, Room 8C–09, Rockville, MD 20857; telephone: 301/443–6896; fax: 301/443–1164.

In fiscal year 1997, HRSA is soliciting applications that carry out the Program's purpose and goals in the following areas:

- Expand the number of community-academic linkages with State and local public health agencies, community-based organizations, health care facilities, including managed care organizations, industry, and local educational institutions for the purpose of developing on-site educational experiences for public health students and distance-based continuing education programs for employed public health personnel.
- Expand the number of public health students and faculty who participate in collaborative projects that foster creative partnering with community-based organizations to address pressing community health needs.
- Establish partnerships with managed care organizations to provide public health faculty, students, and practitioners with the knowledge base and practical skills experience to apply community and population-based health assessment to the needs of managed and integrated systems of care.
- Promote curriculum development, field placements, and collaborative projects with community organizations, public health agencies, schools, the aging network, and other entities in such areas as domestic violence prevention, interdisciplinary team training, communication and interpersonal skills, cultural diversity, and partnerships with other health professions schools and programs to increase their public health and population-based science content.
- Develop recruitment and retention strategies to increase the number of minority and disadvantaged individuals enrolled in and completing degree and continuing education programs in public health.

Eligibility

To be eligible for a Public Health Special Project Grant, the applicant shall be a school of public health that has been accredited by the Council on Education for Public Health pursuant to sections 799(1) (A) and (E) of the PHS Act, and shall be located in a State as defined in section 799(9) of the Act. Applicants must assure that students of the school will, through participation in the project for which the award is made, receive training in the activities carried out by the project.

Period of Support

The period of Federal support for a new project may not exceed three years. A competing continuation application may be submitted for 2 additional years of support for the same project, extending the total project period to 5 years. Competing continuation applications may request support for ongoing activities, for new or expanded activities, or for both ongoing and new or expanded activities.

Proposed Review Criteria

The following criteria for review of applications are proposed for public comment:

- Proposal addresses the purposes of the Public Health Special Projects Grant Program and is supported by a well-documented rationale;
- Objectives are consistent with the rationale, measurable, and achievable within the project period;
- Methodology is consistent with the objectives and explained in appropriate detail;
- Evaluation is linked to the objectives and addresses outcomes;
- Administrative and management capability required to carry out the project is documented;
- Budget justification is complete, appropriate, cost-effective, and justified; and
- Plan for institutionalizing project outcomes is specific and realistic.

Statutory Preference

A funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of approved applications.

As prescribed by section 762(b) of the Act, preference in funding will be given to qualified applicants that agree the project for which the award is made will: (1) establish or strengthen field placements for students in public or nonprofit private health agencies or organizations; and (2) involve faculty members and students in collaborative projects to enhance public health services to medically underserved communities.

4. Chiropractic Demonstration Project Grants

Purpose

Section 782 of the Public Health Service Act authorizes the Secretary to award grants to carry out demonstration projects in which chiropractors and physicians collaborate to identify and provide effective treatment for spinal and lower-back conditions. The period of support is three years.

Eligibility

To be eligible for a Chiropractic Demonstration Project, the applicant shall be:

1. a public or private nonprofit school, college or University of Chiropractic; and

2. enter into a formal agreement as necessary to ensure that a school of

allopathic or osteopathic medicine will collaborate in the project.

Project Requirements

Specific project requirements published in the Federal Register at 59 FR 44995, dated August 31, 1994 will be used for FY 1997:

1. The project must address the identification and treatment of spinal and/or lower-back conditions.
2. The project must be founded on collaborative efforts between the school(s) of chiropractic and school(s) of allopathic or osteopathic medicine.
3. Each project must include a strong research protocol which will result in a significant expansion of documented research in the area addressed and which is suitable for publication in refereed health professions journals, including research oriented publications.
4. The project must include an explicit strategy for case-finding and a strategy for making direct comparisons to other forms of treatment. The results must be generalizable to patients cared for in clinical practices addressing spinal and/or lower-back conditions.
5. Whenever feasible, minorities and women should be included in study populations so that research findings can be of benefit to all persons at risk of the disease, disorder, or condition under study.

Review Criteria

The review of applications will take into consideration for FY 1997 the following criteria published in the Federal Register at 59 FR 44995, dated August 31, 1994:

1. The strength of the rationale for the project;
2. The quality and clarity of the objectives to be achieved in relation to the stated statutory purposes of the program and the potential of the project for meeting them;
3. The strength of the applicant's institutional background in chiropractic training and research;
4. The competency of all faculty, both chiropractic and allopathic or osteopathic medicine, to be involved in the project, including past experience in chiropractic and/or chiropractic research and allopathic or osteopathic research;
5. The proposed methodology to be used in carrying out the goals and objectives of the project, including those pertaining to research and its outcomes;
6. The appropriateness of timelines to be used in achieving the project's goals and objectives;
7. The strength of the proposed evaluation methodology to be used in evaluating the accomplishments of the project, including those pertinent to research;
8. The strength of the evidence of the applicant institution's commitment, including letters of support, to carrying out the project successfully and the institutional commitment of the allopathic or osteopathic school of medicine collaborating in the project;
9. The suitability and availability of all proposed facilities and resources to be used in carrying out the project;
10. The appropriateness of the proposed budget and fiscal plan for carrying out the project and the administrative and management capability of the applicant to implement the project in a cost-effective manner; and
11. The documentation, terms, and specificity of a formal agreement with a school of allopathic or osteopathic medicine for its collaboration in carrying out the goals, objectives, and evaluation of the project.

The peer review group which reviews applications for this program will include no fewer than two, and no more than three chiropractors.

5. Allied Health Grant Program

Section 767 authorizes the Secretary to award grants to eligible entities to assist such entities in meeting the costs associated with expanding or establishing programs that will increase the number of individuals trained in allied health professions. Projects will address expansion of enrollments, community-based interdisciplinary training, health promotion and disease prevention, partnerships, and innovative approaches to the training of allied health personnel and the delivery of allied health services. The period of support is three years.

Programs funded under this section may include—

(1) those that expand enrollments in allied health professions with the greatest shortages or whose services are most needed by the elderly;

(2) those that provide rapid transition training programs in allied health fields to individuals who have baccalaureate degrees in health-related sciences;

(3) those that establish community-based allied health training programs that link academic centers to rural clinical settings;

(4) those that provide career advancement training for practicing allied health professionals;

(5) those that expand or establish clinical training sites for allied health professionals in medically underserved or rural communities in order to increase the number of individuals trained;

(6) those that develop curriculum that will emphasize knowledge and practice in the areas of prevention and health promotion, geriatrics, long-term care, home health and hospice care, and ethics;

(7) those that expand or establish interdisciplinary training programs that promote the effectiveness of allied health practitioners in geriatric assessment and the rehabilitation of the elderly;

(8) those that expand or establish demonstration centers to emphasize innovative models to link allied health clinical practice, education, and research.

Eligibility

''Eligible entity'' for the purpose of this grant program means:

(1) public or private nonprofit schools, universities, or other educational entities that provide for education and training in the allied health professions; or

(2) other public or nonprofit private entities capable, as determined by the Secretary, of carrying out the purpose of the Allied Health Project Grants Program as described in the application; and

(3) be located in the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa and the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia.

Funding Preference

The statutory preferences identified in Sections 767(b)(2) and 791(a) of the Public Health Service Act are set forth below. Applicants who meet one or more of the following criteria will receive funding preference. Greater priority will be given to applicants who qualify in two or three preference categories.

(A) expand and maintain first-year enrollment by not less than 10 percent over enrollments in base year 1992; or

(B) demonstrate that not less than 20 percent of the graduates of such training programs during the preceding 2-year period are working (at least 50% of worktime in clinical settings having the principal focus of serving residents of medically underserved communities). Graduate who are providing care in a medically underserved community as a part of a fellowship or other educational experience can be counted; or

(C) during the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. ''Significant increase in the rate'' means that, between academic years 1994–95 and 1995–96, the rate of placing graduates in the specified settings has increased by a minimum of 50 percent and that not less than 15 percent of graduates from the most recent year are working in these settings.

New Program Funding Preference

Implementation specifics for new programs was published in the Federal Register at 59 FR 15742, dated April 4, 1994. A new program is defined as any program which has graduated less than three classes. A new program will qualify for the above funding preferences if four or more of the following criteria are met:

1. The mission statement of the program identifies a specific purpose of preparing health professionals to serve underserved populations.
2. The curriculum includes content which will help to prepare practitioners to serve underserved populations.
3. Substantial clinical training experience is required in medically underserved communities.
4. A minimum of 20 percent of the faculty spend at least 50 percent of their time providing/supervising care in medically underserved communities.
5. The entire program or a substantial portion of the program is physically located in a medically underserved community.
6. Student assistance, which is linked to service in medically underserved communities following graduation, is available to the students in the program.
7. The program provides a placement mechanism for placing graduates in medically underserved communities.

Review Criteria

The review criteria, stated below, which were established in FY 1990 (55 FR 12424, dated April 3, 1990) after public comment, will remain unchanged in FY 1997.

1. The extent to which the proposed project meets the legislative purpose;
2. The background and rationale for the proposed project;
3. The extent to which the project contains clearly stated realistic and achievable objectives;
4. The extent to which the project contains a methodology which is integrated and compatible with project objectives, including collaborative arrangements and feasible workplans;
5. The evaluation plans and procedures for program and trainees, if involved;
6. The administrative and management capability of the applicant to carry out the proposed project, including institutional infrastructure and resources;
7. The extent to which the budget justification is complete, cost-effective and includes cost-sharing, when applicable; and
8. Whether there is an institutional plan and commitment for self-sufficiency when Federal support ends.

Information Requirements Provision

Under section 791(b) of the Act, the Secretary may make an award under the Allied Health Project Grants only if the applicant for the award submits to the Secretary the following information:

1. A description of rotations or preceptorships for students, or clinical training programs for residents, that have the principal focus of providing health care to medically underserved communities.
2. The number of faculty on admissions committees who have a clinical practice in community-based ambulatory settings in medically underserved communities.
3. With respect to individuals who are from disadvantaged backgrounds or from medically underserved communities, the number of such individuals who are recruited for academic programs of the applicant, the number of such individuals who are admitted to such programs, and the number of schools individuals who graduate from such programs.
4. If applicable, the number of recent graduates who have chosen careers in primary health care.
5. The number of recent graduates whose practices are serving medically underserved communities.
6. A description of whether and to what extent the applicant is able to operate without Federal assistance under this title.

6. Grants for Geriatric Education Centers

Section 777(a) of the Public Health Service Act authorizes the Secretary to make grants to support the development of collaborative arrangements involving several health professions schools and health care facilities. These arrangements, called Geriatric Education Centers (GECs), facilitate training of health professional faculty, students, and practitioners in the diagnosis, treatment, and prevention of disease, disability, and other health problems of the aged. Health professionals include allopathic physicians, osteopathic physicians, dentists, optometrists, podiatrists, pharmacists, nurses, nurse practitioners, physician assistants, chiropractors, clinical psychologists, health administrators, and allied health professionals.

Projects supported under these grants must offer training involving four or more health professions, one of which must be allopathic or osteopathic medicine. Projects must address one or more of the statutory purposes listed below:

(a) improve the training of health professionals in geriatrics;
(b) develop and disseminate curricula relating to the treatment of the health problems of elderly individuals;
(c) expand and strengthen instruction in methods of such treatment;
(d) support the training and retraining of faculty to provide such instruction;
(e) support continuing education of health professionals and allied health professionals who provide such treatment; and
(f) establish new affiliations with nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers in order to provide students with clinical training in geriatric medicine.

Recommendations to assist GECs in developing programmatic objectives are set forth in the HRSA's publication entitled A National Agenda for Geriatric Education: White Papers. Copies of the White Papers and the GEC excerpts from it are available by contacting the Interdisciplinary, Geriatrics and Allied Health Branch, Division of Associated, Dental and Public Health Professions, BHPr/HRSA, 5600 Fishers Lane, Room 8–103, Rockville, MD 20857; telephone: 301/443–6887; fax: 301/443–1164.

Eligibility

Grants may be made to accredited health professions schools as defined by section 799(1), or programs for the training of physician assistants as defined by section 799(3), or schools of allied health as defined in section 799(4), or schools of nursing as defined by section 853(2).

Applicants must be located in the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Republic of Palau, the Republic of the Marshall Islands, or the Federated States of Micronesia. The initial period of Federal support should not exceed 3 years. Projects may recompete for an additional 3 years.

Proposed Review Criteria

The following review criteria are proposed for FY 1997:

(1) The degree to which the proposed project adequately provides for the project requirements;

(2) The extent to which the rationale and specific objectives of the project are based upon a needs assessment of the status of geriatrics training in the institutions to be assisted and/or the geographic area to be served;

(3) The ability of the project to achieve the project objectives within the proposed geographic area;

(4) The adequacy of educational facilities and clinical training settings to accomplish objectives;

(5) The adequacy of organizational arrangements involving professional schools and other organizations necessary to carry out the project;

(6) The adequacy of the qualifications and experience in geriatrics of the project director, staff and faculty;

(7) The administrative and managerial ability of the applicant to carry out the proposed project in a cost-effective manner, and;

(8) The potential of the project to continue on a self-sustaining basis.

(9) If applicable, the extent to which there is evidence that the institutions jointly have planned and jointly will conduct the proposed consortia activities.

(10) The potential of the project to recruit and/or retain minority faculty members and trainees for participation in long term and/or short term training experiences.

(11) The adequacy of the evaluation mechanisms to measure the education performance outcomes of each objective at primary (aggregated outcome data) and secondary (results that can be attributed to the program's efforts) levels.

(12) The degree to which the proposed project objectives relate to recommendations from the HRSA's publication of the White Papers.

7. Grants for the Health Administration Traineeships and Special Projects Program

Purpose

Section 771 of the Public Health Service Act authorizes the Secretary to:

(1) award grants which provide traineeships for students enrolled in an accredited program of health administration, hospital administration, or health policy analysis and planning programs; and

(2) assist programs of health administration in the development or improvement of programs to prepare students for employment with public or nonprofit private entities.

The period of Federal support is for three years.

This program is governed by regulations at 42 CFR part 58, subpart D to the extent to which these regulations are not inconsistent with the amended statute.

Eligibility

Eligible applicants are public or nonprofit private educational entities, including graduate schools of social work but excluding accredited schools of public health, offering a graduate program in health administration, hospital administration, or health policy analysis and planning accredited by the Accrediting Commission on Education in Health Services Administration. Applicants must assure that, in providing traineeships, priority will be given to students who demonstrate a commitment to employment with public or nonprofit private entities in health administration and management.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The administrative and management ability of the applicant to carry out the proposed project in a cost-effective manner;

2. The adequacy of the staff and faculty;

3. The adequacy of institutional resources available to conduct graduate level education, to include the adequacy of teaching facilities;

4. The adequacy of recruitment and placement assistance for students in accord with the legislative purpose and intent; and

5. The extent to which the application justifies the need for traineeships and the rationale, objectives, methodology, and evaluation of special project grants.

Statutory Funding Preference

Preference will be given to qualified applicants meeting the following conditions:

1. Not less than 25 percent of the graduates of the applicant are engaged in full-time practice settings in medically underserved communities;

2. The applicant recruits and admits students from medically underserved communities;

3. For the purpose of training students, the applicant has established relationships with public and nonprofit providers of health care in the community involved; and

4. In training students, the applicant emphasizes employment with public or nonprofit private entities.

The term ''medically underserved community is defined in the Federal Register at 58 FR 9570 dated February 22, 1993.

This preference will only be applied to applications that rank above the 20th percentile of proposals recommended for approval by the peer review group.

8. Dental Public Health Specialty Training Grants Purpose and Legislative Authority

Section 763 of the Public Health Service Act authorizes the Secretary to make grants to schools of public health and dentistry to meet the costs of projects to:

(1) plan and develop new residency training programs and to maintain or improve existing residency training programs in dental public health; and

(2) provide financial assistance to residency trainees enrolled in such programs.

Eligibility

To be eligible for a Dental Public Health Specialty Training Grant, the applicant must:

(1) Be a public or nonprofit private school of dentistry or public health and be accredited by the appropriate accrediting body,

(2) Be located in any one of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia.

(3) Evidence that it has, or will have available, full-time faculty members with training and experience in the field of dental public health and support from faculty members trained in public health and other relevant specialties and disciplines; and

(4) Have a program accredited by the American Dental Association Commission on Dental Accreditation.

Support may be requested for this grant program for a project period of not more than three years.

Program Priorities for Fiscal Year 1997

Applicants are encouraged to address one or more of the program priorities within their proposals:

Education. Developing strategies to make dental public health education more relevant to practice and more available to dental public health practitioners. Particularly, expanding opportunities for the specialty education of working dentists with a master's in public health (MPH) or equivalent degrees through

nontraditional or innovative approaches.

Linkages. Establishing and strengthening community-academic partnerships, including linkages with State and local health departments; community-based organizations; managed care organizations; industry; schools; and other education and training programs.

Access and Quality. Improving access and quality in health care, particularly oral health care, for vulnerable populations and the public at large.

Proposed Review Criteria

The following review criteria are proposed for Dental Public Health Specialty Training Grants.

Applications will be reviewed and rated according to the applicant's ability to meet the following:

1. The proposal addresses the legislative intent of the program and is supported by a well-documented rationale.
2. The proposal is responsive to the program priorities.
3. Objectives are consistent with the rationale, measurable, and achievable within the project period.
4. Methodology is consistent with the objectives and explained in appropriate detail.
5. Evaluation is linked to the objectives and addresses project outcomes.
6. The applicant demonstrates the administrative and managerial capability to carry out the proposed project.
7. The proposed budget is complete, appropriate, cost-effective, and clearly justified.
8. The plan for institutionalizing the project is specific and realistic.

Statutory Preference

As provided in Section 791(a) of the PHS Act, preference will be given to any qualified applicant that—

(A) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or

(B) during the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings.

Minimum Percentages for ''High Rate'' and ''Significant Increase in the Rate''

''High rate'' is defined as a minimum of 20 percent of graduates in academic years 1993–94, 1994–95, and 1995–96 who spend at least 50 percent of their work time in clinical practice in the specified settings. Graduates who are providing care in a medically underserved community as a part of a fellowship or other educational experience can be counted.

''Significant increase in the rate'' means that, between academic years 1994–95 and 1995–96, the rate of placing graduates in the specified settings has increased by a minimum of 50 percent and that not less than 15 percent of graduates from the most recent year are working in these settings.

Applicants which usually graduate fewer than four trainees per academic year or which are less than three years old will qualify for the funding preference if they meet four or more of the following criteria:

1. The mission statement of the program identifies a specific purpose of preparing health professionals to serve underserved populations.
2. The curriculum includes content which will help to prepare practitioners to serve underserved populations.
3. Substantial clinical training experience is required in medically underserved communities.
4. A minimum of 20 percent of the faculty spend at least 50 percent of their time providing/supervising care in medically underserved communities.
5. The entire program or a substantial portion of the program is physically located in a medically underserved community.
6. Student assistance, which is linked to service in medically underserved communities following graduation, is available to the students in the program.
7. The program provides a placement mechanism for deploying graduates to medically underserved communities.

This preference will only be applied to applications that rank above the 20th percentile of proposals recommended for approval by the peer review group.

Statutory Information Requirement

Under Section 791(b) of the PHS Act, the Secretary may make a grant only if the applicant for the award meets the ''information requirement'' of the grant through the submission of the following regarding the applicant's program:

1. A description of rotations or preceptorships for students, or clinical training programs for residents, that have the principal focus of providing health care to medically underserved communities.
2. The number of faculty on admissions committees who have a clinical practice in community-based ambulatory settings in medically underserved communities.
3. With respect to individuals who are from disadvantaged backgrounds or from medically underserved communities, the number of such individuals who are recruited for academic programs of the applicant, the number of such individuals who are admitted to such programs, and the number of such individuals who graduate from such programs.
4. If applicable, the number of recent graduates who have chosen careers in primary health care.
5. The number of recent graduates whose practices are serving medically underserved communities.
6. A description of whether and to what extent the applicant is able to operate without Federal assistance under this title.

Interested individuals are invited to comment on the proposed review criteria for Grants for Interdisciplinary Training for Health Care for Rural Areas, Public Health Special Project Grants, Grants for Geriatric Education Centers, and Dental Public Health Specialty Training Grants. Also, individuals are invited to comment on the proposed minimum percentages for ''high rate'' and ''Significant Increase in the Rate'' for implementation of the general statutory funding preference for the Dental Public Health Specialty Training Program.

The comment period is 30 days. All comments received on or before December 2, 1996 will be considered before the final review criteria are established.

Written comments should be addressed to: Neil Sampson, Director, Division of Associated, Dental and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–101, 5600 Fishers Lane, Rockville, MD 20857.

All comments received will be available for public inspection and copying at the Division of Associated, Dental and Public Health Professions, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Application Availability

Application materials are available on the World Wide Web at address: ''http://www.hrsa.dhhs.gov/bhpr/grants.html''. In Fiscal Year 1997, the Bureau of Health Professions (BHPr) will use Adobe Acrobat to publish the grants documents on the Web page. In order to download, view and print these grants documents, you will need a copy of Adobe Acrobat Reader. This can be obtained without charge from the Internet by going to the Adobe Web page (''http://www.adobe.com'') and

downloading the version of the Adobe Acrobat Reader which is appropriate for your operating system, i.e., Windows, Unix, Macintosh, etc. A set of more detailed instructions on how to download and use the Adobe Acrobat Reader can be found on the BHPr Grants Web page under ''Notes on this WWW Page.

If additional programmatic information is needed, please contact the Division of Associated, Dental and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–101, 5600 Fishers Lane, Rockville, Maryland 20857. Questions regarding grants policy and business management issues should be directed to the Grants Management Branch in Room 8C–26 at the above address. Please refer to Table 1 for specific BHPr contact names and phone numbers.

For applicants who are unable to access application materials electronically, a hard copy will be provided by contacting the HRSA Grants Application Center. The Center may be contacted by: Telephone Number: 1–888–300–HRSA; FAX Number: 301–309–0579; Email Address: HRSA.GAC@ix.netcom.com.

Completed applications should be returned to: Grants Management Officer (CFDA#), HRSA Grants Application Center, 40 West Gude Drive, Suite 100, Rockville, Maryland 20850.

Application Forms

The standard application form PHS 398 (revised 5/95), Competing Training Grant Application and General Instructions, will be used for the Chiropractic Demonstration Project program. This form has been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB Clearance Number is 0925–0001.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions will be used for all other programs announced in this notice. This form has been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB Clearance Number is 0915–0060.

Deadline Dates

The deadline dates for receipt of applications for each of these grant programs are shown in Table 1. Applications will be considered to be ''on time'' if they are either:

(1) *Received on or before* the established deadline date, or

(2) *Sent on or before* the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant. In addition, applications which exceed the page limitation and/or do not follow format instructions will not be accepted for processing and will be returned to the applicant.

TABLE 1

PHS title VII section number/program title/CFDA number	Grants management contact/phone number/Email address FAX: (301) 443–6343	Programmatic contact/phone number FAX: (301) 443–1164	Deadline date for competing applications
778—Health Care for Rural Areas: Interdisciplinary Training Grants—93.192.	Brenda Selser, (301) 443–6960, bselser@hrsa.dhhs.gov.	Judy Arndt, (301) 443–6867.	12/18/96
749—Residency Training and Advanced Education in the General Practice of Dentistry—93.897.	Brenda Selser, (301) 443–6960, bselser@hrsa.dhhs.gov.	Kathy Hayes, (301) 443–6896 OR (301) 443–4832.	12/16/96
762—Public Health Special Projects—93.188	Wilma Johnson, (301) 443–6880, wjohnson@hrsa.dhhs.gov.	Anne Kahl, (301) 443–6896.	1/06/97
782—Chiropractic Demonstration Project Grants	Brenda Selser, (301) 443–6960, bselser@hrsa.dhhs.gov.	Shannon Mulroney, (301) 443–6765.	2/10/97
767—Allied Health Grant Program—93.191	Wilma Johnson, (301) 443–6880, wjohnson@hrsa.dhhs.gov.	Norman Clark, (301) 443–1346.	12/23/96
777(a)—Geriatric Education Centers (GECs)—93.969.	Wilma Johnson, (301) 443–6880, wjohnson@hrsa.dhhs.gov.	Susan Klein, (301) 443–6889.	1/27/97
771—Health Administration Traineeships and Special Projects—93.962.	Wilma Johnson, (301) 443–6880, wjohnson@hrsa.dhhs.gov.	Stuart Bernstein, (301) 443–6896, OR (301) 443–3231.	12/13/96
763—Dental Public Health Specialty Training Grants—93.117.	Brenda Selser, (301) 443–6960, bselser@hrsa.dhhs.gov.	Kathy Hayes, (301) 443–6896 OR (301) 443–4832.	12/13/96

National Health Objectives for the Year 2000

The Public Health Service urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report; Stock No. 017–001–00474–0) or *Healthy People 2000* (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Telephone 202–783–3238).

Academic and Community Partnerships

As part of its cross-cutting program priorities, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide primary care services to the underserved.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, heath care, and early childhood development services are provided to children.

These programs are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). These programs are also not subject to the Public Health System Reporting Requirements.

Dated: October 29, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–28112 Filed 10–31–96; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Cancer Institute; Notice of Meeting

Notice is hereby given of the meeting of the Advisory Committee to the Director, National Cancer Institute, Working Group on Developmental Diagnostics November 5–6, 1996 in Conference Room D, Natcher Building, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland.

This meeting will be open to the public on November 5, 1996 from 8:30 a.m. to approximately 5 p.m., during which presentations will be made on existing clinical specimen resources and issues related to the use of these resources for basic and clinical cancer research.

The meeting will be closed to the public on November 6, 1996 from 9 a.m. to approximately 11 a.m. for discussion of confidential issues relating to the discussion and evaluation of issues pertaining to programmatic areas and/or NCI Personnel. These discussions will reveal confidential personal information including consideration of personnel qualifications and performance, the competence of individual investigators and similar matters, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy and premature disclosure of recommendations which would inhibit the final outcome and subsequent implementation of recommendations.

Information pertaining to the meeting may be obtained from Ms. Susan J. Waldrop, Executive Secretary, Developmental Diagnostics Working Group, National Cancer Institute, Office of Science Policy, Building 31, Room 3A11, 31 Center Drive, MSC 2440, Bethesda, MD 20892 (301) 496–1458. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact Ms. Waldrop in advance of the meeting.

Dated: October 28, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–28261 Filed 10–30–96; 2:25 pm]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review and evaluate grant applications.
Name of SEP: Population Index.
Date: October 31, 1996.
Time: 1:00 p.m.–adjournment (Teleconference).
Place: 6100 Executive Boulevard, 6100 Building—Room 5E01, Rockville, Maryland 20892.
Contact Person: Dr. Hameed Khan, Scientific Review Administrator, NICHD, 6100 Executive Boulevard, 6100 Building—Room 5E01, Rockville, Maryland 20892, Telephone: (301) 496–1696.

Purpose/Agenda: To review and evaluate grant applications.
Name of SEP: Cortical Granule Envelope.
Date: November 4, 1996.
Time: 1:00 p.m.–adjournment (Teleconference).
Place: 6100 Executive Boulevard, 6100 Building—Room 5E01, Rockville, Maryland 20892.
Contact Person: Dr. Hameed Khan, Scientific Review Administrator, NICHD, 6100 Executive Boulevard, 6100 Building—Room 5E01, Rockville, Maryland 20892, Telephone: (301) 496–1696.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The discussions of these applications could reveal confidential trade secrets of commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. [93.846, Project Grants in National Institute of Child Health and Human Development], National Institutes of Health, HHS)

Dated: October 29, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–28259 Filed 10–30–96; 2:25 pm]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Biological and Physiological Sciences.
Date: November 8, 1996.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4202, Telephone Conference.
Contact Person: Dr. Eugene Zimmerman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4202, Bethesda, Maryland 20892, (301) 435–1220.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Biological and Physiological Sciences.
Date: November 20, 1996.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 5146, Telephone Conference.
Contact Person: Dr. Ramesh Nayak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5146, Bethesda, Maryland 20892, (301) 435–1026.

Name of SEP: Behavioral and Neurosciences.
Date: November 25, 1996.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 5172, Telephone Conference.
Contact Person: Dr. Leonard Jakubczak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5172, Bethesda, Maryland 20892, (301) 435–1247.

Name of SEP: Clinical Sciences.
Date: December 2, 1996.
Time: 11:30 a.m.
Place: NIH, Rockledge 2, Room 4214, Telephone Conference.
Contact Person: Dr. Dan McDonald, Scientific Review Administrator, 6701 Rockledge Drive, Room 4214, Bethesda, Maryland 20892, (301) 435–1215.

Name of SEP: Multidisciplinary Sciences.
Date: December 18, 1995.
Time: 8:00 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Houston Baker, Scientific Review Administrator, 6701 Rockledge Drive, Room 5208, Bethesda, Maryland 20892, (301) 435–1175.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–

93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 23, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–28041 Filed 10–31–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.

Date: November 7, 1996.

Time: 3:30 p.m.

Place: NIH, Rockledge 2, Room 4128 (Telephone Conference).

Contact Person: Dr. Anshumali Chaudhari, Scientific Review Administrator, 6701 Rockledge Drive, Room 4128, Bethesda, Maryland 20892, (301) 435–1210.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93,893, National Institutes of Health, HHS)

Dated: October 28, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–28260 Filed 10–30–96; 2:25 pm]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4076–N–03]

Announcement of Funding Awards for Public Housing Demolition, Site Revitalization, and Replacement Housing Grants (HOPE VI); Fiscal Year 1996

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

ACTION: Announcement of funding awards.

SUMMARY: According to section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of the funding award for HOPE VI Fiscal Year (FY) 1996. The purpose of this document is to announce the name and address of the grantee and the amount of the award.

FOR FURTHER INFORMATION CONTACT: Milan Ozdinec, Director, Office of Urban Revitalization, Department of Housing and Urban Development, 451 7th Street, SW, Room 4144, Washington, DC 20410; telephone (202) 401-8812 (this is not a toll free number). Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay Service at 1-800-877-TDDY, which is a toll-free number.

SUPPLEMENTARY INFORMATION:

The funding made available under the HOPE VI program is provided by the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104-134; approved April 26, 1996).

This notice announces the awardees of approximately $480 million in funding for the HOPE VI program for demolition, the capital costs of reconstruction, rehabilitation and other physical improvements, the provision of replacement housing, management improvements, resident self-sufficiency programs, and tenant-based assistance.

The FY 1996 awards announced in this Notice were selected for funding consistent with the provisions in the Notice of Funding Availability published in the Federal Register on July 22, 1976 (61 FR 38024).

The Catalog of Federal Domestic Assistance number for the HOPE VI Program is 14.864.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989), the Department is hereby publishing the names, addresses, and amounts of those awards as shown in Appendix A.

Dated: October 23, 1996.

Christopher Hornig,

Deputy Assistant Secretary for Public Housing Investments.

Appendix A—Fiscal Year 1996 HOPE VI Awards

Name and address	Amount
Ms. Mary Louise Battisti, Executive Director, The Housing Authority of the City of Spartanburg, P.O. Box 2828, Spartanburg, SC 29304–2828	$14,620,369
Mr. Ronnie A. Ferguson, Executive Director, Jacksonville Housing Authority, 1300 Broad Street, Jacksonville, FL 32709	21,552,000
Ms. Karen Thoreson, Executive Director, City of Tucson Public Housing Authority, P.O. Box 27210, Tucson, AZ 85726–7210	14,600,000
Mrs. Andrea Duncan, Executive Director, Housing Authority of Louisville, 420 South Eighth Street, Louisville, KY 40203	20,000,000
Mr. Eugene Jones, Executive Director, Housing Authority of Kansas City, Missouri, 712 Broadway, Kansas City, MO 64106	13,000,000
Mr. Harrison Shannon, Jr., President/CEO, Housing Authority of the City of Charlotte, 1301 South Boulevard, Charlotte, NC 28203	24,501,684
Mr. Michael Kelly, Executive Director, Housing Authority of New Orleans, 918 Carondelet Street, New Orleans, LA 70130	25,000,000
Ms. Claire E. Freeman, Chief Executive Officer, Cuyahoga Metropolitan Housing Authority, 1441 West 25th Street, Cleveland, OH 44113–3101	29,733,334
Mr. Stanley A. Lowe, Executive Director, Pittsburgh Housing Authority, 200 Ross Street, 8th Floor, Pittsburgh, PA 15219–2068	34,732,764
Mr. Robert C. Rosenberg, Court Appointed Receiver, Chester Housing Authority, P.O. Box 380, Chester, PA 19013	15,789,414
Mr. Daniel P. Henson III, Executive Director, Housing Authority of Baltimore City, 417 East Fayette Street, Baltimore, MD 21202	22,500,000
Ms. Renee Lewis Glover, Executive Director, Housing Authority of the City of Atlanta, 739 West Peachtree Street, NE, Atlanta, GA 30365	29,720,520
Mr. Raymond P. Murphy, Jr., Executive Director, Holyoke Housing Authority, 475 Maple Street, Holyoke, MA 01040–3775	15,000,000
Mr. Frederick C. Lamont, Acting Director of Finance, City and County of San Francisco Housing Authority, 440 Turk Street, San Francisco, CA 94102	20,360,000
Mr. John Nelson, Jr., Deputy Executive Director, Chicago Housing Authority, 626 West Jackson Blvd., Chicago, IL 60661–5601	67,918,550

Name and address	Amount
Mr. Paul Graziano, Executive Director, New York City Housing Authority, 250 Broadway, New York, NY 10007	20,000,000
Mr. J. Alan Jones, Executive Director, Housing Authority of the City of Wilmington, P.O. Box 899, Wilmington, NC 28402	11,620,655
Mr. Carl R. Greene, Executive Director, Detroit Housing Commission, 2211 Orleans, Detroit, MI 48207	34,224,160
Mr. Jack Quinn, Executive Director, Housing Authority of the City of Pueblo, 1414 North Santa Fe Avenue, Pueblo, CO 81003	109,550
Mr. Audley Evans, Executive Director, Housing Authority of the City of Tampa, Florida, 1514 Union Street, Tampa, FL 33607	873,000
Mrs. Doris M. Chiles, Executive Director, Housing Authority of the City of Columbia, 207 Park Street, Columbia, MO 65203	169,200
Mr. Richard W. Collins, Executive Director, Housing Authority of Savannah, P.O. Box 1179, Savannah, GA 31402	2,336,140
Mr. Ravi Yalamanchi, Executive Director, Saginaw Housing Commission, 2811 Davenport Avenue, Box A, Saginaw, MI 48602	1,413,200
Mr. Jerome Ryans, Executive Director, Memphis Housing Authority, 700 Adams Avenue, Memphis, TN 38105	4,542,867
Ms. Sharon West, Executive Director, Buffalo Municipal Housing Authority, 300 Perry Street, Buffalo, NY 14204	6,304,000
Mr. Apolonio Flores, President and CEO, The San Antonio Housing Authority, 818 South Flores, San Antonio, TX 78204	840,726
Ms. Janice Washington, Executive Director, St. Louis Housing Authority, 4100 Lindell Boulevard, St. Louis, MO 63108	675,000
Mr. Tommy L. Brooks, Executive Director, Ocala Housing Authority, P.O. Box 2468, Ocala, FL 34478–2468	1,642,957
Mr. David Gilmore, Receiver, District of Columbia Housing Authority, 1133 North Capitol Street NE, Washington, DC 20002–7599	1,995,000
Mr. Harry Thomas, Executive Director, Seattle Housing Authority, 120 Sixth Avenue North, Seattle, WA 98109–5003	788,570
Ms. Cheryl Lovell, Interim Executive Director, Housing Authority of East St. Louis, 700 North 20th Street, East St. Louis, IL 62205	1,000,000
Mr. Bryan Anderson, Executive Director, Housing Authority of the City of New Haven, 360 Orange Street, New Haven, CT 06511	1,380,000
Mr. Harold Lucas, Executive Director, Housing Authority of the City of Newark, 57 Sussex Avenue, Newark, NJ 07103–3992	9,010,400
Mr. Felix Raymond, Executive Director, Housing Authority of the City of Paterson, 60 Van Houten Street, Paterson, NJ 07505–1998	2,047,000
Mr. John D. Wardlaw, Executive Director, Hartford Housing Authority, 475 Flatbush Avenue, Hartford, CT 06106–3728	5,025,000
Mr. Wayne W. Morris, Executive Director, Housing Authority of the City of Tacoma, 902 South L Street, Tacoma, WA 98405	1,757,940

[FR Doc. 96–28063 Filed 10–31–96; 8:45 am]
BILLING CODE 4210–33–P

[Docket No. FR–4124–N–10]

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.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 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 24 CFR Part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR Part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the Federal Register, the

landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Corps of Engineers: Mr. Bob Swieconek, Army Corps of Engineers, Civilian Facilities, Pulaski Building, Room 4224, 20 Massachusetts Avenue, NW., Washington, DC 20315–1000; (202) 761–1753; Navy: Mr. John J. Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, Code 241A, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0052; Interior: Ms. Lola D. Knight, Department of the Interior, 1849 C Street, NW., Mail Stop 5512–MIB, Washington, DC 20240; (202) 208–4080; Transportation: Mr. Crawford F. Grigg, Director, Space Management, SVC–140, Transportation Administrative Service Center, Department of Transportation, 400 7th Street, SW., Room 2310, Washington, DC 20590; (202) 366–4246; (These are not toll-free numbers).

Dated: October 25, 1996.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program
Federal Register Report for 11/01/96

Suitable/Available Properties

Buildings (by State)

Idaho

Bldg. 177
Albeni Falls Dam
Vista Area Co: Bonner ID
Landholding Agency: COE
Property Number: 319630004
Status: Excess
Comment: 1400 sq. ft., wood frame, concrete slab, presence of lead based paint, off-site use only.

North Carolina

Grove Arcade Fed. Bldg.
37 Battery Park Ave.
Asheville Co: Buncombe NC 28802–
Landholding Agency: GSA
Property Number: 549630018
Status: Excess
Comment: 169340 sq. ft., concrete, most recent use—office, historic preservation convenants
GSA Number: 4–G–NC–710.

Oklahoma

Water Treatment Plant
Belle Starr, Eufaula Lake
Eufaula Co: McIntosh OK 74432–
Landholding Agency: COE
Property Number: 319630001
Status: Excess
Comment: 16′x16′, metal, off-site use only.

Water Treatment Plant
Gentry Creek, Eufaula Lake
Eufaula Co: McIntosh OK 74432–
Landholding Agency: COE
Property Number: 319630002
Status: Excess
Comment: 12′ x 16′, metal, off-site use only.

Land (by State)

Guam

Unimproved Land
Rt. 2A
Agat, GU
Landholding Agency: GSA
Property Number: 549630019
Status: Excess
Comment: 44.37 acres
GSA Number: 9–N–GU–420D.

Massachusetts

Estate of S. Newburg
Lois and Ellen Street
Haverhill Co: Essex MA 01830–
Landholding Agency: GSA
Property Number: 549630017
Status: Excess
Comment: land—36,425 sq. ft.—two noncontiguous parcels, heavily wooded
GSA Number: 1–G–MA–793

Pennsylvania

Land—Tioga-Hammond Lakes
Mansfield Co: Tioga PA 16933–
Location: 2 miles northeast of Mansfield on State Route 58044
Landholding Agency: GSA
Property Number: 319120001
Status: Excess
Comment: approximately 10.82 acres, steep terrain, flowage easement
GSA Number: 4–D–PA–0699G.

Suitable/Unavailable Properties

Buildings (by State)

Alaska

Nome Marineway & Warehouse
Belmont Point
Nome AK 99762–
Landholding Agency: COE
Property Number: 319630005
Status: Unutilized
Comment: 2400 sq. ft., needs major rehab, floodplain, most recent use—office w/ living space.

Land (by State)

North Dakota

Lot 18, 0.08 acre
Garrison Creek
Garrison Dam/Lake Sakakawea Co.: McLean ND
Landholding Agency: COE
Property Number: 319630003
Status: Unutilized
Comment: 0.08 acre of land, floodplain, most recent use—cottage site.

Unsuitable Properties

Buildings (by State)

Alaska

Building 408–B
USCG Support Center Kodiak
Kodiak Co: Kodiak Is. Bor. AK 99619–
Landholding Agency: DOT
Property Number: 879640001
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

California

Building 5–30
Naval Air Weapons Station
Oxnard Co: Ventura CA 93042–
Landholding Agency: Navy
Property Number: 779640011
Status: Unutilized
Reason: Extensive deterioration.

Building 305
Naval Air Weapons Station
Oxnard Co: Ventura CA 93042–
Landholding Agency: Navy
Property Number: 779640012
Status: Unutilized
Reason: Extensive deterioration.

Building 616
Naval Air Weapons Station
Oxnard Co: Ventura CA 93042–
Landholding Agency: Navy
Property Number: 779640013
Status: Unutilized
Reason: Extensive deterioration.

Building 617
Naval Air Weapons Station
Oxnard Co: Ventura CA 93042–
Landholding Agency: Navy
Property Number: 779640014
Status: Unutilized
Reason: Extensive deterioration.

Building 618
Naval Air Weapons Station
Oxnard Co: Ventura CA 93042–
Landholding Agency: Navy
Property Number: 779640015
Status: Unutilized
Reason: Extensive deterioration.

Connecticut

Former Housatonic Valley
NPS Tract 286–28
New Milford Co: Litchfield CT 06776–
Landholding Agency: Interior
Property Number: 619640004
Status: Unutilized
Reason: Extensive deterioration.

Florida

Cape St. George Lighthouse Co: Franklin FL 32328–
Landholding Agency: DOT
Property Number: 879640002
Status: Unutilized
Reason: Extensive deterioration.

Hawaii

Building 53
Naval Magazine Lualualei
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 779640005
Status: Underutilized
Reason: Extensive deterioration.

Building 28
Ford Island Housing
Pearl Harbor Co: Honolulu HI 96818–
Landholding Agency: Navy
Property Number: 779640006
Status: Unutilized

Reason: Extensive deterioration.

Building 29
Ford Island Housing
Pearl Harbor Co: Honolulu HI 96818–
Landholding Agency: Navy
Property Number: 779640007
Status: Unutilized
Reason: Extensive deterioration.

Building 31
Ford Island Housing
Pearl Harbor Co: Honolulu HI 96818–
Landholding Agency: Navy
Property Number: 779640008
Status: Unutilized
Reason: Extensive deterioration.

Building 32
Ford Island Housing
Pearl Harbor Co: Honolulu HI 96818–
Landholding Agency: Navy
Property Number: 779640009
Status: Unutilized
Reason: Extensive deterioration.

Building 90
Ford Island Housing
Pearl Harbor Co: Honolulu HI 96818–
Landholding Agency: Navy
Property Number: 779640010
Status: Unutilized
Reason: Extensive deterioration.

Maine

Former Pullen Cabin
NPS Tract 106–29
Monson/Elliottsville Co: Piscataquis ME 04464–
Landholding Agency: Interior
Property Number: 619640001
Status: Unutilized
Reason: Extensive deterioration.

Former Mudge Cabin
NPS Tract 106–28
Monson/Elliottsville Co: Piscataquis ME 04464–
Landholding Agency: Interior
Property Number: 619640002
Status: Unutilized
Reason: Extensive deterioration.

Former Great Northern Paper
NPS Tract 103–01
Millinocket Co: Piscataquis ME 04462–
Landholding Agency: Interior
Property Number: 619640003
Status: Unutilized
Reason: Extensive deterioration.

Michigan

FOG Signal Building
St. Martins Island Co: Delta MI 49829–
Landholding Agency: GSA
Property Number: 549640001
Status: Unutilized
Reason: Other
Comment: Inaccessible.
GSA Number: 1–U–MI–760.

Crisp Point Light Station
McMillan Township Co: Luce MI
Landholding Agency: GSA
Property Number: 549640002
Status: Unutilized
Reason: Extensive deterioration.
GSA Number: 1–U–MI–541A.

North Carolina

Dwelling 1
USCG Coinjock Housing
Coinjock Co: Currituck NC 27923–
Landholding Agency: GSA
Property Number: 879120083
Status: Excess
Reason: Extensive deterioration.
GSA Number: 4–U–NC–772.

Dwelling 2
USCG Coinjock Housing
Coinjock Co: Currituck NC 27923–
Landholding Agency: GSA
Property Number: 879120084
Status: Excess
Reason: Extensive deterioration.
GSA Number: 4–U–NC–722.

Dwelling 3
USCG Coinjock Housing
Coinjock Co: Currituck NC 27923–
Landholding Agency: GSA
Property Number: 879120085
Status: Excess
Reason: Extensive deterioration.
GSA Number: 4–U–NC–722.

Virginia

Building 401
Norfolk Naval Shipyard
Portsmouth VA 23709–
Landholding Agency: Navy
Property Number: 779640001
Status: Excess
Reason: Extensive deterioration.

Building 235
Norfolk Naval Shipyard
Portsmouth VA 23709–
Landholding Agency: Navy
Property Number: 779640002
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Floodway; Secured Area; Extensive deterioration.

Building 657
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 77964003
Status: Excess
Reason: Secured Area; Extensive deterioration.

Building 380A
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 779640004
Status: Excess
Reason: Secured Area.

Land (by State)

Guam

Submerged Lands
Ritidian Point GU
Landholding Agency: GSA
Property Number: 549640003
Status: Excess
Reason: Other
Comment: Inaccessible
GSA Number: 9–N–GU–437.

[FR Doc. 96–27920 Filed 10–31–96; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application; Final Environmental Impact Statement Availability on the Proposed Issuance of an Incidental Take Permit for Threatened and Endangered Species on Lands Managed by the Washington Department of Natural Resources Within the Range of the Northern Spotted Owl

AGENCIES: Fish and Wildlife Service, Department of the Interior (lead agency); National Marine Fisheries Service, Commerce.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the Final Environmental Impact Statement on the proposed issuance of an incidental take permit for threatened and endangered species on lands managed by the Washington Department of Natural Resources (Applicant) is available for review. The Applicant has applied to the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (together Services) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Applicant has also requested an unlisted species agreement to cover species which may occur in the planning area and which may be listed as threatened or endangered species in the future. The term of the permit would be 70 years, with the possibility of three extensions of 10 years each. The application has been assigned permit number PRT–812521. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Publication of the Record of Decision and issuance of the permit will occur no sooner December 2, 1996.

ADDRESSES: Individuals wishing copies of the application or Environmental Impact Statement for review should immediately contact Chuck Turley, Washington Department of Natural Resources, 1111 Washington Street SE, P.O. Box 47011, Olympia, Washington, 98504–7011 or the U.S. Fish and Wildlife Service, Pacific Northwest Habitat Conservation Plan Program, 3704 Griffin Lane SE, Suite 102, Olympia, Washington 98501–2192; (360) 753–9440. Documents will be available for public inspection by appointment during normal business hours (8 am to 5 pm, Monday through Friday) at the above address.

FOR FURTHER INFORMATION CONTACT: William Vogel or Craig Hansen, U.S. Fish and Wildlife Service, or Steve Landino, National Marine Fisheries Service at the Pacific Northwest Habitat Conservation Plan Program, 3704 Griffin Lane SE, Suite 102, Olympia, Washington 98501–2192; (360) 753–9440.

SUPPLEMENTARY INFORMATION:

Background

Under section 9 of the Act and its implementing regulations, ''taking'' of threatened and endangered species is prohibited. However, the Services, under limited circumstances, may issue permits to take threatened or endangered wildlife species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened and endangered species are in 50 CFR 17.22 and 17.32.

The Applicant has addressed species conservation and ecosystem management on approximately 1.6 million acres of State-managed land within the range of the northern spotted owl (*Strix occidentalis caurina*) (owl) in Washington. The Applicant is requesting a permit for the incidental take of the owl, marbled murrelet (*Brachyramphus marmoratus*) (murrelet), Oregon silverspot butterfly (*Speyeria zerene hippolyta*), Aleutian Canada goose (*Branta canadensis leucopareia*), peregrine falcon (*Falco peregrinus*), bald eagle (*Haliaeetus leucocephalus*), gray wolf (*Canis lupus*), grizzly bear (*Ursus arctos*) and the Columbian white-tailed dear (*Odocoileus virginianus leucurus*) which may occur as a result of timber harvest and related activities within the 1.6-million-acre planning area.

The Habitat Conservation Plan is designed to complement the Northwest Forest Plan, and includes various forms of mitigation which are integral parts of the Habitat Conservation Plan. The Habitat Conservation Plan covers nine planning units which occur in three basic geographic areas: (1) Five planning units in the area west of the Cascade Crest; (2) three planning units in the area within the range of the owl east of the Cascade Crest; and (3) the Olympic Experimental State Forest Planning Unit. Only listed species are addressed east of the Cascade Crest.

Development of the Final Environmental Impact Statement

In development of this Final Environmental Impact Statement, the agencies have initiated action to ensure compliance with the purpose and intent of National Environmental Policy Act, as amended. Scoping activities were undertaken preparatory to developing the Draft Environmental Impact Statement. A Notice of Intent to prepare the Environmental Impact Statement was published in the May 2, 1994, Federal Register (59 FR 22682). This was followed by a Notice of Availability of a Draft Environmental Impact Statement and receipt of an Application for an Incidental Take Permit published in the April 5, 1996, Federal Register (61 FR 15297). Five public meetings were held during the comment period.

Potential consequences, in terms of adverse impacts and benefits associated with the implementation of each alternative, were described in the Draft Environmental Impact Statement. Key issues addressed in the Draft and Final Environmental Impact Statement are identified as the effects that implementation of the various alternatives would have upon: (1) Threatened and endangered species; (2) other wildlife and their habitats; (3) surrounding and intermingled land uses; (4) other aspects of the physical and the human environment. Each alternative was evaluated for its potential to result in significant adverse impacts, and the adequacy or inadequacy of the proposed measures to avoid, minimize, and substantially reduce the effects.

Comments from 181 entities (testimony from 41 people, and 174 written comments) were received on the Draft Environmental Impact Statement. Comments were varied. Topics covered in the comments included the range of alternatives, length of the comment period, adequacy of mitigation, credibility of the science relied upon in developing conservation strategies, adequacy of the impacts analysis, population viability of the subject species, uncertainty surrounding alternatives, assurances provided to the applicant, fiduciary responsibilities to trust beneficiaries by the Applicant, Federal trust responsibilities to the Tribes, and permit issuance criteria. The Final Environmental Impact Statement contains summaries of, and responses to, all comments received during the comment period. Issues and potential consequences remain constant from the Draft to the Final Environmental Impact Statement.

Alternatives Analyzed in the Final Environmental Impact Statement

The Draft Environmental Impact Statement considered many alternatives, but only advanced six for further detailed study. Alternatives considered but not advanced for detailed analysis ranged from no harvest to a Habitat Conservation Plan based on State forest-practices regulations and are discussed in section 2.5 of the Draft Environmental Impact Statement. Six alternatives were advanced for detailed analysis.

Three alternatives are presented for the Habitat Conservation Plan planning units excluding the Olympic Experimental State Forest Planning Unit: (1) A No-Action alternative; (2) the proposed Habitat Conservation Plan; and (3) a Habitat Conservation Plan strategy with enhanced conservation. Three alternatives are presented separately for the Olympic Experimental State Forest: (1) A No-Action alternative; (2) a zoned conservation strategy which focuses on owl demographic support, and maintenance of several existing owl sites and likely landscape connections; and (3) an unzoned conservation strategy, similar to the proposed Habitat Conservation Plan for other planning units. The Olympic Experimental State Forest is addressed separately from the other planning units because of its unique location on the Olympic Peninsula, value to fish and wildlife, and current condition of its forests. This planning unit has provisions for a greater emphasis on research as part of the mitigation measures for incidental take.

Under the No-action Alternatives, the applicant would avoid the take of any and all federally listed species and no permit would be issued. Under the Action Alternatives, the Applicant seeks to obtain an incidental take permit for owls, murrelets, Oregon silverspot butterflies, Aleutian Canada Geese, peregrine falcons, bald eagles, gray wolves, grizzly bears, and Columbian white-tailed deer that may occur on State lands managed by the Applicant within the Habitat Conservation Plan area.

Under the Habitat Conservation Plan, the owl conservation strategy for all planning units, excluding the Olympic Experimental State Forest, was developed to minimize and mitigate for the incidental take by providing owl nesting, roosting, and foraging habitat, and dispersal habitat in areas that complement the Northwest Forest Plan. The amount and location of this habitat varies between planning units depending upon the amount of Applicant-managed lands designated as nesting, roosting, and foraging habitat management areas and the capability of the land to provide owl habitat. However, the objective is to provide nesting, roosting, and foraging habitat on 50 percent of Applicant-managed lands within the nesting, roosting, and

foraging habitat management areas. Under the enhanced conservation alternative, the objective is to provide nesting, roosting, and foraging habitat on 60 percent of Applicant-managed lands within such areas. Both action alternatives also include areas managed for owl dispersal habitat.

For owls on the Olympic Experimental State Forest, the proposed Habitat Conservation Plan takes an ''unzoned approach.'' The goals for each of 11 landscape-management units include 20 percent of the area as nesting, roosting, and foraging habitat and another 20 percent which would also provide roosting and foraging opportunities for owls. The alternative ''zoned approach'' would use a combination of nest groves, core areas, range areas, and temporary special pair areas to emphasize strategically located areas.

The murrelet conservation strategy for the proposed Habitat Conservation Plan includes provisions to conduct a habitat-relationship study to determine the type and range of potential murrelet habitat that is likely to be occupied. After habitat-relationship studies are completed on a planning unit by planning unit basis, a small percentage of marginal murrelet habitat will be released for harvest without surveys. A long-range conservation strategy will be developed in consultation with the U.S. Fish and Wildlife Service after habitat-relationship studies are completed and surveys of remaining habitat are concluded. Under the enhanced conservation strategy, all suitable murrelet habitat, including marginal habitat, would be retained until the completion of the long-range conservation strategy. These same alternatives apply to the Olympic Experimental State Forest as well.

The riparian strategies for both action alternatives were developed to protect anadromous fish and riparian-obligate species by establishing riparian management zones, wetland protection areas, and provisions to address steep and unstable slopes, rain-on-snow event areas, and road system management. Under the Habitat Conservation Plan, riparian management zones will be established along all Type 1 through Type 4 Waters. Type 5 Waters will be protected in areas having a high risk of mass wasting. These buffers will contain a no-harvest portion as well as areas where management activity will be allowed. Additional wind buffers will be placed on Type 1 through Type 3 Waters on the windward side of the stream where there is a potential for windthrow. Under the enhanced conservation alternative, riparian management buffers will be applied to all Type 1 through Type 5 Waters, and wind buffers will be applied to both sides of Type 1 through Type 3 Waters.

For the Olympic Experimental State Forest, the riparian strategy is the same for both action alternatives, which includes interior and exterior core buffers. The interior core buffers are designed to minimize mass-wasting potential, and protect riparian processes and function. The exterior core buffers are designed to protect the integrity of the interior core from damaging winds and will be applied to both sides of Type 1 through Type 4 Waters, as well as Type 5 Waters as appropriate.

The Applicant also seeks to obtain an unlisted species agreement for species that may occur on Washington Department of Natural Resources managed lands on the west side of the Cascade Crest. The proposed unlisted species agreement requests that if species currently using the habitat types in the West Side and Olympic Experimental State Forest planning units become listed as a threatened or endangered species in the future, and no extraordinary circumstances exist, the species would be added to the Incidental Take Permit. Each action alternative contains provisions to protect the habitat types that occur on Washington Department of Natural Resources managed lands. For example, in addition to the conservation provided by the owl, murrelet, and riparian strategies, additional provisions are included to protect special habitat types such as caves, talus fields, and large, structurally unique trees and snags.

The Final Environmental Impact Statement contains minor modifications to the Environmental Impact Statement and also highlights changes made to the Habitat Conservation Plan and Implementation Agreement in response to public comments. Additional information regarding these changes may be obtained from the Services at the above addresses.

Author: William O. Vogel, Pacific Northwest Habitat Conservation Plan Program.

Authority: 16 U.S.C. 1361–1407, 1531–1544, and 4201–4245.

Dated: October 23, 1996.

Thomas J. Dwyer,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 96–27929 Filed 10 31–96; 8:45 am]

BILLING CODE 4310–55–P

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–821354

Applicant: Oklahoma City Zoological Park, Oklahoma City, OK.

The applicant requests a permit to import a pair of captive-held jaguar (*Panthera onca*) from Asociacion Rescate y Conservacion de Vida Silvestre, Santa Elena, Guatamala for the purpose of enhancement of the species through captive-breeding.

PRT–821381

Applicant: Michael Lowe, Jasper, GA.

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.

PRT–821375

Applicant: Ryker Lowe, Jasper, GA.

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.

PRT–821442

Applicant: Henry Doorly Zoo, Center for Conservation and Research, Omaha, NE.

The applicant requests a permit to import tissue samples from wild, captive-held and museum specimens of lowland and mountain anoa (*Bubulus depressicornis* and *B. quarlesi*) for the purpose of scientific research which will benefit the species in the wild.

PRT–724540

Applicant: Archie Carr Center for Sea Turtle Research, Gainesville, FL.

The applicant requests renewal of their permit to import blood and tissue samples from green (*Chelonia mydas*), black (*Chelonia mydas agassizi*), loggerhead (*Caretta caretta*), hawksbill (*Eretmochelys imbricata*), olive ridley (*Lepidochelys olivacea*), Kemp's ridley (*Lepidochelys kempii*) and leatherback sea turtles (*Dermochelys coriacea*) from locations worldwide for the purpose of scientific research that will benefit the species in the wild. This notice covers activities conducted by the applicant over a five year period.

PRT–690286

Applicant: Eddie and Cheryl Schmitt, Bradenton, FL.

The applicant requests a permit to reexport and reimport leopards (*Panthera pardus*), Bengal tigers (*Panthera tigris*), 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.

PRT–820732

Applicant: Zoological Society of San Diego, San Diego, CA.

The applicant requests a permit to import 3 male and 3 female captive born giant sable antelope (*Hippotragus niger variani*) from Sable Ranch, Republic of South Africa, to enhance the survival of the species through captive propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: October 28, 1996.

Mary Ellen Amtower,

Acting Chief Branch of Permits, Office of Management Authority.

[FR Doc. 96–28016 Filed 10–31–96; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[NV–030–97–1220–00]

Notice of Closure of Public Land to Off-Highway Vehicle Use, Douglas County, NV

AGENCY: Bureau of Land Management, Interior.

SUMMARY: Notice is hereby given that certain public lands in the vicinity of Stephanie Way and Fuller Avenue in the Johnson Lane area are closed to off-highway motorized vehicle use. This closure is necessary to prevent further impact to vegetative and soil resources and to eliminate noise and dust from intensive vehicle play occurring in close proximity to a school, park and residential area.

EFFECTIVE DATES: This closure goes into effect on November 15, 1996 and will remain in effect until the Walker Resource Management Plan is updated or the Authorized Officer determines the closure is no longer needed.

FOR FURTHER INFORMATION CONTACT: Tom Abbett, Outdoor Recreation Planner, 1535 Hot Springs Road, Carson City, Nevada 89706. Telephone (702) 885–6125.

SUPPLEMENTARY INFORMATION: This closure applies to all motorized vehicle traffic except for law enforcement or emergency personnel during the conduct of their official duties. This closure does not apply to County public roads. The public lands affected by this closure are described as follows:

Mt. Diablo Meridian

T. 14 N., R. 20 E.,
Sec 27, E½E½SE¼SW¼.

The authority for this closure is 43 CFR 8341.2(a). Any person who fails to comply with this closure is subject to arrest and fine of up to $1,000 and/or imprisonment not to exceed 12 months.

A map of the closed area is available at the Carson City District Office.

Dated this 16th day of October, 1996.

Daniel L. Jacquet,

Acting ADM, Non-Renewable Resources.

[FR Doc. 96–28022 Filed 10–31–96; 8:45 am]

BILLING CODE 4310–HC–P–M

[OR–015–97–1150–04; GP7–0005]

Emergency Closure of public lands; Oregon

AGENCY: Bureau of Land Management (BLM), Lakeview District, Interior.

ACTION: Emergency Road Closure.

SUMMARY: Notice is hereby given that effective immediately the road from the bottom gate to the top of Cougar Mountain, as legally described below, is closed to all vehicle access and travel.

In Lake County, Oregon: T.25S., R.15E., W.M., Oregon, Section 14: SESE.

The purpose of this closure is to protect the area's cultural resource values, reduce erosion, and reduce harassment of California bighorn sheep. The only exception would be for special authorized administrative use and emergency needs. The authority for this closure is 43 CFR 8341.2. This closure will remain in effect until an ORV designation plan is completed for this area.

FOR FURTHER INFORMATION CONTACT: Vern Stoffleth, Lakeview Resource Area, BLM, PO Box 151, Lakeview, OR 97639 (ph: 541–947–2177).

Dated: October 16, 1996.

Scott R. Florence,

Manager, Lakeview Resource Area.

[FR Doc. 96–28020 Filed 10–31–96; 8:45 am]

BILLING CODE 4310–33–P

[NV–030–1992–02]

Notice of Availability for the Denton-Rawhide Mine Expansion Project Draft Environmental Impact Statement and Notice of Comment Period and Public Open-House

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability for the Denton-Rawhide mine expansion Draft Environmental Impact Statement (EIS), Mineral County, Nevada; and notice of comment period and public open-house.

SUMMARY: Pursuant to section 102 (2) (C) of the National Environmental Policy Act, 40 CFR 1500–1508, and 43 CFR 3809, notice is given that the Bureau of Land Management (BLM) has prepared, with the assistance of a third-party consultant, a Draft EIS on the proposed Denton-Rawhide Mine Expansion Project, and has made copies available for public and agency review.

DATES: Written comments on the Draft EIS must be submitted or postmarked to the BLM no later than January 3, 1997. Oral and/or written comments may also be presented at a public open-house, to be held: November 20, 1996, 4:00–6:00 p.m., Carson City District BLM Office.

ADDRESSES: Written comments on the Draft EIS should be addressed to: Bureau of Land Management, Carson City District Office, 1535 Hot Springs Road, Carson City, Nevada 89706, Attn.: Terri Knutson, Denton-Rawhide EIS Project Manager. A limited number of copies of the Draft EIS and supporting documentation may be obtained at the same address.

FOR FURTHER INFORMATION CONTACT: Terri Knutson, Denton-Rawhide EIS Project Manager, Bureau of Land Management, 1535 Hot Springs Road, Carson City, Nevada 89706, (702) 885–6156.

SUPPLEMENTAL INFORMATION: Kennecott Rawhide Mining Company of Fallon, Nevada has submitted an amended Plan of Operations for the expansion of the existing Denton-Rawhide Mine located approximately 55 miles southeast of Fallon, Nevada. The proposed operation would include: development and

condemnation drilling necessary for development of future operations; expansion of the open-pit and waste rock disposal area; construction of an additional leach pad and solution ponds to accommodate processing of Run-of-Mine ore; and the relocation of the stormwater diversion channel beyond the limits of the active mine workings. Existing permitted surface disturbance within the project area is 1,005 acres. The proposal would disturb an additional 364 acres for a total of 1,369 acres of public and private land within the project area.

This Draft EIS analyzes the environmental impacts associated with the proposed expansion of the existing Denton-Rawhide Mine, a partial pit backfill alternative, and the no action alternative. Issues analyzed in the Draft EIS include geology and minerals, water resources, soils, vegetation, wildlife and fisheries, range resources, paleontological resources, cultural resources and Native American concerns, air quality, access and land use, recreation and wilderness, social and economic values, visual resources, noise, and hazardous materials.

A copy of the Draft EIS has been sent to all individuals, agencies, and groups who have expressed interest in the project or as mandated by regulation or policy. A limited number of copies are available upon request from the BLM at the address listed above.

Public participation has occurred during the EIS process. A Notice of Intent was filed in the Federal Register on January 24, 1996, and an open scoping period was held until March 1, 1996. One public scoping open-house to solicit comments and ideas was held on February 15, 1996. All comments presented to the BLM throughout the EIS process have been considered.

To assist the BLM in identifying and considering issues and concerns on the proposed action and alternatives, comments on the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters in the document. Comments may address the adequacy of the Draft EIS and/or the merits of the alternatives formulated and discussed in the document. 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. After the comment period ends on the Draft EIS, comments will be analyzed and considered by the BLM in preparing the Final EIS.

Dated: October 18, 1996.

John O. Singlaub,

District Manager.

[FR Doc. 96–28021 Filed 10–31–96; 8:45 am]

BILLING CODE 4310–HC–P

Bureau of Land Management

[CA–067–7122–6606; CACA–35511]

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement for the Imperial Project, a proposed gold mining operation on public lands in Imperial County, California.

DATES: Comments on the Draft Environmental Impact Statement must be postmarked no later than Tuesday, December 31, 1996.

ADDRESSES: Written comments should be addressed to Bureau of Land Management, El Centro Resource Area, 1661 South 4th Street, El Centro, CA 92243, Attention: Keith Shone.

FOR FURTHER INFORMATION CONTACT: Keith Shone (619) 337–4412 or Thomas Zale (619) 337–4420.

PUBLIC HEARINGS: No hearings are presently planned, however, should public demand warrant, a hearing would be held by the BLM.

SUPPLEMENTARY INFORMATION: The Imperial Project (Project) is a proposal by Chemgold, Inc. to develop an open-pit, precious metal mining operation utilizing heap leach processes. The proposed site is located in eastern Imperial County, California, approximately 45 miles northeast of El Centro, California and 20 miles northwest of Yuma, Arizona. The Project area is comprised of approximately 1,625 acres of unpatented mining claims on public lands administered by the BLM. Up to 150 million tons of ore would be leached and 450 million tons of waste rock would be deposited at the proposed waste rock stockpiles or the mine-out portion of the three (3) planned open pits. The expected maximum average mining rate would be 130,000 tons per day. Approximately 1,392 acres of surface disturbance would occur as a result of the Proposed Action. Mining activities would be performed 24 hours per day, seven (7) days per week, and are projected to commence in 1997 and terminate around the year 2016. The proposed mine would include a lined heap leach pad designed and constructed to support and contain the ore heap and to collect process fluid from the treated heap for precious metal recovery. Blasted ore rock would be mined and hauled directly to the heap without crushing (run-of-mine). Blasted waste rock would be hauled directly to a waste rock stockpile or to one of the on-site pits to be backfilled. A ground water production well field, consisting of up to four (4) ground water production wells, would be completed and used to provide water for processing operations, dust control and domestic uses.

Dated: October 21, 1996.

Terry A. Reed,

Area Manager.

[FR Doc. 96–27519 Filed 10–31–96; 8:45 am]

BILLING CODE 4310–40–P

Intent To Prepare Environmental Impact Statement

AGENCY: Bureau of Land Managment, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) for a mining Plan of Operations (POO) for the Kinross-Goldbanks Mine project, Pershing County, Nevada; and notice of scoping period and public meeting.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 and 43 CFR part 3809, the Bureau of Land Managment (BLM) will be directing the preparation of an EIS for the proposed development of a mine in Pershing County, Nevada. The EIS will be prepared by contract and funded by Kinross-Goldbanks Mining Company (KGMC). A public meeting will be held to identify issues to be addressed in the EIS, and to encourage public participation in the review process. Representatives of the BLM and KGMC will be summarizing the POO and accepting comments from the audience. The BLM invites comments and suggestions on the scope of the analysis.

DATES: The scoping meeting will be held Wednesday, December 4, 1996 at the office of the Winnemucca District BLM, from 7–9 p.m. Written comments on the POO and scope of the EIS will be accepted until December 16, 1996. The Draft EIS is expected to be completed by July of 1997, at which time the document will be made available for public review and comment.

ADDRESSES: Scoping comments may be sent to: District Manager, Winnemucca District Office BLM, 5100 E. Winnemucca Blvd., Winnemucca, NV 89445, Attn: Ken Loda, Project NEPA Coordinator.

FOR FURTHER INFORMATION CONTACT: Ken Loda, Winnemucca District Office BLM, 5100 E. Winnemucca Blvd., Winnemucca, NV 89445, phone (702) 623–1500.

SUPPLEMENTARY INFORMATION: Kinross-Goldbanks Mining Company of Winnemucca, Nevada, has submitted to the Winnemucca District Office of the BLM a POO for development of the Goldbanks Mine. This is a precious metals project located in Pershing County, approximately thirty miles south of Winnemucca, Nevada. The project site is located in the Goldbanks Hills on the east flank of the East Range. The project will ultimately consist of two separate mining areas and associated waste rock dumps, and a heap leach process area, various ancillary facilities, and two access roads. The total project area encompasses approximately 16,208 acres of BLM-administered public land and 160 acres of fee land. Approximately 2,761 acres of public land will be disturbed by the proposed action. During the eleven year production life 85,583,000 tons of ore and 261,252,000 tons of overburden and interburden will be mined.

Operations are scheduled to begin the spring of 1998. The Goldbanks Project will consist of two open pits and two rock waste rock dumps, a crushing facility and leach pad, a class III landfill site, bioremediation area, an office, laboratory and truck shop/warehouse facility, roads, power lines and water lines to support the operation. An existing road right-of-way to the project area has previously been obtained from the BLM. All proposed activities are planned on public land administered by the BLM. At present the only currently permitted activities are exploration drilling.

Reclamation of the facilities will include detoxification of the heap leach facility, grading of the waste rock dumps and heap leach facility, removal of all buildings and facilities followed by topsoil replacement and revegetation. The Main Zone pit will not be backfilled but a berm will be constructed following mining. The KW pit may be backfilled to near natural ground level, or may be left unfilled.

This EIS will address the issues of geology, minerals, soils, water resources, vegetation, wildlife, grazing management, air quality, aesthetic resources, cultural resources, ethnographic concerns, paleontological resources, land use, access, recreation, social and economic values related to project development.

Federal, state, and local agencies and other individuals or organizations who may be interested in or affected by the BLM's decision on the POO are invited to participate in the scoping process. The Authorized Officer will respond to public input and comment as part of the final EIS. The decision regarding the proposal will be recorded as a Record of Decision, which is subject to appeal under 43 CFR part 4.

Dated: October 18, 1996.

Colin P. Christensen,

Acting District Manager, Winnemucca.

[FR Doc. 96–28019 Filed 10–31–96; 8:45 am]

BILLING CODE 4310–HC–P

[WO–300–1310–00]

Green River Basin Advisory Committee, Colorado and Wyoming

AGENCY: Burau of Land Management, Interior.

ACTION: Notice of Meeting of the Green River Basin Advisory Committee.

SUMMARY: This notice announces the dates, time, and schedule and preliminary agenda for a meeting of the Green River Basin Advisory Committee (GRBAC).

DATES: November 13, 1996, from 8:00 a.m. until 4:00 until p.m. and November 14, 1996, from 8:00 a.m. until 3:00 p.m.

ADDRESSES: Holiday Inn, 1675 Sunset Drive, Rock Springs, WY.

FOR FURTHER INFORMATION CONTACT: Terri Trevino, GRBAC Coordinator, Bureau of Land Management, P.O. Box 1828, Cheyenne, WY 82003, telephone (307) 775–6020.

SUPPLEMENTARY INFORMATION: The topics for the meeting will include:

(1) Subgroup report
(2) Cumulative impacts task force report
(3) Update of Southwest Wyoming Resource Evaluation study
(4) Further response from Interior Department on GRBAC Preliminary Report
(5) Public comment.

This meeting is open to the public. Persons interested in making oral comments or submitting written statements for the GRBAC's consideration should notify the GRBAC Coordinator at the above address by November 11. The GRBAC will hear oral comments beginning at 4:00 p.m. on November 13. The GRBAC may establish a time limit for oral statements.

Dated: October 29, 1996.

Michael Dombeck,

Acting Director, Bureau of Land Management.

[FR Doc. 96–28203 Filed 10–31–96; 8:45 am]

BILLING CODE 4310–84–P–M

[ID–045–07–1610–00]

Bureau of Land Management, Challis Resource Area, Idaho

ACTION: Amendment to extend public comment period on Challis Draft Resource Management Plan and Draft Environmental Impact Statement (RMP/EIS).

SUMMARY: On Friday, August 2, 1996 a Notice of Availability of the Challis Draft Resource Management Plan (RMP) and Draft Environmental Impact Statement (EIS) was published in the Federal Register, Vol. 61, No. 150, page 40431. That notice indicated that the public comment period for the Challis Draft RMP/EIS would end November 21, 1996.

The comment period has been extended and will remain open through January 6, 1997.

DATE: The public comment period for the Challis Draft Resource Management Plan and Draft Environmental Impact Statement has been extended and will remain open through January 6, 1997.

ADDRESS: Written comments may be submitted at any time during the comment period to the Bureau of Land Management, Salmon Field Office, Route 2, Box 610, Salmon, Idaho 83467.

FOR FURTHER INFORMATION CONTACT: Kathe Rhodes, Planning and Environmental Coordinator, at the address above, or telephone (208) 756–5440.

Dated: October 25, 1996.

Ted Graf,

Acting District Manager.

[FR Doc. 96–28023 Filed 10–31–96; 8:45 am]

BILLING CODE 4310–GG–M

[WY–921–1430–01; WYW 137811]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) proposes to withdraw approximately 230.71 acres of public land in Park County, to protect important cave resource values found in the Spirit Mountain Caverns located

near Cody, Wyoming. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATES: Comments and requests for meeting should be received on or before January 30, 1997.

ADDRESSES: Comments and meeting requests should be sent to the Wyoming State Director, BLM, P.O. Box 1828, Cheyenne, Wyoming 82003–1828.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, 307–775–6124, or Duane Whitmer, Cody Resource Area Manager, P.O. Box 518, Cody, Wyoming 82414, 307–587–2216.

SUPPLEMENTARY INFORMATION: On September 5, 1996, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry (except for disposal by exchange), under the general land laws, including the mining laws, subject to valid existing rights:

Sixth Principal Meridian, Wyoming

T. 52 N., R. 102 W.,
Sec. 5, lot 19, S½NW¼SE¼, SW¼NE¼SE¼, W½SE¼SE¼, SW¼SE¼, SE¼SW¼;
Sec. 8, NW¼NE¼, NE¼NW¼.

The area described contains approximately 230.71 acres in Park County.

The purpose of the proposed withdrawal is to protect the important cave resource values pending further study and development of appropriate, and possibly longer-term, actions to protect and manage the resources.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Wyoming State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the Federal Register at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the Federal Register, the land will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature which would not impact the geologic/cave resource or impair the existing values of the area may be allowed with the approval of an authorized officer of the Bureau of Land Management during the segregative period.

Alan R. Pierson,

State Director.

[FR Doc. 96–28056 Filed 10–31–96; 8:45 am]

BILLING CODE 4310–22–M

National Park Service

Missouri National Recreational River Advisory Group; Notice of Meeting

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Missouri National Recreational River Advisory Group. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

DATES: Wednesday, November 20, 1996; 1:30 p.m.

ADDRESSES: Community Services Center, Springfield, South Dakota.

AGENDA: (1) Discussion of a group advisory statement concerning the draft general management plan (2) Public comments to the advisory group (3) Final discussions and approval of the advisory group statement to the Secretary of Interior concerning the draft plan. (4) Proposed agenda, date, and time, of the next advisory group meeting. The meeting is open to the public. Interested persons may make oral/written presentation to the Commission or file written statements. Requests for time for making presentations may be made to the Superintendent prior to the meeting or to the Chair at the beginning of the meeting. In order to accomplish the agenda for the meeting, the Chair may want to limit or schedule public presentations.

The meeting will be recorded for documentation and a summary in the form of minutes will be transcribed for dissemination. Minutes of the meeting will be made available to the public after approval by the Commission members. Copies of the minutes may be requested by contacting the Superintendent. An audio tape of the meeting will be available at the headquarters office of the Niobrara/Missouri National Scenic Riverways in O'Neill, Nebraska.

FOR FURTHER INFORMATION CONTACT: Superintendent Warren Hill, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, Nebraska 68763–0591, or at 402–336–3970.

SUPPLEMENTARY INFORMATION: The Missouri National Recreational River Advisory Group was established by the law that established the Missouri National Recreational River, Public Law 102–50. The purpose of the group, according to its charter, is to advise the Secretary of the Interior on matters pertaining to the development of a management plan, and management and operation of the Recreational River. The Missouri National Recreational River is the 39-mile free flowing segment of the Missouri from Fort Randall Dam to the vicinity of Springfield in South Dakota.

Dated: October 21, 1996.

William W. Schenk,

Field Director, Midwest Field Area.

[FR Doc. 96–28070 Filed 10–31–96; 8:45 am]

BILLING CODE 4310–70–P

Notice of Meeting of National Landmarks Committee of National Park System Advisory Board

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the National Landmarks Committee of the Secretary of the Interior's National Park System Advisory Board will be held at 9:00 a.m. on the following date and at the following location.

DATES: November 20, 1996.

LOCATION: Department of the Interior, Conference Room 7000 B, Main Interior Building, 1849 C Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patricia Henry, National Register, History, and Education, National Park Service, P.O. Box 37127, Suite 310, Washington, DC 20013–7127. Telephone (202) 343–8163.

SUPPLEMENTARY INFORMATION: The purpose of the meeting of the National Landmarks Committee of the Secretary of the Interior's National Park System Advisory Board is to evaluate studies of historic properties in order to advise the full National Park System Advisory Board meeting on November 21, 1996, of the qualifications of properties being proposed for National Historic Landmark (NHL) designation, and to recommend to the full board those properties that the committee finds meet the criteria for designation for the National Historic Landmarks Program.

The members of the History Areas Committee are:

Dr. Holly Anglin Robinson, CO-CHAIR
Mr. Parker Westbrook, CO-CHAIR
Dr. David Warren
Dr. Shereen Lerner
Mr. Jerry L. Rogers
Dr. John Vlach
Dr. Richard Guy Wilson
Ms. Elizabeth K. Meyer
Dr. James Horton, *ex officio*

The meeting will include presentations and discussions on the national historic significance and the historic integrity of a number of properties being nominated for National Historic Landmark designation. The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file for consideration by the committee written comments concerning nominations and matters to be discussed pursuant to 36 CFR Part 65. Comments should be submitted to Carol D. Shull, Chief, National Historic Landmarks Survey, and Keeper of the National Register of Historic Places, National Register, History and Education, National Park Service, P.O. Box 37127, Suite 310, Washington, DC 20013–7127.

The nominations to be considered are:

Arizona
Grand Canyon Village, Grand Canyon National Park
Connecticut
Philip Johnson's Glass House, 798–856 Ponus Ridge Road, New Caanan
Illinois
Owen Lovejoy House, East Peru Street, Princeton
Haymarket Martyrs' Monument, 863 S. Des Plaines Avenue, Forest Park
Indiana
Eleutherian College Classroom and Chapel Building, SR 250, Lancaster
Kansas
Spring Hill Ranch, Chase County
Maryland
Greenbelt Historic District, Greenbelt
Massachusetts
Gore Place, 52 Gore Street, Waltham (REVISED DOCUMENTATION)
Montana
Going-to-the-Sun Road, Glacier National Park
North Dakota
Huff Archeological Site, Morton County
Ohio
John Rankin House, 6152 Rankin Road, Ripley
John P. Parker House, 300 Front Street, Ripley
South Dakota
Vanderbilt Archeological Site, Campbell County
Washington
Mount Rainier National Park, Ashford
West Virginia
Matewan Historic District, Matewan

Also, should the necessary waivers be received, the committee will also be considering an additional property: Shelburne Farms, Shelburne, Vermont.

The committee will also be given an introduction and overview to: El Camino Real de Tierra Adentro National Historic Trail feasability study, Texas.

Dated: October 22, 1996.

Carol D. Shull,

Chief, National Historic Landmarks Survey and Keeper, National Register of Historic Places, National Park Service, Washington Office.

[FR Doc. 96–28069 Filed 10–31–96; 8:45 am]

BILLING CODE 4310–70–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearing of the Judicial Conference Advisory Committee on Rules of Appellate Procedure

AGENCY: Judicial Conference of the United States. Advisory Committee on Rules of Appellate Procedure.

ACTION: Notice of cancellation of open hearing.

SUMMARY: The Appellate Rules public hearing scheduled to be held in Denver, Colorado on November 15, 1996, has been canceled. [Original notice of hearing appeared in the Federal Register of August 28, 1996 (61 FR 44345)].

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273–1820.

Dated: October 28, 1996.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 96–28035 Filed 10–31–96; 8:45 am]

BILLING CODE 2210–01–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP No. 1104; ZRIN 1121–ZA–53]

Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of meeting.

SUPPLEMENTARY INFORMATION: A meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention will take place in the District of Columbia, beginning at 1:00 p.m. on Wednesday, November 20, 1996 and ending at 3:00 p.m. on November 20, 1996. This advisory committee, chartered as the Coordinating Council on Juvenile Justice and Delinquency Prevention, will meet at the United States Department of Justice, located at 950 Pennsylvania Avenue, NW., Conference Room 5111, Washington, DC. 20530–0001. The Coordinating Council, established pursuant to Section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App. 2), will meet to carry out its advisory functions under Section 206 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. This meeting will be open to the public. The public is advised that it must enter the building via the Constitution Avenue Visitors Center. For security reasons, members of the public who are attending the meeting must contact the Office of Juvenile Justice and Delinquency Prevention (OJJDP) by close of business November 13, 1996. The public is further advised that a pictured identification is required to enter the building.

FOR FURTHER INFORMATION CONTACT: The point of contact at OJJDP is Lutricia Key who can be reached at (202) 307–5911.

Dated: October 28, 1996.

John J. Wilson,

Deputy Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 96–28044 Filed 10–31–96; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

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 supersedes 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

Connecticut
- CT960001 (March 15, 1996)
- CT960003 (March 15, 1996)
- CT960004 (March 15, 1996)

Maine
- ME960005 (March 15, 1996)
- ME960010 (March 15, 1996)
- ME960022 (March 15, 1996)
- ME960042 (March 15, 1996)

New Jersey
- NJ960002 (March 15, 1996)

New York
- NY960003 (March 15, 1996)
- NY960006 (March 15, 1996)
- NY960008 (March 15, 1996)
- NY960010 (March 15, 1996)
- NY960012 (March 15, 1996)
- NY960013 (March 15, 1996)
- NY960018 (March 15, 1996)
- NY960020 (March 15, 1996)
- NY960042 (March 15, 1996)
- NY960050 (March 15, 1996)
- NY960051 (March 15, 1996)
- NY960074 (March 15, 1996)
- NY960076 (March 15, 1996)

Volume II

Pennsylvania
- PA960001 (March 15, 1996)
- PA960002 (March 15, 1996)
- PA960003 (March 15, 1996)
- PA960004 (March 15, 1996)
- PA960016 (March 15, 1996)
- PA960017 (March 15, 1996)
- PA960020 (March 15, 1996)
- PA960027 (March 15, 1996)
- PA960033 (March 15, 1996)

Volume III

Florida
- FL960034 (March 15, 1996)
- FL960100 (March 15, 1996)

Georgia
- GA960004 (March 15, 1996)
- GA960033 (March 15, 1996)
- GA960050 (March 15, 1996)

Kentucky
- KY960001 (March 15, 1996)
- KY960007 (March 15, 1996)
- KY960027 (March 15, 1996)
- KY960029 (March 15, 1996)
- KY960035 (March 15, 1996)

South Carolina
- SC960033 (March 15, 1996)

Volume IV

Minnesota
- MN960005 (March 15, 1996)
- MN960008 (March 15, 1996)
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- MN960058 (March 15, 1996)
- MN960061 (March 15, 1996)

Ohio
- OH960002 (March 15, 1996)
- OH960012 (March 15, 1996)
- OH960029 (March 15, 1996)
- OH960035 (March 15, 1996)
- OH960038 (March 15, 1996)

Volume V

Louisiana
- LA960001 (March 15, 1996)
- LA960004 (March 15, 1996)
- LA960005 (March 15, 1996)
- LA960009 (March 15, 1996)
- LA960010 (March 15, 1996)
- LA960016 (March 15, 1996)
- LA960018 (March 15, 1996)

Missouri
- MO960001 (March 15, 1996)
- MO960002 (March 15, 1996)
- MO960003 (March 15, 1996)
- MO960006 (March 15, 1996)
- MO960008 (March 15, 1996)
- MO960009 (March 15, 1996)
- MO960011 (March 15, 1996)
- MO960013 (March 15, 1996)
- MO960041 (March 15, 1996)
- MO960042 (March 15, 1996)
- MO960047 (March 15, 1996)
- MO960050 (March 15, 1996)
- MO960051 (March 15, 1996)
- MO960057 (March 15, 1996)
- MO960058 (March 15, 1996)
- MO960060 (March 15, 1996)
- MO960062 (March 15, 1996)
- MO960065 (March 15, 1996)
- MO960067 (March 15, 1996)
- MO960072 (March 15, 1996)

Nebraska
- NE960003 (March 15, 1996)
- NE960038 (March 15, 1996)

Volume VI

North Dakota
- ND960002 (March 15, 1996)
- ND960019 (March 15, 1996)
- ND960026 (March 15, 1996)
- ND960027 (March 15, 1996)
- ND960049 (March 15, 1996)
- ND960050 (March 15, 1996)

Oregon
- OR960001 (March 15, 1996)
- OR960011 (March 15, 1996)
- OR960014 (March 15, 1996)

Washington
- WA960001 (March 15, 1996)
- WA960002 (March 15, 1996)
- WA960003 (March 15, 1996)
- WA960011 (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 25th day of October 1996.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 96–27789 Filed 10–31–96; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Grant Availability Notice; Correction

AGENCY: Institute of Museum Services, NFAH.

ACTION: Correction to grant application availability notice for fiscal year 1997, submitted September 13, 1996 and printed September 26, 1996 on page 50152.

(Catalogue of Federal Domestic Assistance No. 45.301 Institute of Museum Services)

Dated: October 23, 1996.

DEADLINE DATE FOR TRANSMITTAL OF APPLICATIONS: Applications must be mailed or hand-delivered by the deadline date:

Program	Deadline
GOS	February 14, 1997.
CP	February 28, 1997.
PSP	April 11, 1997.
CAP	December 6, 1996.
MAP I	October 25, 1996 and April 25, 1997.
MAP II	March 14, 1997.
MAP III ...	February 28, 1997.
MLI	March 21, 1997.

Diane B. Frankel,

Director, Institute of Museum Services.

[FR Doc. 96–28018 Filed 10–31–96; 8:45 am]

BILLING CODE 7036–01–M

National Endowment for the Arts

National Council on the Arts 129th Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on November 19, 1996 from 9:00 a.m. to 5:30 p.m., in Room M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

This meeting will be open to the public. Topics will include a Congressional Update and Council Letter Committee and American Canvas reports. Discussions will be held on the FY 98 Budget, Guidelines for Grants for Organizations, and Literature Fellowships. Application review will follow discussions.

If, in the course of discussion, it becomes necessary for the Council to discuss nonpublic commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews which are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TTY–TDD 202/682–5429, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from the Office of Communications, National Endowment for the Arts, Washington, D.C. 20506, at 202/682–5570.

Dated: October 27, 1996.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. 96–27995 Filed 10–31–96; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On August 30, 1996, the National Science Foundation published a notice in the Federal Register to permit applications received. Permits were issued on October 22, 1996 to the following applicants:

Natalie Goodall, Permit No. 97–002
Douglas Quinn, Permit No. 97–005
David Ainley, Permit No. 97–010
Gerald L. Kooyman, Permit No. 97–011
Diana W. Freckman, Permit No. 97–013
Ron Naveen, Permit No. 97–015

Nadene G. Kennedy,

Permit Office.

[FR Doc. 96–28040 Filed 10–31–96; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Company (D.C. Cook Nuclear Plant, Units 1 and 2); Exemption

I

Indiana Michigan Power Company (IMPCo, the licensee) is the holder of Facility Operating License Nos. DPR–58 and DPR–74 which authorize operation of the Donald C. Cook Nuclear Plant, Units 1 and 2, respectively. The Cook facilities are pressurized water reactors located at the licensee's site in Berrien County, Michigan. The license provides, among other things, that the facility is subject to all rules, regulations, and

orders of the Commission now or hereafter in effect.

II

Subsection (a) of 10 CFR 70.24, ''Criticality accident requirements,'' requires that each licensee authorized to possess special nuclear material (SNM) shall maintain in each area where such material is handled, used, or stored, an appropriate criticality monitoring system.

In accordance with the Technical Specifications for D. C. Cook, Units 1 and 2, the monitoring requirements of 10 CFR 70.24(a)(2) are applicable. Subsection (a) of 10 CFR 70.24 also requires that emergency procedures be maintained for each area in which licensed SNM is handled, used, or stored to ensure that all personnel withdraw to an area of safety upon the sounding of the alarm. These procedures must include the conduct of drills to familiarize personnel with the evacuation plan, designation of responsible individuals for determining the cause of the alarm, and placement of radiation survey instruments in accessible locations for use in such an emergency. However, exemptions may be requested pursuant to 10 CFR 70.24(d), provided that the licensee believes that good cause exists for the exemption.

By letter dated April 8, 1996, the licensee requested an exemption from the requirements of 10 CFR 70.24. A previous exemption from the provisions of 10 CFR Part 70.24 for the storage of SNM, including reactor fuel assemblies [maximum amount of 2313 kg of U–235 in uranium enriched to no more than 3.15 weight percent (w/o)], was granted to Indiana and Michigan Power Company for D.C. Cook Unit 2 in NRC Materials License No. SNM–1753. The materials license was issued on August 18, 1977. No similar exemption was issued for the Unit 1 materials license; however, the fuel storage facilities were common to both units. The previously issued exemption expired when the materials license expired upon conversion of the construction permit to an operating license on December 23, 1977, for Unit 2. The basis for the current exemption request is the same as for the original request. Specifically, the licensee proposes to handle and store unirradiated fuel without having a criticality monitoring system or emergency procedures as required by 10 CFR 70.24.

The basis for the exemption is that inadvertent or accidental criticality will be precluded through compliance with the Cook Technical Specifications, the geometric spacing of fuel assemblies in the new fuel storage facility and spent fuel storage pool, and administrative controls imposed on fuel handling procedures.

Inadvertent or accidental criticality of SNM while in use in the reactor vessel is precluded through compliance with the Cook Technical Specifications, including reactivity requirements (e.g., shutdown margins, limits on control rod movement), instrumentation requirements (e.g., reactor power and radiation monitors), and controls on refueling operations (e.g., refueling boron concentration and source range monitor requirements). In addition, the operators' attention directed toward instruments monitoring behavior of the nuclear fuel in the reactor assures that the facility is operated in such a manner as to preclude inadvertent criticality. Finally, since access to the fuel in the reactor vessel is not physically possible while in use and is procedurally controlled during refueling, there are no concerns associated with loss or diversion of the fuel.

SNM as nuclear fuel is stored in one of two locations, the spent fuel pool or the new fuel vault. The spent fuel pool is used to store irradiated fuel under water after its discharge from the reactor. The pool is designed to store the fuel in a geometric array that precludes criticality. In addition, existing Technical Specification limits on k_{eff} are maintained less than or equal to 0.95, even in the event of a fuel handling accident. The new fuel vault design precludes criticality by maintaining an effective multiplication factor less than or equal to 0.95 when the racks are fully loaded and in the normal dry condition or under full water density flooded conditions. The effective multiplication factor is also less than or equal to 0.98 under optimum moderation conditions. The new fuel vault is used to receive and store new fuel in a dry condition upon arrival on site and prior to loading in the reactor. Administrative controls encompass placing the assemblies in the fuel inspection stand, performing inspection activities, and lifting and placement of the assemblies into specified locations in the new fuel vault.

The new fuel vault is protected from the effects of natural phenomena, including earthquakes, tornadoes, hurricanes, floods, and external missiles. The auxiliary building which houses the new fuel vault is designed to Seismic Class I by a dynamic analysis using Response Spectrum and Modal Analysis Procedure to maintain structural integrity after a safe shutdown earthquake (SSE) or following a postulated hazard, such as fire, internal missiles, or pipe break. The new fuel racks are designed to Seismic Class III by an analysis using the procedures of the Uniform Building Code.

Both irradiated and unirradiated fuel is moved to and from the reactor vessel and the spent fuel pool to accommodate refueling operations. Also, unirradiated fuel can be moved to and from the new fuel storage area. In addition, movements of fuel into the facility and within the reactor vessel or within the spent fuel pool occur. Fuel movements are procedurally controlled and designed to preclude conditions involving criticality concerns. In addition, the Technical Specifications specifically address the refueling operations and limit the handling of fuel to ensure against an accidental criticality and to preclude certain movements over the spent fuel pool and the reactor vessel.

Based upon the information provided, there is reasonable assurance that irradiated and unirradiated fuel will remain subcritical. The circumstances for granting an exemption to 10 CFR 70.24 are met because criticality is precluded with the present design configuration, Technical Specifications requirements, administrative controls, and the fuel handling equipment and procedures. Therefore, the staff concludes that the licensee's request for an exemption from the requirements of 10 CFR 70.24 is acceptable and should be granted.

III.

Accordingly, the Commission has determined that, pursuant to 10 CFR 70.14, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants Indiana Michigan Power Company an exemption as described in Section II above from 10 CFR 70.24, ''Criticality accident requirements,'' for D.C. Cook, Units 1 and 2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (61 FR 39672).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 28th day of October 1996.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96–28054 Filed 10–31–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket Number 40–6659]

Petrotomics Company; Notice of Receipt of Application for Establishing Alternate Concentration Limits in Source Material License SUA–551 for the Shirley Basin, Wyoming Uranium Mill Site; Hearing Opportunity

AGENCY: Nuclear Regulatory Commission.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated September 10, 1996, an application from Petrotomics Company (Petrotomics) to establish Alternate Concentration Limits, Points of Compliance, Points of Exposure, and Restricted Area boundary, and amend accordingly Source Material License No. SUA–551 for the Shirley Basin Wyoming uranium mill.

FOR FURTHER INFORMATION CONTACT: Mohammad W. Haque, Uranium Recovery Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6640.

SUPPLEMENTARY INFORMATION: Petrotomics' application to amend Source Material License SUA–551, which describes the proposed change and the reasons for the request is being made available for public inspection at the NRC's Public Document Room at 2120 L Street, NW (Lower Level), Washington, DC 20555.

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR Part 2, Subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for hearing must be filed within 30 days of the publication of this notice in the Federal Register. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Service Branch.

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Petrotomics Company, P.O., Box 8509, Shirley Basin, Wyoming 82615, Attention: Ron Juday; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

Dated at Rockville, Maryland, this 21st day of October 1996.

Joseph J. Holonich,

Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96–28053 Filed 10–31–96; 8:45 am]

BILLING CODE 7590–11–P

OFFICE OF PERSONNEL MANAGEMENT

[Form OFI–10]

Proposed Collection; Comment Request

AGENCY: Office of Personnel Management.

ACTION: Proposed collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and 5 CFR 1320.5 (a)(i)(iv), this notice announces that OPM intends to submit to the office of Management and Budget (OMB) a request for reclearance of an information collection. The Mail Reinterview, OFI Form 10, is completed by individuals who have been interviewed by a contract investigator during the course of a personnel investigation. This form asks questions regarding the performance of the investigator.

It is estimated that 5700 individuals will respond annually, each response requiring approximately 6 minutes to complete, for a total burden of 570 hours

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication. To obtain copies of the proposal please contact James M. Farron at 202–418–3208 or by email to jmfarron@opm.gov.

Submit comments on this proposal to Richard A. Ferris, Office of Personnel Management, Room 200, 600 E. Street N.W., Washington, D.C. 20004.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–28011 Filed 10–31–96; 8:45 am]

BILLING CODE 6325–01–M

[SF 2800]

Proposed Collection; Comment Request Review of a Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management will be submitting to the Office of Management and Budget a request for reclearance of an information collection. SF 2800, Application for Death Benefits Under the Civil Service Retirement System, is used by survivors to apply for death benefits.

We estimate 70,000 forms are completed annually. Each form takes approximately 30 minutes to complete. The annual estimated burden is 35,000 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@mail.opm.gov

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESS: Send or deliver comments to—Lee Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415–0001.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–0623.

U.S. Office of Personnel Management

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–28012 Filed 10–31–96; 8:45 am]

BILLING CODE 6325–01–M

[Forms RI 20–7 and RI 30–3]

Proposed Collection; Comment Request for Review of a Revised Information Collection:

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for clearance of a revised information collection. RI 20–7, Representative Payee Application, is used by CSRS and FERS to collect information from persons applying to be fiduciaries for annuitants or survivor annuitants who appear to be incapable of handling their own funds or for minor children. RI 30–3, Information Necessary for a Competency Determination, collects medical information regarding the annuitant's competency for OPM's use in evaluating the annuitant's condition.

Approximately 12,480 RI 20–7 forms will be completed annually. Each form requires approximately 30 minutes to complete. The annual burden is 6,240 hours. Approximately 250 RI 30–3 forms will be completed annually. Each form requires approximately 1 hour to complete. The total annual burden is 6,490 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@mail.opm.gov

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESS: Send or deliver comments to—Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–28013 Filed 10–31–96; 8:45 am]

BILLING CODE 6325–01–M

[RI 92–22]

Proposed Collection; Comment Request for Review of a Revised Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management has submitted to the Office of Management and Budget a request for clearance of a revised information collection. RI 92–22, Annuity Supplement Earnings Report, is used annually to obtain the amount of personal earnings from annuity supplement recipients to determine if there should be a reduction in benefits paid to the annuitant.

Approximately 160 RI 92–22 forms will be completed annually. Each form requires approximately 15 minutes to complete. The annual estimated burden is 40 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@mail.opm.gov.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Victor J. Roy, Chief, Entitlements Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 2342, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–28014 Filed 10–31–96; 8:45 am]

BILLING CODE 6325–01–M

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Patricia Paige, (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on September 27, 1996 (61 FR 50886). Individual authorities established or revoked under Schedules A and B and established under Schedule C between September 1, 1996, and September 31, 1996, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authorities were established or revoked in September 1996.

Schedule B

No Schedule B authorities were established in September, 1996.

The following Schedule B authority was revoked in September, 1996:

Department of Labor

Office of the Inspector General. Not to exceed 110 positions of Criminal Investigator (Special Agent), GS–1811–5/15, in the Office of Labor Racketeering. Effective September 20, 1996.

Schedule C

The following Schedule C authorities were established in September, 1996:

Department of Agriculture

Special Assistant to the Director, Empowerment Zone/Enterprise Community. Effective September 4, 1996.

Confidential Assistant to the Administrator, Foreign Agricultural Service. Effective September 5, 1996.

Confidential Assistant to the Deputy Under Secretary for Policy and Planning. Effective September 10, 1996.

Confidential Assistant to the Administrator, Rural Utilities Service. Effective September 12, 1996.

Confidential Assistant to the Administrator, Foreign Agricultural Office. Effective September 27, 1996.

Confidential Assistant to the Secretary of Agriculture. Effective September 27, 1996.

Confidential Assistant to the Deputy Under Secretary for Research, Education and Economics. Effective September 30, 1996.

Department of Commerce

Senior Advisor to the Chief of Staff. Effective September 12, 1996.

Special Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective September 12, 1996.

Confidential Assistant to the Chief of Staff. Effective September 12, 1996.

Confidential Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective September 12, 1996.

Confidential Assistant to the Director for Communications and Press Secretary. Effective September 12, 1996.

Confidential Assistant to the Senior Advisor to the Secretary. Effective September 12, 1996.

Special Assistant to the General Counsel. Effective September 27, 1996.

Department of Defense

Personal and Confidential Assistant to the Principal Deputy Under Secretary of Defense for Policy. Effective September 4, 1996.

Special Assistant to the Under Secretary of Defense for Personnel and Readiness for External Affairs and Management Support. Effective September 13, 1996.

Special Assistant for Outreach to the Deputy Under Secretary of Defense (Environmental Security). Effective September 27, 1996.

Special Assistant to the Principal Deputy Under Secretary of Defense for Policy. Effective September 30, 1996.

Department of Education

Confidential Assistant to the Assistant Secretary, Office of Civil Rights. Effective September 4, 1996.

Confidential Assistant to the Counselor to the Secretary. Effective September 9, 1996.

Confidential Assistant to the Director, Office of Public Affairs. Effective September 12, 1996.

Special Assistant to the Director, Scheduling and Briefing, Office of the Secretary. Effective September 24, 1996.

Confidential Assistant to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs. Effective September 30, 1996.

Department of Health and Human Services

Executive Assistant to the Assistant Secretary for Planning and Evaluation. Effective September 17, 1996.

Special Assistant to the Director, Office of Professional Relations. Effective September 20, 1996.

Department of Housing and Urban Development

Special Assistant to the General Counsel. Effective September 19, 1996.

Department of Justice

Special Assistant to the Commissioner, Immigration and Naturalization Service. Effective September 19, 1996.

Department of Labor

White House Liaison to the Deputy Secretary. Effective September 13, 1996.

Secretary's Representative to the Associate Director, Office of Congressional and Intergovernmental Affairs. Effective September 20, 1996.

Department of State

Foreign Affairs Officer to the Deputy Assistant Secretary for Public Affairs. Effective September 6, 1996.

Special Assistant to the Director, Policy Planning Staff. Effective September 18, 1996.

Department of Transportation

Scheduling Assistant to the Special Assistant for Scheduling and Advance. Effective September 12, 1996.

Special Assistant to the Assistant to Secretary and Director of Public Affairs. Effective September 27, 1996.

Department of the Treasury

Special Assistant to the Chief of Staff. Effective September 13, 1996.

Environmental Protection Agency

Executive Assistant to the Associate Administrator for Regional Operations and State and Local Relations. Effective September 5, 1996.

Special Assistant/Advanced Program Advisor to the Assistant Administrator for Enforcement and Compliance Assurance. Effective September 30, 1996.

Export-Import Bank of the United States

Administrative Assistant to the Director, a Member of the Bank Board of Directors. Effective September 4, 1996.

National Endowment for the Humanities

Special Assistant to the Chairman. Effective September 5, 1996.

Director of Enterprise and Congressional Liaison to the Chairman. Effective September 12, 1996.

Occupational Safety and Health Review Commission

Counsel to a Commissioner to the Member (Commissioner). Effective September 12, 1996.

Office of Personnel Management

Communications Assistant to the Director, Office of Communications. Effective September 12, 1996.

Office of the United States Trade Representative

Congressional Affairs Specialist to the Assistant United States Trade Representative for Congressional Affairs. Effective September 12, 1996.

President's Commission on White House Fellowships

Special Assistant to the Director, President's Commission on White House Fellowships. Effective September 12, 1996.

Small Business Administration

Deputy Scheduler to the Director of Scheduling. Effective September 27, 1996.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P. 218.

Office of Personnel Management

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–28015 Filed 10–31–96; 8:45 am]

BILLING CODE 6325–01–M

POSTAL SERVICE

Sunshine Act Meeting; Board of Governors

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, November 4, 1996, and at 8:30 a.m. on Tuesday, November 5, 1996, in Washington, D.C.

The November 4 meeting is closed to the public (see 61 FR 54245, October 17, 1996, and the additional notice published in today's Federal Register). The November 5 meeting is open to the public and will be held at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, Thomas J. Koerber, at (202) 268–4800.

Agenda

Monday Session

November 4—1:00 p.m. (Closed)

1. Consideration of a New Business Venture. (Allen R. Kane, Chief Marketing Officer and Senior Vice President)

2. Postal Rate Commission Docket No. MC96–3, Special Services Fees and Classification. (John H. Ward, Vice President, Marketing Systems)
3. Proposed Filing with the Postal Rate Commission for Parcels/Expedited Mail. (John H. Ward, Vice President, Marketing Systems)
4. Consideration of Funding Approval for the Minneapolis, Minnesota, Information Service Center/Accounting Operations Center. (Messrs. Porras, Umscheid and Weirich)

Tuesday Session

November 5—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, October 7–8, 1996.
2. Remarks of the Postmaster General/Chief Executive Officer. (Marvin Runyon)
3. Quarterly Report on Service Performance. (Yvonne D. Maguire, Vice President and Consumer Advocate)
4. Fiscal Year 1997 Financing Plan. (Michael J. Riley, Chief Financial Officer, and Stephen M. Kearney, Treasurer, Corporate Treasury)
5. Capital Investments.
   a. Kansas City, Missouri, Processing and Distribution Center. (William J. Brown, Vice President, Mid-West Area Operations)
   b. Computerized On-Site Data Entry System (CODES) Replacement Project. (Michael J. Riley, Chief Financial Officer)
6. Tentative Agenda for the December 2–3, 1996, meeting in Washington, D.C.

Thomas J. Koerber,

Secretary.

[FR Doc. 96–28253 Filed 10–30–96; 8:45 am]

BILLING CODE 7710–12–M

Sunshine Act Meeting; Board of Governors; Addition to Closed Meeting Agenda

By telephone vote on October 23, 1996, a majority of the members contacted and voting, the Board of Governors voted to add to the agenda of its November 4, 1996, meeting, closed to public observation (see 61 FR 54245, October 17, 1996), consideration of a new business venture.

The Board determined that pursuant to section 552b(c) (3) and (4) of Title 5, United States Code; section 410(c)(2) of Title 39, United States Code; and section 7.3(d) of Title 39, Code of Federal Regulations, the discussion is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)].

The Board further determined that the public interest does not require that the Board's discussion of these matters be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation pursuant to section 552b(c) (3) and (4) of Title 5, United States Code; section 410(c)(2) of Title 39, United States Code; and section 7.3(d) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, Thomas J. Koerber, at (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 96–28254 Filed 10–30–96; 2:13 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22298; 811–3977]

Baird Capital Development Fund, Inc.; Notice of Application

October 25, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Baird Capital Development Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on August 19, 1996 and amended on October 22, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 19, 1996, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Mercer E. Bullard, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company that was organized as a Wisconsin corporation on February 21, 1984. On February 27, 1984, applicant registered under the Act and filed a registration statement pursuant to section 8(b) of the Act. On the same date, applicant filed a registration statement on Form N–1A to register an indefinite number of shares of its common stock that became effective on July 2, 1984. Applicant's initial public offering commenced on that date.

2. On December 20, 1995, applicant's Board of Directors (''Directors'') approved and recommended an Agreement and Plan of Reorganization (the ''Agreement''), pursuant to which applicants' portfolio securities and other assets would be transferred to AIM Capital Development Fund (''AIM Fund''), a series of AIM Equity Funds, Inc. Proxy materials were filed with the SEC on December 29, 1995 and were distributed to shareholders on or about February 2, 1996. At a meeting held on March 15, 1996, applicant's shareholders approved the Agreement.

3. The transfer of the portfolio securities and other assets to the AIM Fund occurred on August 12, 1996. As consideration for the transfer, AIM Equity Funds, Inc. issued shares of AIM Fund directly to the shareholders of applicant, and the shares of applicant were thereupon cancelled. The aggregate value of the AIM Fund shares so issued was equal to the aggregate net value of applicant's assets transferred in the transaction, and each shareholder of applicant received AIM Fund shares having a net asset value equal to the shares of applicant held by such shareholder immediately prior to the reorganization.

4. In connection with the reorganization, the applicant incurred approximately $4,270 of expenses, consisting of legal fees. Fees and expenses incurred in applicant's liquidation amounted to approximately $1,500. All of such fees and expenses were paid from the assets of applicant retained in the reorganization for such purpose. No brokerage commissions were incurred in connection with the reorganization.

5. At the time of the application, applicant had no outstanding shareholders, assets, debts, or liabilities. Applicant is not a party to any litigation or administrative proceeding.

6. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs. Applicant filed articles of dissolution with the Wisconsin Secretary of State on August 14, 1996, to terminate its corporate existence.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–27998 Filed 10–31–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22297; 812–10276]

The Gannett Welsh & Kotler Funds, et al.; Notice of Application

October 25, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: The Gannett Welsh & Kotler Funds (the ''Trust''), GW&K Equity Fund, L.P. (the ''Partnership''), Gannett Welsh & Kotler, Inc. (the ''Adviser''), and GSD, Inc. (the ''General Partner'').

RELEVANT ACT SECTIONS: Order requested under section 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit the exchange of shares of a series of the Trust for portfolio securities of an affiliated Partnership. Thereafter, the Partnership will dissolve and distribute the shares it received in the exchange *pro rata* to its partners.

FILING DATE: The application was filed on July 26, 1996 and amended on October 21, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 19, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 222 Berkeley Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Mercer E. Bullard, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a Massachusetts business trust that has filed to be registered under the Act as an open-end management investment company. The registration statement has not yet been declared effective, and no offering of shares has commenced. The Trust initially will offer two series of shares, the GW&K Equity Fund (the ''Equity Fund'') and the GW&K Government Securities Fund. The investment objective of the Equity Fund is long-term total return from a combination of capital growth and growth of income. Shares of the Equity Fund will not be subject to front-end or contingent deferred sales loads or redemption fees. The Trust has adopted a distribution expense plan pursuant to rule 12b–1 of the Act. Applicants anticipate that shares of the Equity Fund will be marketed in much the same manner as the interests in the Partnership have been marketed to date.

2. The Partnership was organized in 1991 as a limited partnership under Delaware law. The Partnership has not been registered under the Act in reliance upon section 3(c)(1) of the Act, and the Partnership interests have not been registered under the Securities Act in reliance upon section 4(a) of the Securities Act. The Partnership's investment objective is to realize long-term total return from a combination of capital growth and growth of income, by investing in a diversified portfolio of equity securities. The General Partner is the sole general partner of the Partnership and a wholly owned subsidiary of the Adviser. All of the principals of the General Partner are principals of the Adviser. As of June 30, 1996, the General Partner had capital invested in the Partnership representing .5% of the net assets of the Partnership. The General Partner received its interest in the Partnership in exchange for cash. The Adviser is the investment adviser of the Partnership and the Trust and is registered as an Investment Adviser under the Investment Advisers Act of 1940.

3. Applicants propose that the Equity Fund will exchange substantially all of the properties and assets of the Partnership prior to offering the shares to the public. Thereafter, the Partnership will dissolve and distribute the shares it received to its partners *pro rata,* including the General Partner, along with cash received from the sale of portfolio securities, if any, of the Partnership not acquired by the Equity Fund. The Partnership will retain assets sufficient, in the judgment of the Partnership, to pay the Partnership's debts, obligations and liabilities. Immediately following the exchange transaction (the ''Exchange''), partners of the Partnership will constitute all of the holders of shares of the Equity Fund, except for shares representing seed capital contributed to the Equity Fund by the Adviser or one of its affiliates pursuant to section 14(a) of the Act.

4. The proposed Exchange will be effectuated pursuant to an agreement and plan of exchange (the ''Plan'') to be approved by the limited partners of the Partnership. Solicitation of the limited partners for approval of the Plan will be made by means of a prospectus/information statement. Securities of the Partnership will be acquired and valued by the Equity Fund at the time of acquisition in accordance with the pricing mechanism adopted by the Board of Trustees of the Trust and set forth in the N–1A Registration Statement, which is equivalent to the independent ''current market price'' of the securities as defined in rule 17a–7 under the Act. The Equity Fund will not acquire securities from the Partnership if, in the opinion of the Adviser, the acquisition would result in a violation of the Equity Fund's investment objectives, policies, or restrictions. The Equity Fund will have the authority to pay proceeds of a redemption of shares of a former partner of the Partnership in-kind, rather than in cash, in order to avoid the incurrence of excessive brokerage costs by the Equity Fund after the Exchange. No affiliated person of the Trust, the Adviser or the General Partner, or affiliated persons of any such person, will receive the proceeds of redemptions in-kind.

5. The General Partner has considered the desirability of the Exchange from the point of view of the Partnership and has concluded that (a) the Exchange is in the best interests of the Partnership and the limited partners and (b) the

Exchange will not dilute the financial interests of the partners when their Partnership interests are converted to shares of the Equity Fund.

6. The Plan will not be submitted to the limited partners of the Partnership unless a majority of the board of trustees of the Trust, including a majority of the non-interested members, conclude that (a) the Exchange is in the best interest of the Equity Fund, the Partnership, and the limited partners of the Partnership; (b) the Exchange will not dilute the financial interests of the Equity Fund's sole shareholder or of the partners of the Partnership when their interests are converted to shares of the Equity Fund, and (c) the terms of the Exchange as reflected in the Plan have been designed to meet the criteria contained in section 17(b) of the Act, i.e., that the Exchange be reasonable and fair, not involve overreaching and be consistent with the policies of the Equity Fund. The trustees will consider each aspect of the Exchange, including (i) the method of valuing the portfolio securities to be acquired from the Partnership, (ii) the net asset value of the shares to be delivered to the Partnership, (iii) the procedure for selecting among the portfolio securities of the Partnership, (iv) the possibility of the Equity Fund's incurring excessive brokerage costs as a result of redemptions of shares by former partners of the Partnership, (v) the allocation of the costs of the Exchange, (vi) the possibility of adverse tax consequences to future shareholders of the Equity Fund resulting from the carrying forward of unrealized capital gains from the Partnership to the Equity Fund, and (vii) the benefits from the Exchange accruing to the General Partner and the Adviser.

7. The Exchange will not be effected unless: (a) the registration statements of the Equity Fund have been declared effective, (b) the limited partners of the Partnership have approved the Plan, (c) the requested order has been granted, and (d) the Trust has received an opinion of counsel that (i) the distribution of shares from the Partnership to its limited partners, which will be in liquidation of the Partnership, will not cause taxable gain or loss to be recognized by the limited partners, (ii) the basis to the limited partners for the shares will be equal to the adjusted basis of the limited partners' interests in the Partnership, and (iii) the limited partners' holding periods with respect to the shares will include the Partnership's holding periods with respect to the shares.

8. The Exchange has been proposed primarily for two reasons. First, the Exchange will permit limited partners of the Partnership to pursue as shareholders of the Equity Fund substantially the same investment objective and policies in a larger fund. Second, the Equity Fund will be simpler to operate because complicated allocation calculations that the Partnership must make would not apply to the Equity Fund, and operating as a registered investment company would eliminate other administrative burdens and filing requirements currently faced by the Partnership.

9. The General Partner will assume all costs of the Exchange, including the cost of transferring the Partnership's portfolio securities to the account of the Equity Fund and the cost of issuing shares of the Equity Fund in the Exchange, as well as the legal fees and expenses relating to the application for exemptive relief and obtaining an opinion of counsel on certain tax matters. No brokerage commission, fee, or other remuneration will be paid in connection with the Exchange.

10. After the Exchange is accomplished, the former portfolio manager of the Partnership and then-current manager of the Equity Fund intends for the foreseeable future to manage the assets of the Equity Fund in substantially the same manner as he had previously managed the Partnership, except as may be necessary or desirable (a) in order to qualify as a regulated investment company under the Internal Revenue Code of 1986, (b) in order to comply with investment restrictions adopted by the Equity Fund in accordance with the requirements of the Act or securities laws of states where the Fund's shares will be offered, or (c) in light of changed market conditions.

Applicants' Legal Conclusions

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company from selling to or purchasing from such investment company any security. Applicants state that the Partnership may be considered an affiliated person of the Trust because the Partnership and the Trust may be deemed under the control of the Adviser, because of its being the investment adviser of both the Partnership and the Trust. Thus, unless the requested relief is granted, the proposed Exchange may be prohibited under section 17(a) of the Act if the Exchange is viewed as a principal transaction between the Trust and the Partnership.

2. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the transaction is consistent with the policies of the registered investment company, and the transaction is consistent with the general purposes of the Act.

3. Applicants believe that the proposed transaction satisfies the criteria of section 17(b). Applicants contend the terms of the Exchange are reasonable and fair because the Equity Fund and the Partnership have similar investment objectives and policies, and the Equity Fund will attempt to provide investors with portfolio securities substantially similar to that held by the Partnership. Applicants also note that the Equity Fund will acquire the Partnership securities at their independent ''current market price,'' as defined in rule 17a–7. Applicants believe that this price will be as advantageous to the Equity Fund as open-market purchases. In addition, by acquiring suitable securities from the Partnership, applicants argue that the Equity Fund will avoid incurring brokerage and other transaction costs. Applicants further note that the terms of the Exchange will result in no gain or loss being recognized by partners of the Partnership. Finally, applicants note that shares of the Equity Fund will be issued at net asset value.

4. Applicants believe the Exchange is consistent with the policies of the Equity Fund because the Equity Fund will acquire securities that the Adviser has previously purchased on the basis of substantially similar objectives and policies. After the Exchange, limited partners will hold substantially the same assets as the Equity Fund's shareholders as they had previously held as limited partners of the Partnership. In this sense, the Exchange can be viewed as a change in the form in which assets are held, rather than as a disposition giving rise to section 17(a) concerns. Finally, applicants believe the proposed Exchange does not give rise to the abuses that section 17(a) was designed to prevent and is consistent with the policies underlying the adoption of rule 17(a)–7.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–28004 Filed; 10–31–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22300; 812–10368]

HLM Global Equity Limited Partnership, et al.; Notice of Application

October 28, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: HLM Global Equity Limited Partnership (the ''Partnership''), Harding, Loevner Funds, Inc. (the ''Company''), and Harding Loevner Management, L.P. (''HLM'').

RELEVANT ACT SECTIONS: Order requested under section 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit the Partnership to transfer substantially all of its assets and liabilities to a series of the Company in exchange for the series' shares, which then would be distributed *pro rata* to partners of the Partnership.

FILING DATES: The application was filed on September 27, 1996. By letter dated October 24, 1996, applicants' counsel stated that an amendment, the substance of which is incorporated herein, will be filed during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 22, 1996, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 600 Fifth Avenue, 26th Floor, New York, New York 10020.

FOR FURTHER INFORMATION CONTACT: Brian T. Hourihan, Senior Counsel, at (202) 942–0526, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Partnership is a New Jersey limited partnership with an investment objective of seeking long-term capital appreciation through investments in equity securities of companies based both in and outside the United States. Investors may purchase or redeem Partnership interests (''Units'') at net asset value on a quarterly basis. The Partnership is not registered under the Act in reliance on section 3(c)(1) of the Act. The Units are offered as private placements under section 4(2) of the Securities Act of 1933 and Regulation D promulgated thereunder, and are sold to institutional investors and high net worth individuals. The Partnership's operations are governed by a limited partnership agreement (the ''Partnership Agreement'').

2. HLM is a registered investment adviser under the Investment Advisers Act of 1940. HLM serves as the sole general partner of the Partnership and has exclusive management and control of the business and assets of the Partnership. HLM has authority, on behalf of the Partnership, to do any acts that it deems advisable to further the purposes of the Partnership and that are not prohibited by the Partnership Agreement or applicable law.

3. The Company, a Maryland corporation, is a registered open-end investment company formed as a series company. Currently, the Company has four portfolios in registration. The Company proposes to offer a portfolio designated as the Global Equity Portfolio (the ''GE Portfolio''), which will correspond to the Partnership in terms of investment to objectives and policies.

4. The Company proposes to enter into an advisory agreement with HLM, which will provide advisory and portfolio management services to the Company that are substantially the same as those it currently renders to the Partnership. In addition, the Company proposes to enter into an administration agreement with AMT Capital Services, Inc. (''AMT Capital'') for the provision of administrative services to, and assistance in managing and supervising all aspects of, the general day-to-day business activities and operations of the Company other than investment advisory activities. The Company will pay AMT Capital a monthly fee based on the average daily net assets of the Company. The GE Portfolio will pay a proportionate share of the fee based on its relative net assets.

5. Applicants propose that, pursuant to an Agreement and Plan of Exchange (the ''Plan''), the Company, on behalf of the GE Portfolio, will acquire the assets and liabilities of the Partnership in exchange for GE Portfolio shares (the ''Exchange''). The GE Portfolio shares delivered to the Partnership in the Exchange will have an aggregate net asset value equivalent to the net asset value of the assets transferred by the Partnership to the Company (except for the effect of organizational expenses paid by the GE Portfolio). Upon the consummation of the Exchange, the Partnership will distribute the GE Portfolio shares to its partners, with each partner receiving a number of shares having an aggregate net asset value equivalent to the net asset value of the Units in the Partnership held by such partner prior to the Exchange (except for the effect of organizational expenses paid by the GE Portfolio and the effect of any retained assets and liabilities). The Partnership may retain sufficient assets to pay any accrued expenses that are not transferred to the GE Portfolio and may retain any assets that the GE Portfolio is not permitted to purchase or that are reasonably determined to be unsuitable for it. Assets retained in excess of any amounts needed to pay expenses will be distributed *pro rata* to the partners of the Partnership. The Partnership will be liquidated and dissolved following the distribution.

6. The Partnership Agreement does not contemplate the conversion of the Partnership into a mutual fund format. Accordingly, the general partner, HLM, could be deemed not to have the authority under the terms of the Partnership Agreement to carry out the Plan unilaterally. HLM, therefore, has proposed in the proxy materials to be delivered to each limited partner that the limited partners approve the Plan and an amendment to the Partnership Agreement to allow it to carry out the terms of the Plan. The proxy materials will describe the nature of and reasons for the Exchange, the tax and other consequences to the limited partners, and other relevant matters, including investment objectives and policies, fee structures, and financial information. Limited partners who do not wish to participate in the conversion of the Partnership will have adequate opportunity to redeem their Partnership Units before the conversion occurs. As a result, no limited partner will receive GE Portfolio shares in exchange for his or her Partnership Units unless such limited partner determines to retain his or her investment.

7. The expenses of the Exchange will be borne by HLM. GE Portfolio organizational expenses will be paid by GE Portfolio and amortized over five years. The amortization of such organizational expenses will be included in the calculation of annual expenses subject to an expense limitation. Any unamortized organizational expenses of the Company at the time HLM withdraws its initial investment in the Company will be borne by HLM and not the Company.

8. The management fees for the GE Portfolio will not exceed the maximum fees currently paid by the limited partners in the Partnership. Applicants expect that other GE Portfolio expenses generally will be higher as a percentage of net asset value than the expenses of the Partnership. This is primarily because of the increased costs of operating as a registered investment company and compliance with additional regulatory requirements. HLM will, however, place a cap on annual expenses of the GE Portfolio at 1.25% of the average daily net assets. This cap will continue at the discretion of, and until further notice from, HLM.

9. The Exchange will establish the GE Portfolio as a successor investment vehicle to the Partnership. After the exchange is accomplished, HLM intends, for the foreseeable future, to manage the assets of the GE Portfolio in substantially the same manner as it had previously managed the assets of the Partnership. The Exchange will permit partners to pursue as shareholders of the GE Portfolio the same investment objectives and policies they were expecting from the Partnership without sacrificing the pass-through tax features of the Partnership. In addition, shareholders of the GE Portfolio will be able to purchase and redeem shares on each business day, as opposed to only once per quarter as currently provided under the Partnership Agreement.

10. The Company's board of directors and HLM have considered the desirability of the Exchange from the respective points of view of the Company and the Partnership. A majority of the members of the Company's board (including a majority of the independent directors) and HLM have approved the Exchange and have concluded respectively that: (a) the Exchange is desirable as a business matter for both the Company and the Partnership; (b) the Exchange is in the best interests of the Company and the Partnership; (c) the Exchange is reasonable and fair, does not involve overreaching, and is consistent with the policies of the Act; (d) the Exchange is consistent with the policies of the Company and the Partnership; and (e) the interests of existing shareholders in the Company and existing partners in the Partnership will not be diluted as a result of the Exchange. These findings, and the basis upon which such findings were made, are fully recorded in the respective minute books of the Company and HLM.

11. The Exchange will not be effected unless and until the registration statements have been declared effective, the SEC has issued the requested order, and the Company has received a favorable opinion of counsel with respect to the tax consequences of the Exchange.

Applicants' Legal Analysis

1. Section 17(a) of the Act prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, from selling to or purchasing from such company any security or other property. Section 2(a)(3) of the Act defines an ''affiliated person,'' among other things, as any person directly or indirectly controlling, controlled by, or under common control with, such other person, any officer, director, partner, copartner, or employee of such other person, and, if such other person is an investment company, any investment adviser thereof. Therefore, the Partnership may be considered an affiliated person of the Company because the Partnership and the Company may be deemed to be under the common control of HLM, as the investment adviser. Similarly, the Partnership may be an affiliated person of an affiliated person of the Company because HLM is the general partner of the Partnership and also is the investment adviser to the Company. Thus, the proposed Exchange may be prohibited by section 17(a).

2. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that: (a) the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Applicants believe that the terms of the proposed Exchange are consistent with the standards of section 17(b). They represent, among other things, that the investment objectives and policies of the GE Portfolio are substantially similar to the Partnership and that the limited partners will hold substantially the same assets as GE Portfolio shareholders as they had previously held as limited partners. Applicants state that the Exchange will result in no gain or loss being recognized by the partners of the Partnership. Thus, the partners will become investors in an entity that offers greater liquidity and other advantages, without immediate tax consequences and without having incurred transaction and brokerage charges in order to do so. In addition, the shareholders of the Company will be able to purchase and redeem shares on each business day, as opposed to only once per quarter as is currently provided under the Partnership Agreement.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–28075 Filed 10–31–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26597]

Filings Under the Public Utility Holding Company Act of 1935, as amended (''Act'')

October 25, 1996.

Notice is hereby given that the following filing(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 applications(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 November 18, 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.

New England Electric System (70–7338)

New England Electric System (''NEES''), 25 Research Drive, Westborough, Massachusetts 01582, a registered holding company, has filed a post-effective amendment under sections 6(a) and 7 to its application-declaration filed previously under sections 6(a), 7, 9(a), 10 and 12(c) of the Act and rules 42 and 50(a)(5) thereunder.

By orders dated August 1, 1977, June 7, 1979, December 22, 1981, September 28, 1982, November 19, 1985, March 10, 1987, February 22, 1991 and December 29, 1993 (HCAR Nos. 20121, 21091, 22333, 22649, 23913, 24337, 25261 and 25966, respectively), NEES was authorized to issue and sell, through December 31, 1996, up to an aggregate of 10,693,536 shares of its authorized but unissued common stock, $1.00 par value, pursuant to the NEES System Dividend Reinvestment and Common Share Purchase Plan (''Plan''). NEES has issued 9,093,835 of such shares through August 31, 1996 under the Plan. The Plan also provides that NEES may elect to purchase shares of its common stock on the open market and resell those shares to the Plan at the market price.

NEES now proposes to renew its authority through December 31, 2001 to issue and sell up to 10,693,536 shares of its authorized but unissued common stock pursuant to its Plan, such that, together with any other shares of common stock issued and sold under the Plan, the aggregate does not exceed 10,693,536 shares of common stock. In addition to the unissued shares of common stock, NEES may elect to purchase shares of its common stock on the open market and sell these shares to the Plan at the market price. In all respects, the terms and conditions associated with the issuance and sale of the common shares will remain as previously authorized.

The proceeds from the sale of the common stock will be added to NEES' general funds and be used for any or all of the following purposes: (1) investment in NEES' subsidiaries; (2) repayment of NEES' debt; and (3) for other corporate purposes relating to ordinary business operations, including working capital.

Central and South West Corporation, et al. (70–8133)

Central and South West Corporation, 1616 Woodall Rodgers Freeway, P.O. Box 660164, Dallas, Texas 75202, a registered holding company, and its direct and indirect subsidiaries, CSW Energy, Inc. (''CSW Energy''), 1616 Woodall Rodgers Freeway, P.O. Box 660789, Dallas, Texas 75202, and CSW Development-I, Inc. (''Energy Sub''), a wholly owned subsidiary of CSW Energy, Orange Cogeneration GP II, Inc. (''Orange GP Sub''), a subsidiary of Energy Sub, CSW Orange II, Inc. (''Orange LP Sub''), a wholly owned subsidiary of Energy Sub, Orange Cogeneration G.P., Inc. (''JV Sub''), a wholly owned subsidiary of Orange GP Sub, CSW Orange, Inc. (''CSW Orange''), a wholly owned subsidiary of Orange LP Sub, and Orange Cogeneration Limited Partnership (''Project Venture''), a subsidiary of JV Sub and CSW Orange, each of 1616 Woodall Rodgers Freeway, P.O. Box 660164, Dallas, Texas 75202 (collectively, ''Applicants'') have filed a post-effective amendment under sections 6(a), 7, 9(a), 10, and 12(b) of the Act and rules 43, 45, 51 and 54 thereunder to their application-declaration, as amended, filed under sections 6(a), 7, 9(a), 10, 12(b) and 12(c) of the Act and rules 42, 43, 45(a), 45(b), 50 and 51 thereunder.

By order dated April 15, 1993 (HCAR No. 25796) (''1993 Order''), the Commission authorized CSW and CSW Energy to, among other things, form CSW Orange, JV Sub and the Project Venture and to purchase from certain third parties a cogeneration facility located near Bartow, Florida (''Project''). The Commission also authorized the then existing Applicants to incur certain development expenses not to exceed $7 million in connection with the Project.

By order dated February 9, 1994 (HCAR No. 25988) (''February 1994 Order''), the Commission authorized CSW, CSW Energy, Energy Sub, CSW Orange, Project Venture and JV Sub (''1994 Applicants'') to obtain a credit facility (''Credit Facility'') for the construction and operation of the Project in an amount up to $140 million. The Commission also authorized an investment in the Project Venture by a third party (''New Limited Partner'') in lieu of term financing for the Project. The 1994 Applicants were authorized to advance certain funds in the event the Project Venture was unable to obtain third party Project financing prior to the start of Project construction, in the form of loans, open account advances or additional equity contributions to the Project Venture from CSW Energy in an aggregate amount not to exceed $125 million. In addition, the Commission authorized the issuance of corporate guaranties by the 1994 Applicants or standby letters of credit (with either CSW or CSW Energy as account party thereunder) in an amount not to exceed $50 million, such guaranties or letters of credit to support payment obligations of the Project Venture required by the provider of third party financing for the Project or fuel suppliers, fuel transportation or other third parties under various project agreements.

By order dated September 12, 1994 (HCAR No. 26122), the Commission authorized the 1994 Applicants to organize two special purpose subsidiaries, Orange LP Sub and Orange GP Sub, in order to aid in the procurement of the Credit Facility.

Applicants now propose: (i) To organize a wholly owned subsidiary of the Project Venture (''OCLP Sub''); (ii) that the Project Venture acquire all of the to-be-issued common stock of the OCLP Sub; (iii) that the Project Venture may fund the previously-approved Credit Facility from one or more third parties to be determined (each, a ''Project Lender'') that will purchase certain debt securities to be issued either by the Project Venture or OCLP Sub in an amount not to exceed $140 million for the construction and operation of the Project; (iv) that OCLP Sub loan to the Project Venture the proceeds of the Orange Securities received by OCLP Sub; (v) that Project Venture, JV Sub, CSW Orange, Orange GP Sub and Orange LP Sub guarantee OCLP Sub's obligations under the Orange Securities; and (vi) that Project Venture, JV Sub, CSW Orange, Orange GP Sub and Orange LP, Sub pledge substantially all of its respective assets, including the partnership interests in the Project Venture held by JV Sub and CSW Orange, the securities of JV Sub held by Orange GP Sub, and the securities of CSW Orange held by Orange LP Sub, to secure OCLP Sub's obligations under the Orange Securities.

Applicants state that, as previously approved, the Credit Facility would include: (1) A construction loan in an amount not to exceed $130 million, to be later converted to, or refinanced by, a term loan or repaid by additional equity capital provided by a new limited partner (''New Limited Partner'') in the Project Venture, which New Limited Partner would have a right to distributions from the Project Venture on a preferred basis, and (2) letters of credit and a revolving working capital credit line, each to be provided by the Project Lender, in an aggregate amount not to exceed $10 million to issue any letters of credit or guaranties that may be required by any fuel suppliers, fuel transporters or other third parties under the Project documents and to fund working capital for the Project. Alternatively, the Credit Facility now could include: (1) The issuance by OCLP Sub of certain debt securities to third parties (''Orange Securities'') in reliance on exemptions to the

registration of such securities under the Securities Act of 1933, as amended, including such exemptions available under Rule 144A thereunder, which third party Project Lenders will have no recourse under the Orange Securities to CSW or any of its domestic public utility subsidiaries; or (2) any combination of the financing described above, provided that in no event shall such financing in the aggregate exceed $140 million. Applicants anticipate that any unreimbursed drawings under any letters of credit issued as part of the Credit Facility will be treated as loans thereunder. It is further anticipated that the stock of JV Sub held by Orange GP Sub, the stock of CSW Orange held by Orange LP Sub, the Project assets owned by the Project Venture and the partnership interests of the Project Venture held by each of JV Sub and CSW Orange may be required to be pledged as collateral to the Project Lender as a condition to obtaining the Credit Facility.

To the extent that any proceeds remain in the Credit Facility after repaying the construction loan or issuing term debt to the New Limited Partner, as the case may be, the Project Venture may distribute the proceeds to its partners, including JV Sub and CSW Orange, to reimburse such partners for costs and risks incurred by such partners in connection with the development and construction of the Project.

As mentioned above, it is anticipated that OCLP Sub would loan to the Project Venture the proceeds of the Orange Securities received by OCLP Sub (''OCLP Sub Loan''). The OCLP Sub Loan would be on substantially the same terms as the Orange Securities, which terms would be established by OCLP Sub and the Project Lenders in an arm's length transaction in accordance with market expectations and requirements, to ensure that OCLP Sub will be able to make the debt payments required with respect to the Orange Securities. The Project Venture would distribute the proceeds of the OCLP Sub Loan to its partners, including JV Sub and CSW Orange, to reimburse such partners for costs and risks incurred by such partners in connection with the development and construction of the Project.

Applicants further propose that, once formed, OCLP be included in the flow of funds for equity contributions, open account advances and intercompany loans on the terms and in the manner authorized by the 1993 Order and September 1994 Order.

Central and South West Corp., et al. (70–8469)

Central and South West Corporation (''CSW''), a registered holding company, CSW Energy, Inc. (''CSW Energy''), a wholly-owned non-utility subsidiary company of CSW, and five special-purpose, wholly-owned subsidiary companies of CSW Energy, CSW Sweeny GP, Inc. (''Sweeny GP I''), CSW Sweeny GP II, Inc. (''Sweeny GP II''), CSW Sweeny LP, Inc. (''Sweeny LP I''), CSW Sweeny LP II, Inc. (''Sweeny LP II''), and Sweeny Cogeneration L.P. (''Partnership''), all of 1616 Woodall Rodgers Freeway, P.O. Box 660164, Dallas, Texas, 75202, have filed a post-effective amendment, under sections 6(a), 7 and 12(b) of the Act and rules 45 and 54 thereunder, to an application-declaration filed under sections 6, 7, 9(a), 10, and 12(b) of the Act and rules 45 and 51 thereunder.

By order dated December 9, 1994 (HCAR No. 26184) the Commission authorized CSW and CSW Energy to form Sweeny GP I, Sweeny GP II, Sweeny LP I, Sweeny LP II, and the Partnership, and to incur certain development expenses not to exceed $20 million in connection with the investment in and development, construction, ownership and operation of a qualifying cogeneration facility known as the Sweeny Cogeneration Project (''Project'').

By order dated May 29, 1996 (HCAR No. 26522), the Commission authorized the applicants (i) to obtain from third parties (''Project Lender'') a credit facility (''Credit Facility'') for the construction and operation of the Project in an amount of up to $250 million, (ii) to provide advances to the Partnership in an amount not to exceed $250 million in the event the Project could not be financed prior to the commencement of construction, (iii) to obtain or arrange for irrevocable standby letters of credit or to issue guarantees of up to $50 million, and (iv) to provide up to $250 million in equity support to the Project in the form of an equity support agreement, guarantee or letter of credit to the Project Lender.

The applicants now seek Commission authorization to provide up to $250 million in equity support to the Project in the form of an equity support agreement, guarantee or letter of credit to the interest that will purchase electric power and thermal energy from the Project.

GPU International, Inc. (70–8913)

GPU International, Inc. (''GPUI'') (formerly Energy Initiatives, Inc.), One Upper Pond Road, Parsippany, New Jersey 07054, a wholly-owned nonutility subsidiary company of GPU, Inc. (''GPU''), a registered holding company, has filed an application under sections 9(a) and 10 of the Act and rule 54 thereunder.

GPUI proposes to enter into a joint venture (''JV''), directly or through a to-be-formed direct or indirect wholly-owned subsidiary (''Subsidiary''), with one or more nonaffiliated entities to develop, manufacture and market stationary electric power systems employing fuel cell technology. GPUI states that fuel cells produce electricity directly without combustion, cleanly and with high efficiency. GPUI believes that fuel cell stationary power plants could become an attractive low emission source of power, for both utility and nonutility applications; GPUI notes that fuel cell power plants could be used by electric distribution companies, such as GPU's electric utility subsidiary companies, and their commercialization could generate additional revenues and earnings for the GPU system. GPUI expects that power systems of 1 kw or more would be included in the JV's business and that smaller systems might also be included if otherwise consistent with the concept of ''stationary systems'', those having a more or less fixed location.

One of the JV partners will be an entity which has been in the business of developing and marketing fuel cell-based power systems for several years (''JV Partner''). The JV Partner will license the relevant technology and provide technical and administrative support to the JV. GPUI states that the JV will not own or operate any facilities for the generation, transmission or distribution of electric energy and, therefore, neither the JV nor any Subsidiary will fall within the definition of an ''electric utility company'' under section 2(a)(3) of the Act.

The JV Partner and GPUI are in the process of negotiating the definitive terms, conditions and structure of the JV. GPUI anticipates that the JV will take the form of a corporation, partnership or other limited liability company organized under the laws of a state of the United States or other appropriate jurisdiction. GPUI also anticipates that the JV Partner will hold a majority ownership interest in the JV and that GPUI and other JV participants will receive certain to-be-agreed upon minority shareholder protective rights. GPUI expects that its voting interest in the JV will not exceed 9.9%. In connection with its proposed participation in the JV, GPUI may also receive warrants, options or other

similar rights to acquire securities of the JV Partner and a right/opportunity to acquire securities of joint venture projects to be formed by the JV Partner, excluding the JV.

GPUI states that its aggregate investment in the JV will not exceed $30 million, and expects to fund the proposed investment through capital contributions from GPU, internally generated sources at GPUI or drawdowns by GPUI under existing lines of credit, or any combination of the foregoing.

GPUI requests authority to acquire an interest in the stationary fuel cell-based power system business, and to acquire the securities of a Subsidiary and/or, directly or indirectly, the securities of the JV. With respect to the acquisition of securities of a Subsidiary and/or the JV, GPUI requests that the authorization expire upon the first to occur of December 31, 2000 and the adoption by the Commission of proposed rule 58 or such other rule, regulation or order as shall exempt the proposed transactions from section 9(a).

Consolidated Natural Gas Company, et al. (70–8929)

Consolidated Natural Gas Company (''CNG''), CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania, 15222–3199, a registered holding company, and its wholly owned gas public-utility subsidiaries, The East Ohio Gas Company (''EOG''), 1717 East Ninth Street, Cleveland, Ohio 44114, and West Ohio Gas Company (''WOG''), 319 Market Street, Lima, Ohio 45802, have filed an application-declaration under sections 6(a), 7, 9(a) and 10 of the Act and rules 43, 44, 45 and 54 thereunder.

CNG proposes to reorganize a portion of its system by merging EOG and WOG, with EOG as the surviving corporation succeeding to all powers, privileges, and franchises and subject to all restrictions, disabilities, liabilities, and duties of both companies. Under the Agreement and Plan of Merger, each issued and outstanding share of WOG common stock, $10,000 par value per share, will be cancelled and extinguished, and each issued and outstanding shares of EOG common stock, $50 par value, will remain outstanding subsequent to the merger.

The applicants also request for EOG, after the merger, to succeed to any authorizations granted by the Commission to WOG under the Act which may still be effective and which therefore should appropriately survive as to EOG after the merger. Therefore, all promissory notes and other indebtedness of WOG will become obligations of EOG, and the capital and retained earnings of WOG will be carried forward as capital and retained earnings of EOG. All property and all debts due to either company will be vested in EOG under the proposed merger, and any and all rights of creditors and all liens upon any property of WOG and EOG will be preserved unimpaired. The WOG properties to which EOG will proceed as owner will be recorded on EOG's books of account at the historical value of such properties as carried on WOG's books.

American Electric Power Company, Inc., et al. (70–8931)

American Electric Power Company, Inc., 1 Riverside Plaza, Columbus, Ohio 43215, a registered holding company, and its electric utility subsidiary companies, AEP Generating Company, 1 Riverside Plaza, Columbus, Ohio 43215; Appalachian Power Company, 40 Franklin Road, S.W., Roanoke, Virginia 24011; Columbus Southern Power Company, 215 North Front Street, Columbus, Ohio 43215; Indiana Michigan Power Company, One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801; Kentucky Power Company, 1701 Central Avenue, Ashland, Kentucky 41101; Kingsport Power Company, 40 Franklin Road, S.W., Roanoke, Virginia 24011; Ohio Power Company, 301 Cleveland Avenue, S.W., Canton, Ohio 44701; and Wheeling Power Company, 51 Sixteenth Street, Wheeling, West Virginia 26003 (collectively, ''Declarants''), have filed a declaration under section 12(d) of the Act and rules 44 and 54 thereunder.

Declarants request authorization to sell and/or transfer certain utility assets to customers and noncustomers for a period ending December 31, 2001 without prior Commission approval. It is stated that the consideration for the transfers will be not less than the net book value of the assets and will not exceed $5 million per operating subsidiary per calendar year and $50 million in any calendar year for the AEP System. In the case of a lease, the lease payments will be valued over the term of the lease and be counted against the exemption amount in the initial year of the lease.

SEI Birchwood, Inc., et al. (70–8935)

SEI Birchwood, Inc. (''SEI Birchwood''), a direct nonutility subsidiary of SEI Holdings, Inc., a direct nonutility subsidiary of The Southern Company, a registered holding company, and Birchwood Power Partners, L.P. (''BPP'') (together, ''Applicants''), a subsidiary of SEI Birchwood, both located at 900 Ashwood Parkway, Suite 500, Atlanta, GA 30338, have filed a joint application pursuant to sections 9(a) and 10 of the Act and rule 54 thereunder.

SEI Birchwood and Cogentrix/Birchwood Two, L.P. (''Cogentrix Two''), a nonassociate limited partnership, each hold a 2% general and 48% limited partnership interest in BPP (together, ''Owners''). BPP owns a 237 MW coal-fired cogeneration power plant in Virginia (''Plant''). The Plant produces electricity for sale at wholesale to Virginia Electric and Power Company under a long-term contract. The Plant also produces and delivers steam to a 36-acre greenhouse complex (''Greenhouse Facility'') located on a site that is adjacent to the Plant. The Plant and Greenhouse Facility (together, ''Project'') were constructed as integrated parts of a single project that was intended to qualify as a cogeneration ''qualifying facility'' (''QF'') under the Public Utility Regulatory Policies Act of 1978, as amended (''PURPA''). The Federal Energy Regulatory Commission (''FERC'') certified the Project on the basis, among others, that it would use steam produced by BPP for the Greenhouse Facility operations in quantities sufficient to satisfy the operating standards applicable to QFs under PURPA regulations.[1]

In addition, SEI Birchwood and BPP have each been determined by FERC to be an ''exempt wholesale generator'' (''EWG''), as that term is defined in section 32 of the Act. To become an EWG under section 32, the Applicants had to demonstrate that they would be engaged exclusively in the business of owning and operating an eligible facility and selling electricity at wholesale. In order to meet the ''exclusively engaged'' requirement, the Greenhouse Facility is held by Greenhost, Inc. (''Greenhost''), a Delaware special purpose corporation, whose common shares are owned by a nonassociated, indirect subsidiary of CT Corporation (''CT''). CT is not associated with the Applicants nor Cogentrix Two.

Under the Project financing arrangements with the Owners of the Plant, Greenhost incurred an obligation to pay that portion of the total debt for the Project that went to finance the cost of constructing the Greenhouse Facility, and separately entered into a site lease and steam sales agreement with BPP (''Lease''). Payments under the Lease are designed to match the proportional payments of principal and interest on Greenhost's indebtedness. Greenhost operates the Greenhouse Facility under a long-term facility and site sublease

[1] 18 C.F.R. 292.602.

(''Sublease'') with a nonassociated third-party (''Sublessee''). As a part of these interrelated transactions, the Applicants and Cogentrix Two obtained certain rights and security interests which enable them to terminate the Lease, take possession of the Greenhouse Facility, and/or acquire the shares of Greenhost in the event of defaults by Greenhost and the Sublessee.

In 1996, the Sublessee experienced financial losses and currently is in default on its Sublease obligations. The parties to these agreements have entered into a settlement agreement respecting all claims and terminating the Sublease. Under the settlement, SEI Birchwood and Cogentrix Two may acquire 50% of the common shares of Greenhost for a nominal consideration. Alternatively, BPP may acquire 100% of Greenhost's shares and hold it as a subsidiary. Greenhost's outstanding indebtedness will remain in place, and the Greenhouse Facility will continue to be used for the purposes for which it was built and operated by a third-party.

GPU, Inc., et al. (70–8937)

GPU, Inc. (''GPU''), a registered holding company, and its wholly owned subsidiary service company, GPU Service, Inc. (''GPUS''), each of 100 Interpace Parkway, Parsippany, New Jersey 07054, and GPU's subsidiary companies GPU International, Inc. (''GPUI'') One Upper Pond road, Parsippany, New Jersey 07054, and GPU Generation, Inc. (''GENCO''), 1001 Broad Street, Johnstown, Pennsylvania 15907 (collectively, ''Applicants'') have filed an application-declaration with this Commission under sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and rules 45, 54, 90 and 91 thereunder.

As more fully described below, Applicants propose to engage, through one or more direct or indirect subsidiaries, in the business of brokering and marketing electricity, gas and other energy commodities, including, without limitation, oil, natural gas and coal (''Energy Commodities''), and in providing incidental related services to customers, such as fuel management, storage and procurement services.

GPU and GPUI propose to acquire the securities of one or more newly formed subsidiaries (''Energy Subsidiaries'') and to make cash capital contributions to the Energy Subsidiaries.[2] GPU and GPUI propose to invest, in the aggregate, no more than $20 million in the Energy Subsidiaries prior to December 31, 2000, either by acquisition of securities or by making capital contributions. The authorization with respect to the acquisition of securities of any Energy Subsidiaries shall expire upon the first to occur of either (i) December 31, 2000, or (ii) the adoption by the Commission of proposed rule 58 (HCAR No. 26313, June 20, 1995) or such other rule, regulation or order as shall exempt the proposed transactions from section 9(a) of the Act.

Applicants also request the authority for Energy Subsidiaries to issue debt. Debt financing of any Energy Subsidiaries will not exceed a term of 15 years and will bear interest and carry fees at negotiated rates based on prevailing market conditions. Applicants represent that such issuance of debt will be exempt from prior Commission approval under the Act pursuant to rule 52.

GPU also requests authority through December 31, 2000 to guarantee the debt and other obligations of any Energy Subsidiaries. Such other obligations of Energy Subsidiaries may take the form of bid bonds or performance or other direct or indirect guarantees of contractual or other obligations. The maximum amount of debt and other obligations proposed to be guaranteed at any one time is $150 million.

Applicants state that the Energy Subsidiaries would engage in such activities without regard to the location or identity of customers or source of revenues; provided, however, that (i) unless additional approvals are obtained from the Federal energy Regulatory Commission under the Federal Power Act, the Energy Subsidiaries will not sell electricity to GPU's electric utility subsidiaries, and (ii) the Energy Subsidiaries will not make any sales of electricity or natural gas to retail customers in any state unless authorized or permitted to make such sales under the laws of that state.

It is also proposed that Energy Subsidiaries may, from time to time through December 31, 2000, invest up to $50 million at any one time outstanding to acquire or construct physical assets that are incidental and reasonably necessary in the day-to-day conduct of marketing operations, such as oil and gas storage facilities, gas or coal reserves, or a pipeline spur that is needed in order to make deliveries of fuel to an industrial customer.

To minimize financial exposure of Energy Subsidiaries and of GPU resulting from its guarantees, it is proposed that Energy Subsidiaries utilize risk mitigation measures to balance overall portfolio position in order to limit the financial impact of any loss that may be sustained on any particular commodity transaction due to adverse market price movements or counterparty defaults. Such measures may include entering into offsetting physical delivery contracts, the purchase and sale of derivative instruments, such as options and futures contracts, for purposes of hedging a physical position, and an appropriate mix of long and short-term contracts. In addition, Energy Subsidiaries may purchase or sell commodity-based derivative instruments, such as electricity or gas futures contracts and options of electricity or gas futures, such as are traded on the New York Mercantile Exchange, and gas and oil price swap agreements in order to hedge positions under existing contracts for physical delivery. Energy Subsidiaries will use market hedging measures solely to minimize risk.

Price risk exposure may also be hedged under a purchase or sale contract by taking an opposite position to that purchase or sale. Similarly, in a portfolio of purchase and sales contracts, risk may also be limited through an appropriate mix of long-term and short-term contracts, and diversification of the mix of customers and suppliers regionally and across industry lines. Finally, GPU will endeavor to limit risk exposure through contract provisions (i.e., liquidated damages) that would place a ceiling on the amount of damages payable when performance failure occurs and/or exclude consequential damages.

Authorization is also sought for any Energy Subsidiary to enter into arrangements with GPUS and GENCO, pursuant to which personnel and other resources may be made available to the Energy Subsidiaries, upon request, to support the Energy Subsidiaries in connection with their authorized activities. Pursuant to these arrangements, GPUS and GENCO will provide, account for and bill their services to the Energy Subsidiaries, utilizing a work order system, on a full cost reimbursement basis in accordance with rules 90 and 91 under section 13(b) of the Act. It is stated that no more than 5% of the total employees of the GPU System will, at any one time, directly or indirectly render services to the Energy Subsidiaries in connection with the Energy Commodities Business.

GPU states that, absent further order of the Commission, none of the Energy Subsidiaries will own or operate facilities used for the distribution of gas at retail or facilities used for the

[2] Applicants state that, under rule 52, the subsequent issuance of additional securities by Energy Subsidiaries and their acquisition is exempt from prior Commission approval under the Act. Applicants further state that rule 45(b)(4) exempts from prior Commission approval the making of cash capital contributions to the Energy Subsidiaries.

generation, transmission, or distribution of electric energy for sale. Furthermore, it is stated that the Energy Subsidiaries will limit their activities to ensure that 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.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–28003 Filed 10–31–96; 8:45 am]

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[Release No. 34–37871; Filed No. SR–CBOE–96–65]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, incorporated Relating to Exchange Fees

October 25, 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 October 24, 1996, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. 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 is proposing to waive Exchange fees on transactions in Equity FLEX options from the start of trading of Equity FLEX options, which is scheduled to begin on October 24, 1996, until January 31, 1997. 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, Proposed Rule Change

The purpose of this proposed rule change is to waive Exchange fees related to transactions in Equity FLEX options from the start of trading of these options on the Exchange until January 31, 1997. The Exchange plans to begin trading Equity FLEX options on October 24, 1996. The fees affected and the amount of the fees absent any reduction or rebate [1] are: (1) Exchange transaction fees, which are $.05 per contract side for market-makers, $.06 for member firm proprietary trades, $.15 for customer trades for options under $1, and $.30 for customer trades for options of $1 or more; (2) trade match fees, which are $.04 per contract side for all trades; and (3) floor broker fees, which are $.03 per contract side for all trades. The foregoing fee changes are being implemented by the Exchange pursuant to CBOE Rule 2.22. The Exchange will distribute a circular to its members to notify them of this waiver of Exchange fees.

The Exchange is adopting this waiver of fees related to transactions in Equity FLEX options in order to promote trading in the these options at the outset of their trading on the Exchange. The Exchange believes that the reduction in the fees may encourage more participation in the trading of these options and enhance the prospect that Equity FLEX options will prosper on the Exchange in the future. The fee reduction also will place the Exchange in a position to compete effectively for business in Equity FLEX options with other exchanges trading the same product.

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)(4) of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other changes among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

[1] The fees may actually be less than these amounts pursuant to the Exchange's Prospective Fee Reduction Schedule, the Customer Large Trade Discount Program, and rebate programs that have been filed with the Commission as part of the Exchange's fee schedule.

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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 CBOE. All submissions should refer to File No. SR–CBOE–96–65 and should be submitted by November 22, 1996.

For the Commission, by the Division of market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–27997 Filed 10–31–96; 8:45 am]

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[2] 17 CFR 200.30–3(a)(12).

[Release No. 34–37873; File No. SR–CBOE–96–52]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Options on Interests in Exchange-Listed, Open-End Investment Companies

October 25, 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 29, 1996, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes the adoption of rules to permit the trading of options on interest in open-end, exchange-listed investment companies that hold securities comprising or based on an index or portfolio of securities designed to replicate substantially a specific component of a designated stock index.

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, 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

The purpose of the proposed rule change is to provide for the trading of options on shares or units of open-end, exchange-listed investment companies that hold securities comprising or based on an index or portfolio of securities that is designed to provide investment results that substantially correspond to the price and yield performance of a designated stock index. Specifically, the Exchange intends to trade options on interests in investment companies such as CountryBaskets™, which are shares issued by series of an open-end investment company approved for listing on the New York Stock Exchange (''NYSE'') and, in the case of the initial nine series CountryBaskets, are designed to replicate substantially the performance of specific components of the FT/S&P-Actuaries World Index™ (''FT/S&P–AWI™'').[1]

CountryBaskets are structured either as shares issued by a series of an open-end management investment company that invests in an indexed portfolio of securities, or as interests in unit investment trusts (''UITs'') that have as their assets shares of an open-end investment company that holds the underlying indexed portfolio. In either case, CountryBasket securities will be continually distributed through ''Creation Transactions.'' To effect a Creation Transaction, a person would buy shares of the open-end investment company in exchange for an in-kind deposit of the indexed portfolio of securities and a specified amount of cash to make the deposit equal the net asset value of the fund shares being purchased. Creation Transactions may occur only in ''Creation Unit'' size, which is either 100,000 or 250,000 fund shares, depending on the fund. In the case of CountryBaskets structured as UITs, the trust would issue a creation unit-size aggregation of redeemable units of beneficial interest in exchange for shares of the underlying fund. Thus it will always be possible for a person to acquire additional CountryBaskets by means of a Creation Transaction.

Nine series of CountryBaskets were authorized for trading on the NYSE earlier this year.[2] These initial nine series are based on FT-Actuaries World Indices for Australia, France, Germany, Hong Kong, Italy, Japan, South Africa, United Kingdom and the United States. Options on these same nine series of CountryBaskets are proposed to be traded on the CBOE pursuant to the same rules and procedures that apply generally to trading in options on equity securities or indexes of equity securities, except that special listing criteria are proposed to apply to options on CountryBaskets. Also, reflecting the open-ended nature of CountryBaskets, the Exchange is not proposing any position or exercise limits to apply to options on CountryBaskets.

The listing standards proposed for options on CountryBaskets are set forth in proposed Interpretation and Policy .06 under CBOE Rule 5.3 and in Interpretation .10 under CBOE Rule 5.4. These standards, which provide for the listing of European-style options only, are substantially the same as those that apply to the initial and continued listing of CountryBaskets on the NYSE under the recently approved rules of that exchange.[3] Conforming the listing standards for options on CountryBaskets to the listing standards that apply to CountryBaskets themselves will assure that whenever there is trading in the underlying CountryBaskets, options on these same CountryBaskets may also be available. Similarly, CBOE's proposed listing standards provide that there will be no opening transactions in CountryBasket options, and all such options will trade on a liquidation-only basis, if CountryBaskets should cease to trade on an exchange or as national market securities in the over-the-counter market. The availability of options on CountryBaskets should be beneficial to investors in CountryBaskets, since it will permit these investors to utilize options to adjust the risks and rewards of CountryBasket investing to their individual needs. It should also add to the depth and liquidity of the market for CountryBaskets by permitting market makers in that market to hedge the risks of their market-making activities.

Reflecting the open-ended nature of CountryBaskets, the NYSE's maintenance listing standards for CountryBaskets do not include criteria based on either the number of Units outstanding or on their trading volume.[4] Similarly, the CBOE believes it is neither necessary nor appropriate to apply traditional position or exercise limits to CountryBasket options, and it is proposing to amend Rules 4.11 and 4.12 to provide that these limits shall not ordinarily apply. Since it should always be possible to create more CountryBaskets at their net asset value

[1] CountryBaskets™'' is a servicemark of Deutsche Morgan Grenfell/C.J. Lawrence Inc. (''DMG''). ''FT/S&P-Actuaries World Index™'' and ''FT/S&P–AWI™'' are trademarks of The Financial Times Limited and Standard & Poor's (''S&P''), and are licensed for use by DMG.

[2] *See* Securities Exchange Act Release No. 36923 (March 5, 1996), 61 FR 10410 (March 13, 1996).

[3] *See* NYSE Listed Company Manual, Paragraph 703.16.

[4] NYSE requires at least 300,000 Units to be outstanding before trading in a series of CountryBaskets may commence. Although there is no comparable maintenance standard, as a practical matter there can never be trading in a series of CountryBaskets in which there is less than one Creation Unit (100,000 or 250,000 shares, depending on the series) outstanding, since CountryBaskets may only be created and redeemed in Creation Unit size, and if the last outstanding Creation Unit should ever be redeemed, the series (and options on that series) will cease to trade.

by making an in-kind deposit of the securities that comprise the underlying index or portfolio, there is no limit on the available supply of underlying CountryBaskets. Accordingly, the Exchange believes that there is not the same need for option position and exercise limits to protect the underlying market against squeezes and other types of manipulation that applies to options on securities that are not open-ended. Furthermore, the CBOE believes that in the absence of any maintenance listing requirements in the underlying market that call for a minimum number of Units or for minimum trading volume, position and exercise limits would not be meaningful as a percentage of either of these measures. For these reasons, and to assure that so long as there is trading in the underlying CountryBaskets there can also be trading in the related options, the CBOE is not proposing any position or exercise limits for CountryBasket options. The CBOE reserves the right, however, to impose position and exercise limits if, for reasons not now foreseeable, such limits should ever be needed in the interest of fair and orderly markets in the options or the underlying CountryBaskets.

Reflecting that the underlying portfolios of CountryBaskets are indexed, it is proposed to amend Interpretation and Policy .01 under Exchange Rule 5.5 to provide that the minimum strike price intervals for options on CountryBaskets will be $2.50 where the strike price is $200 or less, and $5.00 where the strike price is over $200. These are comparable to the strike price intervals provided in Interpretation and Policy .01 under Exchange Rule 24.9, as applicable to broad-based index options having strike prices at about the level expected for CountryBasket options.

Margin requirements are proposed for options on CountryBaskets at the same levels that apply to options generally under Exchange Rule 12.3, except that, reflecting the indexed nature of underlying portfolios of CountryBaskets, minimum margin must be deposited and maintained equal to 100% of the current market value of the option plus 15% (instead of 20%) of the market value of equivalent units of the underlying security value. In this respect, the margin requirements proposed for options on CountryBaskets are comparable to margin requirements that currently apply to market index options under Exchange Rule 24.11(b)(i).

The CBOE believes it has the necessary systems capacity to support the additional series of options that would result from the introduction of CountryBaskets options, and it has been advised that the Options Price Reporting Authority (''OPRA'') also will have the capacity to support these additional series upon implementation of an additional outgoing high speed line from the OPRA processor.

The Exchange represents 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, because, by providing for the trading of options on CountryBaskets within the framework of the CBOE's regulated market place while there is trading in the underlying CountryBaskets in other exchange markets, the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no inappropriate 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, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–96–52 and should be submitted by November 22, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–28002 Filed 10–31–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37864; File No. SR–DTC–96–16]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Charges

October 24, 1996.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''), notice is hereby given that on September 24, 1996, The Depository Trust Company (''DTC'') 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 primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change revises DTC's Service Fee Schedule, which is attached as Exhibit 1.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to revise the fees associated with the Notice of Order Execution (''NOE''), the Institute Instruction (''II''), and Standing Instructions Database (''SID'') features of DTC's Institutional Delivery (''ID'') System. DTC continually strives to align service fees with estimated service costs and these revisions are part of that effort. Under the proposed rule change, the fees for NOEs and IIs will be billed to broker-dealers because these instructions facilitate the communication of execution and allocation details between broker-dealers and their institutional clients. The revised fee structure for SID is similar to the fee structure for ID confirmations which allocate the cost of the institution's copy to the bank and/or broker-dealer.

DTC is not currently assessing fees for the use of NOEs and IIs because these services currently are offered to participants and other parties as a pilot program.[3] However, DTC intends to begin assessing fees for NOEs and IIs as of October 1, 1996.[4] Participants and other users of SID will be subject to the fee revisions as of October 1, 1996.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among DTC's participants and other parties who use DTC's ID System.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments on the proposed rule change were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[6] of the Act and pursuant to Rule 19b–4(e)(2)[7] promulgated thereunder because the proposal establishes or changes a due, fee, or other change imposed by DTC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–STC–96–16 and should be submitted by November 22, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 8010–01-M

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] Although DTC offers NOEs and IIs to its participants pursuant to a DTC pilot program, the Commission previously has fully approved these services. Securities Exchange Act Release No. 34119 (June 10, 1994) 59 FR 31660 [File No. SR–DTC–94–04] (order approving proposed rule change) Securities Exchange Act Release No. 35736 (May 18, 1995) 60 FR 27577 [File No. SR–DTC–95–08] (order approving proposed rule change).

[4] The Commission previously approved fees for the NOE and II services in DTC's 1995 fee schedule, but DTC has not assessed its participants for these services. Securities Exchange Act Release No. 35736 (May 18, 1995) 60 FR 27577 [File No. SR–DTC–95–08] (order approving proposed rule change).

[5] 15 U.S.C. 78q–1 (1988).

[6] 15 U.S.C. 78s(b)(3)(A)(ii) (1988).

[7] 17 CFR 240.19b–4(e)(2) (1996).

[8] 17 CFR 200.30–3(a)(12) (1996).

Exhibit 1

PARTICIPANT OPERATING PROCEDURES
FEES

26. INSTITUTIONAL DELIVERY (ID) SYSTEM

Present Fee		Proposed Fee	
[f. Notice of Order Execution]	[$0.04 to executing broker for each Notification of Order Execution] [$0.04 to institution for each Notification of Order Execution]	f. Notice of Order Execution	$0.10 to executing broker for each Notification of Order Execution
[g. Institution Instruction (Trade Allocation)]	[$0.04 to executing broker or step-out broker for each Institution Instruction] [$0.04 to institution for each Institution Instruction]	g. Institution Instruction (Trade Allocation)	$0.10 to executing broker and step-out broker for each Institution Instruction
[h. Standing Instructions Database (SID)] [Addition, Update and Deletion Notification] [PTS and PC Dial-in Inquiry] [Broker-dealer internal account number to link to an institution account]	[$.08 to executing broker for each notification received] [$0.08 to ID agent or clearing agent for each notification received] [$0.08 to executing broker or clearing broker] [$0.08 to ID agent or clearing agent] [$0.05 to executing broker for each input to SID of broker-dealer internal account number]	h. Standing Instructions Database (SID)	for each confirmation passed through the SID database (in addition to the regular confirm fees): $0.05 to clearing broker for each confirm to broker, clearing broker, or interested party $0.05 to clearing agent for confirms to ID agent or clearing agent $0.05 to clearing agent or clearing broker for each confirm to institution that either agrees to pay for, or one-half that rate when parties agree to split the fee $0.05 to institution for each additional copy of a confirm

[FR Doc. 96–28008 Filed 10–31–96; 8:45 am]
BILLING CODE 8010–01–C

[Release No. 34–37870; File No. SR–GSCC–96–08]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to Repurchase Agreement Netting Service

October 25, 1996.

On August 1, 1996, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–GSCC–96–08) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] On August 9, 1996, GSCC filed an amendment to the proposed rule change.[2] Notice of the proposal was published in the Federal Register on September 12, 1996.[3] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

The proposed rule change permits GSCC to reimburse interdealer broker netting members (''IDBs'') for two costs related to their participation in GSCC's netting system for repurchase and reverse repurchase transactions (''repo'') involving government securities as the underlying instruments.[4] Currently, IDB and non-IDB netting members may submit data on brokered repos to GSCC for clearance and settlement. GSCC compares, nets, and settles repo close legs and repo start legs submitted prior to start date (*i.e.,* non-same-day-settling start legs).

Because GSCC currently does not settle intraday start legs, the parties to brokered repos assume the responsibility for the settlement of such legs outside of GSCC. As a result, IDBs will incur clearance charges for the settlement of intraday start legs of brokered repos.[5] Under the proposed rule change, GSCC will absorb IDBs' clearance charges related to the settlement of intraday repo start legs, up to a dollar amount deemed reasonable by it.

In addition, IDBs may incur overnight financing costs resulting from securities delivered too late in the day to redeliver before the close of Fedwire.[6] In such instances, GSCC will reimburse this cost to the IDB if the cost was incurred unavoidably and without fault by the IDB. GSCC will only absorb such charges up to a dollar amount deemed reasonable by it.

In certain circumstances, these cost reimbursements also will be available to a division or separate operating unit within a dealer netting member. To be eligible, such division or unit must operate in an overall manner as a broker and must abide by the requirements imposed on IDBs that participate in the repo netting process.

II. Discussion

Section 17A(b)(3)(F)[7] of the Act requires that the rules of a clearing agency be designed to remove impediments to and to perfect the mechanism of a national clearance and settlement system. Although GSCC provided for participation by IDBs in its repo netting system earlier this year, IDBs, like all other GSCC repo netting members, must assume the responsibility for the settlement of intraday start legs outside of GSCC. By providing a method whereby IDBs can use in an economic fashion the facilities of GSCC to settle their brokered repos, the proposal should encourage IDBs to submit their repo transactions to GSCC. As a result, more repos should be settled through the facilities of a registered securities clearing agency (*i.e.,* GSCC) which should, consistent with the requirements of Section 17A(b)(3)(F), further the establishment of a national clearance and settlement system.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–96–08) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. MacFarland,

Deputy Secretary.

[FR Doc. 96–28000 Filed 10–31–96; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Letter from Jeffrey F. Ingber, General Counsel and Secretary, GSCC, to Christine Sibille, Senior Counsel, Division of Market Regulation, Commission (August 6, 1996).

[3] Securities Exchange Act Release No. 37647 (September 5, 1996), 61 FR 48189.

[4] Earlier this year, the Commission approved a proposed rule change filed by GSCC which provided for participation by IDBs in GSCC's repo netting system. Securities Exchange Act Release No. 37482 (July 25, 1996), 61 FR 40275.

[5] Clearance charges are costs charged by clearing agent banks to their broker-dealer customers related to the settlement of securities movements obligations. Clearance charges may include both fixed charges and pass through charges such as the costs of Fedwire.

[6] Overnight financing costs are costs charged by clearing agent banks to their broker-dealer customers related to the financing by banks of securities held from one business day until the next business day in customers' clearing accounts.

[7] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

[8] 17 CFR 200.30–3(a)(12) (1996).

[Release No. 34–37868; File No. SR–GSCC–96–09]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving Proposed Rule Change Relating to the Establishment of a Mechanism for Returning Certain Excess Clearing Fund Collateral to Members on a Daily Basis

October 25, 1996.

On August 11, 1996, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–GSCC–96–09) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the Federal Register on September 19, 1996.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

The proposed rule change establishes a mechanism for returning certain excess clearing fund collateral to members on a daily basis rather than on the current monthly basis. GSCC's clearing fund is designed to protect GSCC from the exposure presented by fluctuations in the value of a defaulting member's net settlement position from the most recent marking-to-market until liquidation of that position.[3] The daily mark-to-market mechanism, which is applicable to forward net settlement positions, is designed to bring net settlement positions from contract value to current market value.

Members' clearing fund deposit requirements are calculated daily based on the level of members' historical and

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 37678 (September 13, 1996), 61 FR 49367.

[3] The clearing fund collateral pool also allows GSCC to have on deposit from each netting member assets to satisfy losses resulting from a member's default; permits GSCC to maintain a total asset amount sufficient to satisfy potential losses to it and its members resulting from the default of more than one member or the failure of a defaulting member's counterparties to pay their pro rata allocation of loss; and provides GSCC with liquidity to meet its payment and delivery obligations.

current day's net activity. However, GSCC's rules currently provide for the return of excess clearing fund collateral to members only once a calendar month on the second business day of each month. This methodology applies regardless of the level of a member's excess clearing fund collateral. The proposed rule change allows members to request the return of excess collateral on any business day under the following circumstances: (1) The amount of the member's excess clearing fund collateral is at least $5 million; (2) the member is not on class 2 or class 3 surveillance status; and (3) the collateral will be returned only to the extent that GSCC retains a cushion of excess collateral of not less than the greater of (a) ten percent of the member's clearing fund deposit requirement (*i.e.*, GSCC must retain 110% of the member's clearing fund deposit requirement) or (b) $1 million more than the amount of collateral needed to cover the member's current clearing fund deposit requirement.

II. Discussion

Section 17A(b)(3)(F)[4] of the Act requires that the rules of a clearing agency be designed to safeguard securities and funds in its custody or control. While the proposal will permit members with large amounts of excess clearing fund to have daily access to such funds, which should increase such members' liquidity and thus assist them in fulfilling their settlement obligations, the proposal will only allow the return of excess clearing fund under certain conditions, including that GSCC retains a cushion of excess clearing fund. Such conditions should help to ensure that GSCC has sufficient clearing fund on hand to meet its settlement obligations. Thus, the proposal is consistent with GSCC's obligation to safeguard securities and funds in its possession.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–96–09) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

[4] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

[5] 17 CFR 200.30–3(a)(12) (1996).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–28005 Filed 10–31–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37862; File No. SR–MBSCC–96–05]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Charges

October 24, 1996.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''), notice is hereby given that on September 25, 1996, the MBS Clearing Corporation (''MBSCC'') 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 primarily by MBSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule change consists of modifications to the Electronic Pool Notification (''EPN'') schedule of charges, which is attached as Exhibit 1.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC 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. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to modify the access fees and to make technical changes to the schedule of charges for the EPN service. MBSCC currently accommodates connectivity to the EPN service by leased lines and charges an access fee depending on the type of connection used by a participant. The proposed rule change establishes an access fee to accommodate the use of dial-up lines in conjunction with or as an alternative to leased lines for connection to the EPN service.[3] Dial-up access to the EPN service is intended to reduce a participant's monthly telephone company communication charges. Therefore, the proposed rule change modifies the EPN schedule of charges to add an access fee for CTCI TCP/IP via dial-up of $30.00/month. The proposed rule change also makes a technical modification to the EPN schedule of charges to identify the access fees to accommodate connectivity by leased line or dial-up, leased line, and dial-up.[4] MBSCC will implement these changes effective immediately.

MBSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among MBSCC's participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will impact or impose a 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 have been solicited or received. MBSCC will notify the Commission of any written comments received by MBSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[6] of the Act and pursuant to Rule 19b–4(e)(2)[7] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by MBSCC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] The Commission has modified the text of the summaries prepared by MBSCC.

[3] Leased lines are billed on a flat rate regardless of usage whereas dial-up access is billed based on usage plus a small maintenance fee.

[4] One type of connection (*i.e.*, CTCI SNA LU6.2) accommodates leased or dial-up access to the EPN service.

[5] 15 U.S.C. § 78q–1 (1988).

[6] 15 U.S.C. § 78s(b)(3)(A)(ii) (1988).

[7] 17 CFR 240.19b–4(e)(2) (1996).

appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 also will be available for inspection and copying at the principal office of MBSCC. All submissions should refer to File No. SR–MBSCC–96–05 and should be submitted by November 22, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

Exhibit 1—Modifications to MBSCC's EPN Schedule of Charges

MBSCC EPN SCHEDULE OF CHARGES [9]

Account Maintenance Fees	
Direct Account	$250.00/month (per account).
Omnibus Account	$250.00/month (per account) plus $25.00/month (per customer account up to a maximum of $250.00/month/per account).
Message Processing Fees	
ON Send	$.25/million Current Face (8:00 a.m. to 1:00 p.m.).
	$1.25/million Current Face (1:00 p.m. to 2:00 p.m.).
	$1.50/million Current Face (2:00 p.m. to 3:00 p.m.).
	$1.25/million Current Face (3:00 p.m. to 5:00 p.m.).
ON Receive	$.50/million Current Face (8:00 a.m. to 1:00 p.m.).
	$.25/million Current Face (1:00 p.m. to 2:00 p.m.).
	$.25/million Current Face (2:00 p.m. to 3:00 p.m.).
	No Charge (3:00 p.m. to 5:00 p.m.).
DK Send or Receive	No Charge.
Cancel Send or Receive	No Charge.
Retransmission Request	No Charge.
AutoLink Request	No Charge.
Access Fees	
CTCI SNA LU6.2 *via leased line or Dial-up*	$71.00/month (per circuit to MetroTech).
CTCI TCP/IP *leased line* via Wellfleet (MBSCC)	$120.00/month (per circuit to MetroTech).
CTCI TCP/IP *leased line* via Cisco (MBSCC)	$190.00/month (per circuit to MetroTech).
CTCI TCP/IP via Dial-up	*$30.00/month (per circuit to MetroTech).*
EPN Terminal Service	No Charge (first 9.6 Kbps connection).
EPN Terminal Service	$12.75/month (each additional connection).
EPN Dial-up Terminal Service	$12.75/month (each 9.6 Kbps connection).
In addition to the above, telecommunication circuit charges from Sector (or your vendor of choice) will apply.	

[9] Additions to the text are denoted by italics, deleted text is bracketed.

[FR Doc. 96–28009 Filed 10–31–96; 8:45 am]

BILLING CODE 8010–01–M

[8] 17 CFR 200.30–3(a)(12) (1996).

[Release No. 34–37875; File No. SR–NASD–96–37]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Policy and Practice Concerning the Application of the Eligibility Provision in Rule 10304 of the NASD Code of Arbitration Procedure

October 28, 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 October 15, 1996, NASD Regulation, Inc. (''NASD Regulation'') 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 NASD Regulation. NASD Regulation has designated this proposal as one constituting a stated policy, practice, or interpretation under § 19(b)(3)(A)(i) of the Act, which renders the rule effective upon the Commission's receipt of this filing. 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

NASD Regulation is proposing to amend its policy and practice concerning the application of the eligibility provision in Rule 10304 of the Code of Arbitration Procedure (''Code'') of the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') to the effect that arbitrators, not the NASD Regulation staff, shall determine whether a dispute is eligible for arbitration. Below is the text of the proposed policy and practice change.

Pursuant to Rule 10304 of the Code, ''[n]o dispute, claim or controversy shall be eligible for submission to arbitration under this Code where six (6) years have elapsed from the occurrence or event giving rise to the act or dispute, claim or controversy.'' Effective August 1, 1996, the NASD Regulation staff will no longer make preliminary determinations concerning the eligibility of a claim for arbitration. The NASD Regulation staff instead will address questions concerning the eligibility of a claim according to the following procedures:

1. Upon the filing or receipt of a claim, the staff reviews the claim to determine if the claimant has identified when the transaction at issue occurred or when the claim arose. If not identified, the Statement of Claim is retained by the claimant is asked for additional information about the age of the claim.

2. If a claim identifies when the transaction at issue occurred or when the claim arose, it is served on the respondents. It is then the respondent's determination whether to challenge the eligibility of the claim.

3. Any motions to dismiss the claim on eligibility grounds and any responses thereto are forwarded to the arbitrators for a decision.

4. For those cases filed prior to August 1, 1996 where the staff has made a preliminary eligibility ruling in response to a respondent's motion, the moving papers will be forwarded to the arbitrators with a reminder that the arbitrators must review the issue *de novo* and must not accord the staff's preliminary ruling any weight.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation 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. NASD Regulation 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*

NASD Regulation is proposing to amend its policy and practice concerning the application of the eligibility provision in Rule 10304 of the Code to the effect that arbitrators, not the NASD Regulation staff, shall determine whether a dispute is eligible for arbitration under Rule 10304.[1]

Until recently, the NASD Regulation staff made preliminary eligibility determinations, both before and after a claim had been served, in cases where a bright line test could be applied. Before a claim was served the staff would, upon examination of the allegations in the Statement of Claim, determine if the occurrence or event giving rise to the act or dispute, claim or controversy took place more than six (6) years prior to the filing of the Statement of Claim. If the staff determined that this was the case, it would advise the claimant that the claim was ineligible for arbitration. Once a claim had been served and the staff had previously made a preliminary eligibility determination upon the motion of a party, upon the request of a party the arbitrators could review the preliminary staff determination and accept or reject it. The other self-regulatory organization (''SRO'') arbitration forums have also followed this practice.

NASD Regulation has determined that because the practice of having the staff make preliminary eligibility determinations is not expressly provided for in the Code, questions may arise concerning the legal effect of these determinations. Accordingly, NASD Regulation is proposing to amend the existing policy and practice to eliminate staff eligibility determinations.

The amended policy, which is consistent with the Code and plain language of Rule 10304, will require the staff, upon the filing or receipt of a claim, to review the claim to determine if the claimant has identified when the transaction at issue occurred or when the claim arose. If not identified, the Statement of Claim is retained but the claimant is asked for additional information about the age of the claim. By requiring that claims identify when the transaction at issue occurred or arose, NASD Regulation is facilitating the ability of the arbitrators to determine if the claim is eligible.

If a claim identifies when the transaction at issue occurred or when the claim arose, or is amended to provide such information, it is served on the respondents. Once the claim is served, the respondents can decide whether or not to challenge the eligibility of the claim. If a respondent submits a motion to dismiss on eligibility grounds, the claimants will have an opportunity to respond, and the motion and the responses will be forwarded to the arbitrators for a decision.

NASD Regulation has also determined that where a case was filed prior to August 1, 1996, and the staff has made a preliminary eligibility ruling in response to a respondent's motion, the moving papers will be forwarded to the

[1] This policy is intended to be temporary. NASD Regulation intends the policy to remain in effect until an amendment to Rule 10304 can be developed and approved. The NASD's Arbitration Policy Task Force Report on Securities Arbitration Reform recommended suspending the eligibility rule. NASD Regulation, in consultation with the Securities Industry Conference on Arbitration (SICA) and others, is considering other alternatives to suspending the eligibility rule. The policy will not be included in the NASD Manual because NASD Regulation intends to propose a new arbitration eligibility rule within a few months.

arbitrators with a reminder that the arbitrators must review the issue *de novo* and must not accord the staff's preliminary ruling any weight.

NASD Regulation notes, as described above, that eligibility determinations have always involved an element of staff discretion. Thus, adoption of the policy set forth above is not a substantive change in Rule 10304 or its interpretation; it is a change in the manner in which the staff exercises its discretion to administer the arbitration process under the Rule.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[2] in that amending the policy for applying the eligibility provision of the Code serves the public interest by enhancing the perception of fairness of such proceedings by the parties to such proceedings. Unless otherwise expressly provided for in the Code, dispositive motions should be decided by the arbitrators because the arbitrators are the designated adjudicators of all issues of fact, law and procedure in an arbitration. To the extent the parties to such proceedings express increased satisfaction with the resolution of eligibility issues, the goal of providing the investing public with a fair, efficient and cost-effective forum for the resolution of disputes will have been advanced.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act[3] and subparagraph (e) of Rule 19b–4[4] thereunder in that it constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

At any time within 30 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–96–37 and should be submitted by November 22, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–28077 Filed 10–31–96; 8:45 am]

BILLING CODE 8010–01–M

[2] 15 U.S.C. 78*o*–3(b)(6).

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(e).

[Release No. 34–37877; File No. SR–NSCC–96–18]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change To Modify Procedures Relating to the Reconfirmation and Pricing Service

October 28, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 30, 1996, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–NSCC–96–18) as described in Items I, II, and III below, which Items have been prepared primarily by NSCC. 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 purpose of the proposed rule change is to modify NSCC's procedures relating to supplemental input into the Reconfirmation and Pricing Service (''RECAPS'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to modify NSCC's procedures relating to RECAPS.[3] The proposed rule change will implement a request by the RECAPS Subcommittee of the Securities Operations Division of the Securities Industry Association to have members respond more effectively to transactions processed through RECAPS.

NSCC's Procedure II(G) currently provides that members with transactions that have not been reconfirmed after the processing of initial RECAPS input have an opportunity to submit supplemental input during the same RECAPS cycle. Supplemental input includes advisories, deletes, and as-of trades. An advisory allows a member to acknowledge a contraside submission that has not been reconfirmed after processing of initial RECAPS input. A delete permits a member to delete its own submission

[1] 15 U.S.C. 78s(b)(1)(1988).

[2] The Commission has modified the text of the summaries submitted by NSCC.

[3] RECAPS is NSCC's automated fail clearance system for eligible securities. RECAPS provides members an opportunity on a quarterly basis to reconfirm and reprice transactions that already have been compared.

from RECAPS. An as-of trade enables a member to submit a transaction to RECAPS if it failed to submit the transaction as initial RECAPS input at the start of the RECAPS cycle.

The proposed rule change will make several modifications to NSCC's Procedure II(G) regarding RECAPS supplemental input. First, the proposed rule change will expand the range of responses by a member to a transaction submitted by a contraside that has not been reconfirmed after processing of initial RECAPS input (''unreconfirmed RECAP'') by adding ''don't knows'' (''DKs'') and rejects. The proposed rule change will require a member to respond to an unreconfirmed RECAP by submitting an advisory, a DK, or a reject and in the case of a reject by also indicating the reasons for the rejection (*e.g.,* trade previously settled or different quantity).

The proposed rule change will provide that failure to respond to an unreconfirmed RECAP will result in the transaction being deemed DK'ed. The proposed rule change also will provide that a DK'ed transaction will extinguish the rights, if any, of the DK'ing member with respect to the transaction. Transactions of a member that have been DK'ed will be subject to the rules of the appropriate marketplace.

Second, the proposed rule change will eliminate deletes as a type of RECAPS supplemental input. The delete function is being removed because members do not use it, and therefore, there is no longer a need to maintain the delete function as part of the RECAPS system.

Third, the proposed rule change will add a new report to RECAPS. NSCC will make available to members a RECAPS activity report at the end of the RECAPS cycle. The RECAPS activity report will contain summary information regarding the member's overall activity during a particular RECAPS cycle, including the number of transactions submitted, the number of transactions that were reconfirmed, and the number of transactions that were DK'ed, rejected, or for which there was no response.

NSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the rule proposal will promote the prompt and accurate clearance and settlement of securities transactions and will assure the safeguarding of securities and funds in the custody or control of NSCC or for which NSCC is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a 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 have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 NSCC consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC.

All submissions should refer to the file number SR–NSCC–96–18 and should be submitted by November 22, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

[4] 17 CFR 200.30–3(a)(12)(1996).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–28078 Filed 10–31–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37872; File No. SR–OCC–96–08]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Regarding the Exercise of Certain Foreign Currency Options

October 25, 1996.

On July 18, 1996 The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–OCC–96–08) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] to permit the exercise of certain foreign currency options on the business day immediately preceding the expiration date of such options. Notice of the proposal was published in the Federal Register on September 12, 1996.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description of the Proposal

Under the rule change, OCC will permit the exercise of American-style[3] foreign currency and cross-rate foreign currency options (collectively, ''currency options'') on the business day immediately preceding their expiration date. OCC Rule 801(c) formerly prohibited the exercise of option contracts on the business day immediately preceding their expiration unless such options were American-style flexibly structured options.

At the time this exercise restriction was incorporated into OCC's rules, all option contracts expired on Saturday. The restriction ensured that there was adequate time for all unmatched transactions to be resolved and for OCC to receive and process exercise notices for the preliminary and final exercise by exception processing cycles that were then in effect. Since the implementation of the exercise restriction in Rule 801(c), OCC has adopted Friday night as the expiration date for all standardized

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 37655 (September 6, 1996), 61 FR 48193.

[3] An ''American'' or ''American style'' option contract is an option contract that may be exercised at any time from its commencement time until its expiration. In contrast, a ''European style'' option contract is an option contract that may only be exercised on its expiration.

currency options[4] and has replaced its preliminary and final processing procedure with a single processing procedure for currency options. Furthermore, OCC clearing members have requested that OCC lift the restriction with respect to currency options because their non-U.S. customers have expressed a desire to be allowed to submit exercises on Thursday due to time zone differences with the United States.

II. Discussion

Section 17A(b)(3)(F) of the Act[5] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes the proposed rule change is consistent with OCC's obligations under the Act because the extra time to process transactions previously afforded by Rule 801(c) (*i.e.*, exercise restrictions) is no longer necessary for currency options because of OCC's single cycle expiration processing procedures and because currency options expire on Friday instead of Saturday. Therefore, by permitting the currency options to be exercised on Thursday by U.S. and non-U.S. customers of OCC participants and by removing an unnecessary OCC clearance and settlement procedure, the prompt and accurate clearance and settlement of securities transactions should be enhanced.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of 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–OCC–96–08) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–27999 Filed 10–31–96; 8:45 am]

BILLING CODE 8010–01–M

[4] For a completion description of the conversion of the expiration date for all standardized currency options from Saturday to Friday, refer to Securities Exchange Act Release Nos. 32458 (June 11, 1993), [File No. SR–OCC–93–09] (notice of filing and order granting accelerated approval on a temporary basis of a proposed rule change that changed the expiration day for American-style foreign currency options from Saturday to Friday) and 38800 (July 14, 1993), [File No. SR–OCC–93–15] (order granting permanent approval on an accelerated basis of a proposed rule change that changed the expiration day for American-style foreign currency options and cross-rate foreign currency options from Saturday to Friday).

[5] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

[6] 17 CFR 200.30–3(a)(12) (1996).

[Release No. 34–37874; File No. SR–PSE–96–38]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange Relating to Transaction Fees

October 28, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 15, 1996, the Pacific Stock Exchange, Inc. (''PSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE hereby is proposing to adopt a new charge applicable to Lead Market Makers (''LMMs'') who participate in the Exchange's LMM Book Pilot Program.

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 PSE 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 PSE 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

On March 29, 1996, the Exchange filed a proposal with the Commission to adopt a pilot program under which a limited number of LMMs would be able to assume operational responsibility for the options public limit order book (''Book'') in a limited number of issues (''Book Pilot Program'').[2] The Commission approved the Book Pilot Program as a one year pilot program on October 11, 1996.[3] Under the Book Pilot Program, the designated LMMs manage the Book function, take responsibility for trading disputes and errors, set rates for book execution, and pay the Exchange a fee for staffing and services. The Book Pilot Program has been implemented on a limited basis, and will involve no more than three LMMs and/or forty option symbols during the one year pilot phase. During the pilot phase, the Exchange is providing staffing to assist the LMM in the management of the Book function.

The Exchange is now proposing to amend its Schedule of Rates to establish a staffing charge to LMMs who participate in the Book Pilot Program. The proposed charge is $.50 per contract for each contract executed by the Book under the Book Pilot Program. LMMs would be subject to a minimum monthly charge of $200 and a maximum monthly charge of $16,000 for all issues in which the LMM is participating in the Book Pilot Program.

The proposed charge is intended to cover the Exchange's cost of providing staff who will assist the LMM in operating the Book during the Book Pilot Program.

The Exchange believes that the proposed rule change is consistent with Section 6[4] of the Act in general and with Section 6(b)(4)[5] in particular in that it provides for the equitable allocation of reasonable charges among its members and persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is unnecessary or inappropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 37335 (June 19, 1996), 61 FR 33568.

[3] Securities Exchange Act Release No. 37810 (October 11, 1996).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder.[6] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PSE–96–38 and should be submitted by November 22, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–28076 Filed 10–31–96; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78s(b)(3)(A) and 17 CFR 19b–4(e).

[Release No. 34–37869; File No. SR–PTC–96–04]

Self-Regulatory Organizations; Participants Trust Company; Order Approving a Proposed Rule Change Relating to the Elimination of Prefunding Requirements for Intraday Free Retransfers

October 25, 1996.

On July 2, 1996, the Participants Trust Company (''PTC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–PTC–96–04) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] to eliminate prefunding requirements for intraday free retransfers. Notice of the proposal was published in the Federal Register on August 12, 1996.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change amends PTC's rules to eliminate the requirement that participants must have cash on deposit (''optional deposits'') with PTC equal to the original contract value for securities that are received the same day versus payment prior to making an intraday free redelivery of such securities. These optional deposits are commonly referred to as ''prefundings.''

The requirement that participants prefund intraday free redeliveries was added to PTC's rules by PTC's predecessor, MBS Clearing Corporation (''MBSCC'').[3] The purpose of the prefunding requirement was to support the original deliverer's security interest (''DSI'') and the default provisions which permitted PTC to reverse (*i.e.*, unwind) securities deliveries to achieve settlement, both of which were added to PTC's rules at the same time.[4] Both the DSI and the unwind procedures subsequently have been eliminated from PTC's rules and have been replaced with the participant's intraday collateral lien (''PICL'').[5]

The PICL, which can be exercised only if PTC is insolvent and fails to achieve settlement, is granted to those participants with a net credit balance owed to them by PTC. Participants with a net credit balance have a pro rata interest in a common pool of collateral that consists of securities held in transfer accounts (*i.e.*, intraday deliveries versus payment) for which settlement has not yet occurred, payments made by participants to satisfy net debit balances owed to PTC, and prefunding payments made to support intraday free redeliveries of securities from transfer accounts.

Prefunding intraday free redeliveries can impose a substantial burden on participants. For example, if a participant receives a security in a transaction versus payment through PTC and thereafter redelivers it free, such participant usually will be receiving payment for the free redelivery outside of PTC. Although the participant must have sufficient Net Free Equity (''NFE'')[6] for PTC to process the transaction, the participant may not have the cash available until after the funds are received from the party receiving the free redelivery outside of PTC. In addition, the participant may be in a net credit position at PTC when cash prefunding is required as a result of other transactions which are processed through its account.

II. Discussion

Section 17A(b)(3)(F)[7] of the Act requires that the rules of a clearing

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 37523 (August 5, 1996), 61 FR 41816.

[3] In 1988, MBSCC proposed a rule change to require its participants to prefund intraday free transfers. Securities Exchange Act Release No. 26101 (September 22, 1988), 53 FR 37895 [File No. SR–MBS–88–14] (notice of filing of proposed rule change). Subsequently, the order granting PTC's registration as a clearing agency incorporated the proposed rule change stating that PTC's rules were essentially identical to MBSCC's rules including the most recently proposed rule changes. Securities Exchange Act Release No. 26671 (March 31, 1989), 54 FR 13266, [File No. 600–25] (order granting registration as a clearing agency and statement of reasons).

[4] PTC's rules originally provided that securities delivered versus payment (*i.e.*, held in a participant's transfer account) were held by PTC pending settlement subject to the DSI granted to the original delivering participant. If securities were thereafter redelivered free from a transfer account, the secured party would lose its collateral unless prefunding served as proceeds of that collateral. Accordingly, participants that made a free delivery of securities subject to a DSI were required to have cash at least equal to the original contract value of the securities in the form of an optional deposit to the participants fund.

[5] For a more complete discussion of PTC's reasons for removing the DSI and the unwind procedures, refer to Securities Exchange Act Release No. 34701 (September 22, 1994), 59 FR 49730 [File No. SR–PTC–94–03] (order approving proposed rule change).

[6] NFE for a participant's account consists of, among other things, the cash balances in the participant's account, the market value of securities, net of applicable margin in the participant's account or associated transfer account, a portion of the participant's mandatory deposit to the participants fund, and the participant's optional deposits to the participants fund including prefunding. Additional components of NFE not relevant to this analysis include reserve on gain, which operates to reduce NFE in certain transactions, and excess proprietary NFE, a component of supplemental processing collateral.

[7] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that PTC's proposed rule change is consistent with PTC's obligations under the Section 17A of the Act. Each transaction processed through the PTC system, including both deliveries versus payment and free redeliveries, is tested to ensure that both the delivering and receiving participant's accounts will not have negative NFE after giving effect to the transaction. PTC's NFE controls will block any free redelivery where the deduction of the securities from the account of the delivering participant will cause its NFE to be negative thereby reducing the risk that the amount of collateral available with respect to a participant's account is not sufficient to cover the participant's debit balance. The elimination of cash prefunding will not diminish PTC's NFE controls. In addition, the elimination of cash prefunding will release collateral previously required by PTC which should increase participants' liquidity while PTC should not incur any additional risks by such release.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of 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–96–04) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–28001 Filed 10–31–96; 8:45 am]

BILLING CODE 8010–01–M

[8] 17 CFR 200.30–3(a)(12) (1996).

[Release No. 34–37863; File No. SR–Phlx–96–33]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to an Increase in Narrow-Based Index Option Position and Exercise Limits

October 24, 1996.

I. Introduction

On August 2, 1996, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''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 Exchange Rules 1001A(b)(1) and 1002A to increase the position and exercise limits for narrow-based index options from 6,000, 9,000, or 12,000 contracts to 9,000, 12,000, or 15,000 contracts.

The proposed rule change appeared in the Federal Register on September 10, 1996.[3] No comments were received on the proposed rule change. This order approves the Phlx's proposal.

II. Background and Description

According to the Phlx, the purpose of the proposed rule change is to increase narrow-based index option position and exercise limits[4] in order to attract additional trading interest and, thus, promote depth and liquidity in Phlx index options. The Exchange believes that the current limits constrain certain investors from trading index options.

Currently, Exchange Rules 1001A(b)(1) and 1002A establish the following position and exercise limits for narrow-based (industry) index options: (i) 6,000 contracts for an index where a single component stock accounted, on average, for 30% or more of the index value during the 30-day period immediately preceding the Exchange's semi-annual review of narrow-based index option position limits; (ii) 9,000 contracts for an index where a single component stock accounted, on average, for 20% or more of the index value or any five component stocks together accounted, on average, for more than 50% of the index value but no single component stock accounted, on average, for 30% or more of the index value during the 30-day period immediately preceding the Exchange's semi-annual review of narrow-based index option position limits; and (iii) 12,000 contracts where the conditions requiring a limit of 6,000 contracts or 9,000 contracts have not occurred. The Phlx proposes to amend Exchange Rules 1001A(b)(1) and 1002A to increase the position and exercise limits for narrow-based index options from 6,000, 9,000, or 12,000 contracts to 9,000, 12,000, or 15,000 contracts.[5]

The Exchange believes that the proposed increase is appropriate in light of the Exchange's more than ten years experience trading index options. In 1983, the Gold/Silver Index (''XAU'') was the first narrow-based index option to be traded on the Phlx, listed with a position limit of 4,000 contracts.[6] Since that time, the Exchange has honed its experience in monitoring and surveilling index options trading by developing and implementing an increasingly sophisticated regulatory program. This program has benefitted from technological advances and has matured alongside index options trading. Moreover, the market for index options has also evolved, as more investors are familiar with the product and its uses. This is reflected in the appreciable growth in index options volume not only since 1983 but in more recent years as well.[7]

The Exchange recognizes that the purposes of these limits are to prevent manipulation and to protect against disruption of the markets for both options as well as the underlying securities. The Exchange has considered the effects of increased position limits on the marketplace and believes that concerns regarding manipulation and disruption are adequately addressed by the Phlx's regulatory program. The Phlx continues to monitor the markets for evidence of manipulation or disruption caused by investors with positions at or near current position or exercise limits and the new limits will not diminish the surveillance function in this regard.

The current levels for narrow-based index options have been in place since September 1995.[8] Since that time, however, index options have continued

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 37629 (September 3, 1996), 61 FR 47775 (September 10, 1996).

[4] Position limits impose a ceiling on the number of option contracts which an investor or group of investors acting in concert may hold or write in each class of options on the same side of the market (*i.e.,* aggregating long calls and short puts or long puts and short calls). 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.

[5] The Phlx trades options on the following seven narrow-based indexes, with their current position limits noted: (1) Gold/Silver Index (''XAU'') 6,000 contracts; (2) Utility Index (''UTY'') 12,000 contracts; (3) Phlx/KBW Bank Index (''BKX'') 12,000 contracts; (4) Phone Index (''PNX'') 6,000 contracts; (5) Semiconductor Index (''SOX'') 12,000 contracts; (6) Airline Sector Index (''PLN'') 12,000 contracts; and (7) Forest/Paper Products (''FPP'') 12,000 contracts.

[6] *See* Securities Exchange Act Release No. 20437 (December 2, 1983), 48 FR 55229 (December 9, 1983) (File No. SR–Phlx–83–17).

[7] According to the Phlx, index options volume increased 48% (from 998,780 contracts to 1,483,585 contracts) from the period January–June 1995 to January–June 1996.

[8] *See* Securities Exchange Act Release No. 36194 (September 6, 1995), 60 FR 47637 (September 13, 1995) (File No. SR–Phlx–95–16) (increasing position and exercise limits for narrow-based index options to 6,000, 9,000, or 12,000 contracts) (''Securities Exchange Act Release No. 36194'').

to experience heavy and steady volume, with a concomitant increase in open interest. In this light, the Exchange believes that the proposed limits of 9,000, 12,000, or 15,000 contracts should further increase the depth and liquidity of the markets for index options by attracting additional investor interest. The Phlx also believes that higher position limits would further accommodate the hedging needs of Exchange market makers and specialists, who are restricted by current levels.

Further, the Exchange believes that the proposed increases are reasonable. The Phlx states that in prior releases approving increased position limits, the Commission has acknowledged that a gradual, evolutionary approach has been adopted in increasing position and exercise limits. Accordingly, the Phlx proposes a 25% increase in the highest tier (from 12,000 to 15,000 contracts); a 33% increase in the middle tier (from 9,000 to 12,000 contracts); and a 50% increase in the lowest tier (from 6,000 to 9,000 contracts). The Exchange believes that these proposed increases are consistent with the gradual evolution cited by the Commission, as the proposed levels represent reasonable increases which are in line with prior changes.[9]

The Exchange believes that the 1995 changes were so modest (20% or less) that position limit increases are once again needed. Since the 1995 changes were implemented, the Exchange has been requested by its members and customers to again propose an increase in position limits, arguing that these limits hamper their ability to execute investment strategies. In light of the large portfolios common to institutional trading and the large-sized transactions that are required to execute complicated, cross-market strategies, such requests emphasize that institutional hedging needs and trading objectives may exceed current limits. Floor members have also expressed the resulting deleterious effect on index options trading in an exchange environment. Based on such member and customer requests, the Exchange believes that the current position limit levels continue to discourage market participation by large investors and the institutions that compete to facilitate the trading interests of large investors. Accordingly, this proposal aims to accommodate the liquidity and hedging needs of large investors as well as the facilitators of those investors.

Concurrent with the proposed increase in position limits, the Exchange is also proposing a corresponding increase to narrow-based index option exercise limits. The Exchange believes that this increase is necessary and appropriate for the same reasons as the rationale cited above for proposed increases in position limits. Furthermore, exercise limits constrict trading strategies by preventing investors from exercising positions larger than the limit within five consecutive business days. The Exchange also notes that most of its index options currently are or will become European-style, exercisable only during a specified period at expiration, such that the manipulation and market disruption concerns associated with large exercises will be limited.[10]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5),[11] in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest. In addition, the Commission believes that the proposal should remove impediments to and perfect the mechanism of a free and open market by providing market opportunity to investors constricted by current position limit levels.

Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of option contracts that a member or customer can hold or exercise. These rules 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. At the same time, the Commission has recognized that option position and exercise limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.

In this regard, the Phlx has stated that the current position limits discourage market participation by certain large investors and the institutions that compete to facilitate their trading. In addition, the Phlx notes that index option trading volume has increased significantly since 1995, when the current industry index option position limits were established. In light of the increased volume of narrow-based index option trading and the needs of investors and market makers, the Commission believes that the Phlx's proposal is a reasonable effort to accommodate the needs of market participants.

In addition, the Commission notes that the proposal, while increasing the positions limits for narrow-based index options, continues to reflect the unique characteristics of each index option and to maintain the structure of the current three-tiered system. Specifically, the lowest proposed limit, 9,000 contracts, will apply to narrow-based index options in which a single underlying stock accounts for 30% or more of the index value during the 30-day period immediately preceding the Exchange's semi-annual review of industry index option positions limits. A position limit of 12,000 contracts will apply if any single underlying stock accounts, on average, for 20% or more of the index value or any five underlying stocks account, on average for more than 50% of the index value, but no single stock in the group accounts, on average, for 30% or more of the index value during the 30-day period immediately preceding the Exchange's semi-annual review of industry index option position limits. The 15,000 contract limit will apply only if the Exchange determines that the conditions requiring either the 9,000 contract limit or the 12,000 contract limit have not occurred.

The Commission believes that the proposed increases for the three tiers of 25%, 33%, and 50%, for highest to lowest, respectively, appear to be appropriate and consistent with the Commission's evolutionary approach to position and exercise limits. In this regard, the absence of discernible manipulative problems under the current three-tiered position and exercise limit system for narrow-based index options leads the Commission to conclude that the increases proposed by the Exchange are warranted. The Commission recognizes that there are no ideal limits in the sense that options positions of any given size can be stated conclusively to be free of any

[9] *See, e.g.,* Securities Exchange Act Release No. 36194, *supra* note 8, where the Phlx's narrow-based position limit changes represented a 9% increase in the lowest tier (from 5,500 to 6,000 contracts); a 20% increase in the middle tier (from 7,500 to 9,000 contracts); and a 14% increase in the highest tier (from 10,500 to 12,000 contracts).

[10] *See, e.g.,* Securities Exchange Act Release No. 37575 (August 15, 1996), 61 FR 43289 (August 21, 1996), File No. SR–Phlx–96–18) (order approving change in exercise style of Phlx's National Over-the-Counter Index from American-style to European-style).

[11] 15 U.S.C. § 78f(b) (1988).

manipulative concerns. However, based upon the absence of discernible manipulation or disruption problems under current limits, the Commission believes that the proposed limits can be safely considered. Accordingly, the Commission believes that the Phlx's proposed increases of existing position and exercise limits for narrow-based index options is now appropriate.[12]

The Commission notes that the Exchange has had considerable experience monitoring the current three-tiered framework in narrow-based index options. The Commission has not found that differing position and exercise limit requirements based on the particular options product to have created programming or monitoring problems for securities firms, or to have led to significant customer confusion. Based on the current experience in handling position and exercise limits, the Commission believes that the proposed increase in position and exercise limits for narrow-based index options will not cause significant problems.

Finally, the Phlx has indicated that its surveillance procedures have become increasingly sophisticated and automated. The Commission believes that the Exchange's surveillance programs are adequate to detect and deter violations of position and exercise limits as well as to detect and deter attempted manipulative activity and other trading abuses through the use of such illegal positions by market participants.[13]

IV. Conclusion

For the foregoing reasons, the Commission finds that the Phlx's proposal to increase the position and exercises limits for narrow-based index options is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–Phlx–96–33) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

[12] The Commission continues to believe that proposals to increase position limits and exercise limits must be justified and evaluated separately. After reviewing the proposed exercise limits, along with the eligibility criteria for each tier, the Commission has concluded that the proposed exercise limit increases for the three-tiered framework do not raise manipulation problems or increase concerns over market disruption in the underlying securities.

[13] The Commission emphasizes that the Phlx must closely monitor compliance with position and exercise limits and to impose appropriate sanctions for failures to comply with the Exchange's position and exercise limit rules.

[14] 15 U.S.C. 78s(b)(2) (1988).

[15] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–28006 Filed 10–31–96; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities

Proposed Collection Request

The Social Security Administration publishes a list of information collection packages that will require submission to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection(s) listed below requires extension of the current OMB approval(s).

(Call the SSA Reports Clearance Officer on (410) 965–4125 for a copy of the form(s) or package(s), or write to her at the address listed below the information collections.)

1. Statement of Funds You Provided to Another; Statement of Funds You Received—0960–0481. The information collected on forms SSA–2854 and SSA–2855 is used by the Social Security Administration to determine if money borrowed on an informal basis from a noncommercial lender (friend or relative) is income to the borrower/claimant. The information is needed to insure that an individual is properly eligible for Supplemental Security Income (SSI) payments. The respondents are applicants for and recipients of SSI payments.

Number of Respondents: 40,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 6,667 hours.

2. Physical Residual Functional Capacity Assessment; Mental Residual Functional Capacity Assessment—0960–0431. The information collected on forms SSA–4734–U8 and SSA–4734 SUP is needed by the Social Security Administration to assist in the adjudication of disability claims involving physical and/or mental impairments. The forms assist the State Disability Determination Services (DDS) to evaluate impairment(s) by providing a standardized data collection format to present findings in a clear, concise and consistent manner. The respondents are State DDSs administering title II and title XVI disability programs.

Number of Responses: 1,693,425.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 564,475 hours.

Written comments and recommendations regarding the information collection(s) should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Judith T. Hasche, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Submission for OMB Review; Comment Request

The Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with P.L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection(s) listed below, which was published in the Federal Register on September 3, 1996, has been submitted to OMB.

(Call the SSA Reports Clearance Officer on (410) 965–4125 for copies of the form(s) or package(s).)

OMB Desk Officer: Laura Oliven.

SSA Reports Clearance Officer: Judith T. Hasche.

1. Application for Supplemental Security Income—0960–0229. The information on form SSA–8000 is used by the Social Security Administration to determine a claimant's eligibility for benefits and the amount payable in claims for SSI. The respondents are certain applicants for SSI.

Number of Respondents: 1,316,678.

Frequency of Response: 1.

Average Burden Per Response:

35 minutes for paper application

25 minutes for automated collection of information

Estimated Annual Burden: 581,533 hours.

2. Statement of Living Arrangements, In-Kind Support and Maintenance—0960–0174. The information on form SSA–8006 is used by the Social Security Administration to determine if an applicant or recipient meets the income

criteria for eligibility to SSI benefits. The respondents are individuals who apply for or are receiving SSI payments.

Number of Respondents: 438,400.

Frequency of Response: 1.

Average Burden Per Response: 7 minutes.

Estimated Annual Burden: 51,147 hours.

Written comments and recommendations regarding the information collection(s) should be sent within 30 days of the date of this publication. Comments may be directed to OMB and SSA at the following addresses:

(OMB), Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, D.C. 20503

(SSA), Social Security Administration, DCFAM, Attn: Judith T. Hasche, 6401 Security Blvd, 1–A–21 Operations Bldg., Baltimore, MD 21235

Date: October 25, 1996.

Frederick W. Brickenkamp,

Team Leader, FMRCT, Social Security Administration.

[FR Doc. 96–28055 Filed 10–31–96; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice No. 2459]

Shipping Coordinating Committee, Maritime Safety Committee; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 9:30 am on Tuesday, November 26, 1996, in Room 2415, at U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC. The purpose of this meeting will be to finalize preparations for the 67th Session of the Maritime Safety Committee, and associated bodies of the International Maritime Organization (IMO), which is scheduled for December 2–6, 1996, at IMO Headquarters in London. At the meeting, papers received and the draft U.S. positions will be discussed.

Among other things, the items of particular interest are:

a. Adoption of amendments to the Safety of Life at Sea Convention

b. Bulk carrier safety

c. Role of the human element

d. Formal safety assessment, and

e. Report of the following Subcommittees:

(i) Bulk Liquids and gases

(ii) Flag State implementation

(iii) Safety of navigation

(iv) Stability, load lines and fishing vessel safety

(v) Training and watchkeeping, and

(vi) Fire protection.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Joseph J. Angelo, Commandant (G–MS), U.S. Coast Guard, 2100 2nd Street, SW., Room 1218, Washington, DC 20593–0001 or by calling (202) 267–2970.

Dated: October 23, 1996.

Russell A. LaMantia,

Chairman, Shipping Coordinating Committee.

[FR Doc. 96–28024 Filed 10–31–96; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending October 25, 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–96–1884.

Date filed: October 21, 1996.

Parties: Members of the International Air Transport Association.

Subject:

PTC31 S/CIRC 004 dated September 27, 1996, Circle Pacific Resolution 002

PTC31 S/CIRC 0009 dated October 18, 1996, Minutes

PTC31 S/CIRC Fares 0001 dated October 4, 1996, Tables

Intended Effective date: April 1, 1997.

Docket Number: OST–96–1885.

Date filed: October 21, 1996.

Parties: Members of the International Air Transport Association.

Subject:

PTC23 EUR–SASC 0004 dated September 24, 1996, Europe-South Asian Subcontinent Resos r1–r18.

PTC23 EUR–SASC 0007 dated October 18, 1996, Minutes.

PTC23 EUR–SASC Fares 0001 dated October 1, 1996, Tables.

PTC23 EUR–SASC Fares 0002 dated October 11, 1996, Correction.

r–1—001LL
r–2—001ss
r–5—015v
r–7—055a
r–9—070h
r–10—070I
r–11—074y
r–14—080kk
r–16—084d
r–3—002
r–4—005d
r–6—045a
r–8—065a
r–12—078dd
r–13—078oo
r–15—080ww
r–17—084e
r–18—092gg

Intended effective date: January 1, 1997.

Docket Number: OST–96–1891.

Date filed: October 23, 1996.

Parties: Members of the International Air Transport Association.

Subject:

PTC2 EUR 0023 dated October 18, 1996 r1–10

PTC2 EUR 0024 dated October 18, 1996 r11

PTC2 EUR 0026 dated October 18, 1996 r12–18

PTC2 EUR 0028 dated October 18, 1996 r19–22

Within Europe Expedited Resolutions

Intended effective date: January 1/ February 28, 1997.

Docket Number: OST–96–1892.

Date filed: October 23, 1996.

Parties: Members of the International Air Transport Association.

Subject:

PTC2 EUR 0022 dated October 18, 1996 r1–14

PTC2 EUR 0025 dated October 18, 1996 r15–20

PTC2 EUR 0027 dated October 18, 1996 r21–23

Within Europe Expedited Resolutions (Summary attached.)

Intended effective date: December 1, 1996.

Docket Number: OST–96–1905.

Date filed: October 25, 1996.

Parties: Members of the International Air Transport Association.

Subject:

PTC12 MEX–EUR 0004 dated October 22, 1996 r1–2

PTC12 MEX–EUR 0005 dated October 22, 1996 r3–8

Mexico-Europe Expedited Resolutions

Intended effective date: December 1, 1996/January 1, 1997.

Docket Number: OST–96–1906.

Date filed: October 25, 1996.

Parties: Members of the International Air Transport Association.

Subject:

COMP Telex Mail Vote 833.

Adjust Currency for Fares and Rates in Yemen

r–1–010a r–2–010bb

Intended effective date: November 1, 1996.

Docket Number: OST–96–1907.

Date filed: October 25, 1996.

Parties: Members of the International Air Transport Association.

Subject:

TC1 Telex Mail Vote 832

TC1 Longhaul Fares r1–9

Intended effective date: January 1, 1997.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–28079 Filed 10–31–96; 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 October 26, 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–95–1888.

Date filed: October 22, 1996.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 19, 1996.

Description: Application of United Air Lines, Inc. pursuant to 49 U.S.C. Section 41101, and Subpart Q of the Department's Procedural Regulations, applies for renewal of authority to serve Italy in its Certificate of Public Convenience and Necessity for Route 624 for an additional five year period.

Docket Number: OST–96–1886.

Date filed: October 22, 1996.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 19, 1996.

Description: Application of Tem Enterprises, d/b/a Casino Express pursuant to 49 U.S.C. 41108, applies for a certificate of public convenience and necessity authorizing scheduled foreign air transportation of persons, property and mail between any point in the United States and any point in Canada.

Docket Number: OST–96–1908.

Date filed: October 25, 1996.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 22, 1996.

Description: Application of Lauda Air Luftfahrt AG, pursuant to 49 U.S.C. Section 41302 and Subpart Q of the Regulations request a First Amendment to its pending foreign air carrier permit, requesting issuance of a permit authorizing it to engage in scheduled foreign air transportation of persons, property and mail from points behind Austria via Austria and intermediate points to a point or points in a third country or countries, provided such service constitutes part of a continuous operation that includes service to Austria; and to engage in other charter air transportation in accordance with the Department's regulations contained in 14 CFR Part 212.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–28080 Filed 10–31–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Noise Exposure Map Notice and Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Portland International Airport (PDX) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing proposed noise compatibility program that was submitted for Portland International Airport under Part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before April 21, 1997.

EFFECTIVE DATE: The effective date of the FAA's determination on the Portland International Airport noise exposure maps and the start of its review of the associated noise compatibility program is October 22, 1996. The public comment period ends December 23, 1996.

FOR FURTHER INFORMATION CONTACT: Dennis Ossenkop, FAA, Airports Division, ANM–611, 1601 Lind Avenue, S.W., Renton, Washington 98055–4056. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps for Portland International Airport are in compliance with applicable requirements of Part 150, effective October 22, 1996. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before April 21, 1997. This notice also announces the availability of this program for public review and comment.

Under Section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicts noncompatible land uses as of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted a noise exposure map that has been found by FAA to be in compliance with the requirements of Federal Aviation Regulation (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Director of Aviation for Portland International Airport submitted to the FAA noise exposure maps, descriptions and other documentation which were produced during an airport Noise Compatibility Study. It was requested that the FAA review this material as the noise exposure maps, as described in Section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under Section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by PDX. The specific maps under consideration are Exhibit 5–12 and 5–13 in the submission. The FAA has determined that these maps for Portland International Airport are in compliance with applicable requirements. This determination is effective on October 22, 1996. FAA's determination on an airport operator's noise exposure maps is limited to the determination that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such

determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on noise exposure maps submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable for the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of the FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for PDX, also effective on October 22, 1996. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before April 21, 1997.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, paragraph 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to the local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Independence Avenue, SW, Room 615, Washington, D.C.

Federal Aviation Administration, Airports Division, ANM–600, 1601 Lind Avenue, S.W., Renton, Washington, 98055–4056

Portland International Airport, Portland, Oregon

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Renton, Washington, October 22, 1996.

David A. Field,

Acting Manager, Airports Division, ANM–600, Northwest Mountain Region.

[FR Doc. 96–28111 Filed 10–31–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Louisville International Airport, Louisville, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Louisville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

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

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 2851 Directors Cove, Suite #3, Memphis, TN 38131–0301.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert S. Michael, General Manager of the Regional Airport Authority of Louisville and Jefferson County at the following address: Regional Airport Authority of Louisville and Jefferson County, P.O. Box 9129, Louisville, KY 40209–0129.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Regional Airport Authority of Louisville and Jefferson County under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Southern Region, Memphis Airports District Office, Cager Swaunncy, Jr., Project Manager, 2851 Directors Cove. Suite #3, Memphis, TN 38131–0301, (901) 544–3495. The application may be reviewed in person at this location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Louisville International Airport under provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 28, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by Regional Airport Authority of Louisville and Jefferson County was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 28, 1997. The following is a brief overview of the application.

PFC application number: 97–01–C–00–SDF.

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 27, 1997.

Proposed charge expiration date: April 20, 2005.

Total estimated PFC revenue: $40,000,000.

Brief description of proposed project(s): Part 150 Approved Property Acquisitions.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Regional Airport Authority of Louisville and Jefferson County.

Issued in Memphis, Tennessee on October 28, 1996.

LaVerne F. Reid,

Manager, Airports District Office, Southern Region.

[FR Doc. 96–28110 Filed 10–31–96; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Imperial County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Imperial County, California.

FOR FURTHER INFORMATION CONTACT: C. Glenn Clinton, District Engineer, Federal Highway Administration, 980—9th Street, Suite 400, Sacramento, CA 95814–2724.

TELEPHONE: (916) 498–5037.

INTERNET ADDRESS: C. Glenn.Clinton@FHWA.DOT.GOV

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation will prepare an environmental impact statement (EIS) on a proposal to construct approximately 19.9 km (12.4 miles) of State Routes 78 and 111 in Imperial County and near the City of Brawley from 0.8 km (0.5 miles) south of Baughman Road on State Routes 86 and 78 to 0.5 km (0.3 miles) north of Mead Road on State Route 111. The project is proposed as a four-lane expressway on new location.

Improvements to the corridor are considered necessary to provide the final link in continuous four-lane highway access between Interstate 8 in Imperial County and Interstate 10 in Riverside County. This project is part of the primary North American Free Trade Agreement (NAFTA) corridor between the mainland of Mexico and the City of Los Angeles. These improvements are also considered necessary to relieve local congestion and highway safety concerns in the City of Brawley along existing State Routes 78 and 111 which are currently burdened with extensive commercial traffic. Alternatives under consideration include (1) taking no action; (2) constructing a divided four-lane, controlled access expressway on new location; (3) alignment variations as appropriate to minimize environmental effects of the project.

Within the limits of the study area for this project, various environmental resources and issues are known to exist and include but are not limited to: wetlands, floodway and floodplain, wildlife habitat, prime farmlands, growth inducement, economic, home and business relocation, noise, changes to vehicle traffic patterns, regional air quality, seismic exposure, land use planning, hazardous waste, and irrigation/drain systems.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. At least one public meeting will be held in Imperial County to solicit input from the local citizens on alternatives. In addition, a public hearing will be held. Public Notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above. The views of agencies having knowledge about historic resources potentially affected by the proposal or interested in the effects of the project on historic properties are solicited

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: October 18, 1996.

C. Glenn Clinton,

Chief, District Operations—South Sacramento, California.

[FR Doc. 96–28068 Filed 10–31–96; 8:45 am]

BILLING CODE 4910–22–M

Research and Special Programs Administration

[Notice No. 96–22]

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA will conduct a public meeting in preparation for the nineteenth session of the United Nation's Committee of Experts on the Transport of Dangerous Goods (UNCOE) to be held December 2–11, 1996 in Geneva, Switzerland.

DATE: November 22, 1996 at 9:30 a.m.

ADDRESS: Room 6244–6248, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: The primary purpose of this meeting will be to prepare for the nineteenth session of the UNCOE and to discuss U.S. positions on proposals submitted to the nineteenth session of the UNCOE. Topics to be covered during the public meeting include matters related to restructuring the UN Recommendations on the Transport of Dangerous Goods into a model rule, international harmonization of classification criteria, review of intermodal portable tank requirements, review of the requirements applicable to small quantities of hazardous materials in transport (limited quantities), classification of individual substances, requirements for bulk and non-bulk packagings used to transport hazardous materials, infectious substances and criteria for environmentally hazardous substances.

The public is invited to attend without prior notification.

Documents

Copies of documents submitted to the nineteenth session of the UNCOE meeting may be obtained from RSPA. A listing of these documents and copies of U.S. proposals is available on the Hazardous Materials Information Exchange (HMIX), RSPA's computer bulletin board. Documents may also be ordered by contacting RSPA's Dockets Unit (202–366–5046). For more information on the use of the HMIX system, contact the HMIX information center; 1–800–PLANFOR (752–6367); in Illinois, 1–800–367–9592; Monday through Friday, 8:30 a.m. to 5:00 p.m. Central time. The HMIX may also be accessed via the Internet at hmix.idis.anl.gov.

Issued in Washington, DC, on October 28, 1996.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 96–28081 Filed 10–31–96; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–48; OTS No. 03637]

Fairfield Savings Bank, F.S.B., Long Grove, Illinois; Approval of Conversion Application

Notice is hereby given that on October 24, 1996, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Fairfield Savings Bank, F.S.B., Long Grove, Illinois, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Central Regional Office, Office of Thrift Supervision, 200 West Madison Street, Suite 1300, Chicago, Illinois 60606.

Dated: October 28, 1996.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 96–28045 Filed 10–31–96; 8:45 am]

BILLING CODE 6720–01–M

[AC–49; OTS No. 04876]

First Federal Savings and Loan Association of Cullman, Cullman, Alabama; Approval of Conversion Application

Notice is hereby given that on October 24, 1996, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Cullman, Cullman, Alabama, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Southeastern Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

Dated: October 28, 1996.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 96–28046 Filed 10–31–96; 8:45 am]

BILLING CODE 6720–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 F.R. 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, ''Jewels of the Romanovs: Treasures of the Russian Imperial Court'' (See list [1], imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are important pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects beginning at The Corcoran Gallery of Art, Washington, DC from on or about January 30, 1997 through April 13, 1997; The Museum of Fine Arts, Houston, TX on May 1, 1997 through July 13, 1997; San Diego Museum of Art, San Diego, CA on July 13, 1997 through October 12, 1997; Memphis Brooks Museum of Art, Memphis, TN on October 30, 1997 through January 11, 1998; Portland Art Museum, Portland, OR on January 29, 1998 through April 12, 1998; American Museum of Natural History, New York, NY on April 30, 1998 through July 12, 1998 and the J.B. Speed Art Museum, Louisville, KY on July 30, 1998 through October 11, 1998, is in the national interest. Public Notice of these determinations is ordered to be published in the Federal Register.

Dated: October 25, 1996.

Les Jin,

General Counsel.

[FR Doc. 96–28010 Filed 10–31–96; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Neila Sheahan, Assistant General Counsel, at 202/619–5030, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547–0001

federal register

Friday
November 1, 1996

Part II

Department of Commerce

International Trade Administration

Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Tomatoes From Mexico; Notice

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–820]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Tomatoes From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 1, 1996.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Judith Wey Rudman, Office of AD/CVD Enforcement II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5288 or (202) 482–0192, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA).

Preliminary Determination

We preliminarily determine that fresh tomatoes from Mexico are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins are shown in the *Suspension of Liquidation* section of this notice.

Case History

Since the initiation of this investigation on April 18, 1996 (61 FR 18377, April 25, 1996 (*Initiation Notice*)), the following events have occurred:

On May 16, 1996, the United States International Trade Commission (ITC) notified the Department of Commerce (the Department) of its affirmative preliminary injury determination.

On June 4, 1996, the Department issued the antidumping duty questionnaire [1] to counsel for the following growers/exporters of fresh tomatoes to the United States: San Vincente Camalu (Camalu); Ernesto Fernando Echavarria Salazar Grupo Solidario (Echavarria); Arturo Lomeli Villalobas S.A. de C.V. (Lomeli); Ranchos Los Pinos S. de R.L. de C.V. (RLP); Administradora Horticola Del Tamazula (Tamazula); and Agricola Yory, S. de P.R. de R.I. (Yory) (collectively ''respondents'').

The six mandatory respondents and three voluntary respondents submitted questionnaire responses in July 1996. The Department issued supplemental questionnaires to the mandatory respondents in July and August 1996. Responses to these supplemental questionnaires were received in August and September 1996. The voluntary responses were not analyzed. (For a discussion of the selection of respondents, see the *Selection of Respondents* and *Voluntary Respondents* sections of this notice.)

On July 26, 1996, petitioners made a timely request for a postponement of the preliminary determination for a period of no more than 30 days. Pursuant to Section 733(c)(1)(A) of the Act and section 353.15(c) of the Department's regulations, and absent compelling reasons to deny this request, the Department postponed the preliminary determination until no later than October 7, 1996 (61 FR 40607, August 5, 1996).

Based on the information contained in the questionnaire responses of Lomeli's affiliate, Eco Cultivos, S.A. de C.V. (Eco), it appeared that Eco's sole U.S. customer, Desert Glory, Ltd., (DGL), might be considered an ''affiliated person,'' as defined under section 771(33) of the Act. Therefore, on September 9, 1996, we sent DGL a list of questions concerning its ownership and the nature of its business relationships with Eco and Lomeli. DGL's response to these questions was submitted on September 13, 1996. (For a discussion of this issue, see the *Affiliated Persons* section of this notice.) DGL submitted a request for scope clarification on September 30, 1996. Specifically, DGL requested that greenhouse grown ''Desert Glory Cocktail Tomato[es]'' be excluded from the scope of this investigation.

On September 13, 1996, the petitioners requested that, for all respondents, the Department compare transaction-specific export prices in the United States market to weighted-average normal values, in accordance with the ''targeted dumping'' provisions of section 777A(d)(1)(B) of the Act. For further discussion, see the *Targeted Dumping* section of this notice.

On October 7, 1996, the Department further postponed the preliminary determination until no later than October 28, 1996 (*see, Notice of Postponement of Preliminary Antidumping Duty Determination: Fresh Tomatoes from Mexico,* 61 FR 53702 (October 15, 1996)). Petitioners responded to DGL's request for a scope clarification on October 10, 1996, indicating that ''green-house grown 'cocktail tomatoes' '' are not included in the scope of this investigation (*see, Scope of Investigation* section below).

The Commerce Department and the Mexican tomato growers initialled a proposed agreement suspending this investigation on October 10, 1996. Interested parties were informed that the Department intended to finalize the agreement on October 28, 1996, and were invited to provide written comments on the agreement.

Selection of Respondents

Section 777A(c)(1) of the Act states that the Department is to calculate individual dumping margins for all known exporters and producers of the subject merchandise. Section 777A(c)(2) of the Act, however, states that the Department may examine less than all exporters and producers, if there is a large number of exporters and producers. This latter provision permits us to investigate (1) a sample of exporters, producers, or types of products that is statistically valid based on the available information, or (2) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can reasonably be examined. In the antidumping investigations involving pasta from Italy and Turkey, for example, because of our limited resources, we did not investigate individually all known exporters. (*See, Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy,* 61 FR 30326 (June 14, 1996); *Final Determination of Sales at Less Than Fair Value: Certain Pasta From Turkey,* 61 FR 30309 (June 14, 1996), (*Certain Pasta from Turkey).*)

In this case, because of the very large number of exporters of Mexican tomatoes, we invoked section 772A(c)(2) of the Act. We solicited comments on sampling methodologies from the Mexican government, petitioners, and potential respondents. All parties requested that we examine the producers and exporters accounting for the largest volumes of exports, rather than devising a sampling technique.

Based on the administrative resources available to work on this investigation and the number of potential affiliated companies involved, we determined that we could only analyze a total of six respondents (including their affiliates).

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the sales of the merchandise in all of its markets. Sections B and C of the questionnaire request home market sales listings and U.S. sales listings, respectively. Section D requests information on the cost of production of the foreign like product and constructed value of the merchandise under investigation.

At the time we issued the questionnaire, the information on the record demonstrated that the six largest growers/exporters and their affiliates accounted for just under 40 percent of exports, by quantity. These six companies provided an adequate representation of growers/exporters from both the Sinaloa and Baja growing regions, the two significant fresh tomato growing regions in Mexico. (*See* the June 12, 1996, memorandum to Barbara Stafford.)

Voluntary Respondents

Section 782(a) of the Act states that individual rates shall be calculated for firms which voluntarily provide information, except where the number of such respondents is so large that the calculation of individual dumping margins for all such respondents would be unduly burdensome and would prevent the timely completion of the investigation. Because the Department selected the maximum number of respondents it could investigate given the available administrative resources, the Department determined that no voluntary respondents would be accepted unless one of the mandatory respondents did not participate. (*See* the June 12, 1996, memorandum to Barbara Stafford.)

Potential voluntary respondents were provided with specific written guidance on the Department's criteria for including a voluntary respondent in the investigation. Three voluntary respondents timely filed section A, B, C, and D questionnaire responses. We did not analyze these voluntary responses, however, as all mandatory respondents had timely filed responses and are participating in the investigation. In light of the substantial effort already required to analyze the mandatory respondents, analysis of the voluntary respondents by the Department personnel assigned to this investigation would be unduly burdensome and would preclude the timely completion of this investigation.

Affiliated Persons

Based on the information on the record, we have determined that Lomeli and Eco are affiliated through stock ownership and shared board members. In determining whether to apply a single antidumping duty margin to two or more affiliated producers, the Department considers the following factors: (1) Whether the producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (2) whether there is a significant potential for the manipulation of prices or production. The factors the Department may consider in identifying a significant potential for the manipulation of prices or production include: (1) The level of common ownership; (2) interlocking officers or directors; and (3) whether operations are intertwined, such as through the sharing of sales information, the involvement in production and pricing decisions, the sharing of facilities or employees, or the presence of significant transactions between the affiliated producers. The principles underlying these criteria have been cited with approval in recent court decisions. (*See, FAG Kugelfisher* v. *U.S.*, Slip Op. 96–108 (CIT July 10, 1996), citing *Nihon Cement Co.* v. *United States* (17 CIT 400, 425 (1993), and *Final Determination of Sales at LTFV: Antifriction Bearing (Other than Tapered Bearings) and Parts Thereof from the Federal Republic of Germany,* 54 FR 18992, 19089 (May 3, 1989); *see also* Section 351.401 of the *Proposed Regulations,* 61 FR 7314 (February 27, 1996).)

During the POI, all of the tomatoes produced and sold by Lomeli were field-grown tomatoes. During the same period, all tomatoes produced and sold by Eco were grown in greenhouses. Information on the record regarding the manufacturing facilities and production processes used to grow greenhouse and field-grown tomatoes indicates that the production facilities and cultivation methods required to grow greenhouse tomatoes vary significantly from those needed to grow field-grown tomatoes. Therefore, it appears that a shift in production from field-grown tomatoes to greenhouse-grown tomatoes could not be accomplished without significant and expensive retooling of production facilities. Accordingly, although the Department considers Lomeli and Eco to be affiliated parties, we have determined that these companies should not be collapsed for purposes of the preliminary determination. Therefore, we have calculated separate dumping margins and deposit rates for Lomeli and Eco.

In its July 2, 1996, section A response, Eco claimed that its sole U.S. customer, DGL, was unaffiliated. Based on the existence of an exclusive purchase and distribution agreement between Eco and DGL, and the fact that certain employees of a wholly-owned subsidiary of DGL held positions at Eco, it appeared that Eco might be considered an affiliated person as defined in section 771(33) of the Act. Therefore, on September 9, 1996, we sent DGL a list of questions concerning its ownership and the nature of its business with Eco and Lomeli. On October 11, 1996, DGL stated that, in practice, DGL's exclusive purchase and distribution rights are limited to cocktail tomatoes, which have been excluded from the scope of this investigation (*see,* the *Scope of Investigation* section of this notice, below). Based on the record evidence, we have preliminarily determined that DGL does not have the ability to exercise restraint or direction over Eco's sales of subject merchandise and, therefore, does not control Eco for purposes of this investigation. Accordingly, for this preliminary determination, Eco and DGL are not considered affiliated parties within the meaning of section 771(33)(G) of the Act.

Postponement of Final Determination

Pursuant to section 735(a)(2)(A) of the Act, on October 11, 1996, five of the six mandatory respondents requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until the 135th day after the date of publication of the affirmative preliminary determination in the Federal Register. In accordance with 19 CFR 353.20(b), because our preliminary determination is affirmative, respondents accounting for a significant proportion of exports of the subject merchandise have requested postponement, and no compelling reasons for denial exist, we are postponing the final determination. Accordingly, we are extending suspension of liquidation in this case. (*See Extension of Provisional Measures* memorandum dated February 7, 1996, on file in the investigation of Certain Pasta from Italy in Room B–099 of the main Commerce building.)

Scope of Investigation

The products covered by this investigation are all fresh or chilled tomatoes (fresh tomatoes) except for cocktail tomatoes and those tomatoes which are for processing. For purposes of this investigation, cocktail tomatoes are green-house grown tomatoes, generally larger than cherry tomatoes and smaller than roma or common round tomatoes, and are harvested and packaged on-the-vine for retail sale. For purposes of this investigation, processing is defined to include preserving by any commercial process, such as canning, dehydrating, drying or the addition of chemical substances, or converting the tomato product into juices, sauces or purees. Further, imports of fresh tomatoes for processing are accompanied by an ''Importer's Exempt Commodity Form'' (FV–6)

(within the meaning of 7 CFR section 980.501(a)(2) and 980.212(i)). Fresh tomatoes that are imported for cutting up, not further processed (*e.g.,* tomatoes used in the preparation of fresh salsa or salad bars), and not accompanied by an FV–6 form are covered by the scope of this investigation.

All commercially-grown tomatoes sold in the United States, both for the fresh market and for processing, are classified as *Lycopersicon esculentum*. Important commercial varieties of fresh tomatoes include common round, cherry, plum, and pear tomatoes, all of which, with the exception of cocktail tomatoes, are covered by this investigation.

Tomatoes imported from Mexico covered by this investigation are classified under the following subheadings of the Harmonized Tariff Schedules of the United States (HTS), according to the season of importation: 0702.00.20, 0702.00.40, 0702.00.60, and 9906.07.01 through 9906.07.09. Although the HTS numbers are provided for convenience and Customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is March 1, 1995, through February 29, 1996. Since the passage of the URAA, the Department has altered the period it examines in an investigation to correspond to the most recently completed four fiscal quarters before the filing of the petition (*i.e.,* expanding the typical POI from six months to one year). This change is appropriate in light of the statutory definition of ''extended period of time'' for cost cases, to simplify reporting requirements and to prevent possible price manipulation by respondents after they become aware of the filing of a petition.

As indicated in the *Initiation Notice*, the petition was filed with the Department on March 29, 1996, although it was not filed with the ITC until April 1, 1996. Because the Department's current policy is to exclude the month in which the petition is filed from the POI, the submission of the petition to the Department in March called into question the inclusion of March in the POI. Information provided to the Department suggested that the pending filing of the petition was widely known and this, combined with the filing of a 201 case with the ITC on March 11, 1996, called into question the appropriateness of including March sales in our analysis. Due to the combination of these factors, we excluded the month of March from the POI.

Because we excluded March from the POI, we considered whether it was appropriate to base the POI on fiscal quarters. Information on the record indicated that accounting records and company operations in the tomato industry are maintained and tracked on a growing season basis. Because the use of fiscal quarters would not result in a reduced reporting burden for respondents, we did not adjust the POI further back in time in order to align it with fiscal quarters. For a further discussion of the selection of the POI, see the June 12, 1996, memorandum to Barbara Stafford.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent, covered by the description in the *Scope of Investigation* section, above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise (tomatoes of the same tomato type (*e.g.,* round, roma, etc.)) in the home market to compare to U.S. sales in the same month, we compared U.S. sales to a normal value based on constructed value. We did not compare sales of similar merchandise because the cost differences between tomato types are not associated with differences in the physical characteristics of the merchandise.

Targeted Dumping

On September 13, 1996, the petitioners requested that the Department compare the transaction-specific constructed export prices of the six mandatory respondents in the United States to weighted-average normal values, pursuant to the ''targeted dumping'' provisions of section 777A(d)(1)(B) of the Act. The petitioners alleged that there was a pattern of constructed export prices that differed significantly by date of sale, by region, and by customer.

To establish that the alleged patterns of prices differed ''significantly,'' petitioners used the average U.S. prices, sorted only by product codes, as a benchmark for determining whether certain customers received prices that were below the average prices for the same packing type. The packing type reported in the respondents' U.S. sales listings consisted of ''boxes.'' During our analysis of reported sales, it became apparent that different sizes of boxes had been reported. As a consequence of the respondents' failure to report prices in standard units, the petitioners were deprived of meaningful unit prices with which to establish this benchmark.

Unrelated to the reporting of flawed unit prices, petitioners relied upon customers' prices that were ten percent or more below the average price for the packing type to establish that the alleged pattern of variation in prices was ''significant.'' Petitioners did not justify their use of the ten percent benchmark in relationship to price movements for tomatoes, a perishable product. A variation in average prices of ten percent is not necessarily significant in a market in which prices can decline far more than ten percent within a given day. Moreover, fluctuation in price, in and of itself, does not establish a pattern of price differences. Finally, subsection 777A(d)(1)(B)(ii) of the Act requires that the Department must be able to establish that the pattern of price variation cannot be taken into account by comparing the weight-averaged normal values to the weight-averaged U.S. prices. The petitioners addressed this requirement in a conclusory manner, without providing an underlying rationale.

In sum, the targeted dumping allegation does not provide the Department with an adequate basis for comparing the respondents' transition-specific export prices in the United States to their weighted-average normal values. On October 1, 1996, the Department informed petitioners of these findings and indicated our willingness to consider a revised allegation that took these concerns into account.

Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Act and in the SAA accompanying the URAA, at 829–831, to the extent practicable, the Department will calculate normal values based on sales at the same level of trade as the U.S. sales. When the Department is unable to find sales in the comparison market at the same level of trade as the U.S. sale(s), the Department may compare sales in the U.S. and foreign markets at different levels of trade.

In accordance with section 773(a)(7)(A) of the Act, if sales at different levels of trade are compared, the Department will adjust the normal value to account for the difference in level of trade if two conditions are met. First, there must be differences between the actual selling functions performed by the seller at the level of trade of the U.S. sale and at the level of trade of the normal value sale. Second, the difference in level of trade must affect price comparability as evidenced by a pattern of consistent price differences between sales at the different levels of

trade in the market in which normal value is determined.

In order to determine that there is a difference in level of trade, the Department must find that two sales have been made at different stages of marketing, or the equivalent. Different stages of marketing necessarily involve differences in selling functions, but differences in selling functions (even substantial ones) are not alone sufficient to establish a difference in the level of trade. Similarly, seller and customer descriptions (such as ''distributor'' and ''wholesaler'') are useful in identifying different levels of trade, but are insufficient to establish that there is a difference in the level of trade.

In implementing these principles in this investigation, information relevant to level of trade comparisons and adjustments was requested in our initial and supplemental questionnaires. We asked each respondent to establish any claimed levels of trade based on selling functions, and to document and explain any claims for a level of trade adjustment.

In order to determine whether separate levels of trade actually existed within or between the U.S. and the home market, we reviewed, *inter alia,* the selling activities associated with each channel of distribution reported by the respondents. In reviewing the selling functions reported by the respondents, we considered all types of selling functions, both claimed and unclaimed, that were performed. Where possible, we further examined whether the selling function was performed on a substantial portion of sales. The level of trade claims of each respondent were considered, but the ultimate decision was based on the Department's analysis of the reported selling functions.

Pursuant to section 773(a)(1)(B)(i) of the Act, and the SAA at 827, in identifying levels of trade for export price and normal value sales, we considered the selling functions reflected in the starting price, before any adjustments. For CEP sales, we considered the selling functions reflected in the price after the deduction of expenses and profit under Section 772(d) of the Act. Whenever sales within a customer group were made by or through an affiliated company or agent, we ''collapsed'' the affiliated parties before considering the selling functions performed. In determining whether separate levels of trade exist in this investigation, we found that no single selling function in the tomato industry was sufficient to warrant a separate level of trade (*see, Notice of Proposed Rulemaking and Request for Public Comments,* 61 FR 7307, 7348 (February 27, 1996)) (*Proposed Regulations*).

Based on our analysis of the selling functions performed by each respondent, we found that a single level of trade exists in each market. We then compared selling functions in the U.S. market and in the home market and found them to be similar. We find, therefore, that sales in the home market and in the U.S. market are at the same level of trade. (*See* October 22, 1996, Level of Trade Analysis memorandum to Barbara Stafford.)

Fair Value Comparisons

The SAA states that in determining the comparability of sales for inclusion within a particular average, ''Commerce will consider factors it deems appropriate, such as * * * the class of customer involved,'' *SAA* at 842. The Department, not the respondents, determines which customers may be grouped together for product comparison purposes. *Cf., N.A.R., S.p.A.* v. *U.S., 741 F. Supp. 936* (CIT, 1990).

We examined the channel of distribution information reported by respondents and determined that it was not appropriate to include the class of customer as a separate comparison factor. Most respondents did not provide sufficient information that would allow us to examine the appropriateness of the respective customer code classifications based on the functions commonly associated with each category of customer. Since fresh tomatoes may be sold on consignment through unaffiliated distributors, some respondents were unable to obtain customer category information from their distributors. Therefore, since all respondents had the same level of trade in the U.S. and home markets and there was no basis for distinguishing among customer categories, the weighted-average prices were calculated and compared by product type.

To determine whether sales of tomatoes by the Mexican respondents to the United States were made at less than fair value, we compared the export price (EP) or constructed export price (CEP) to the Normal Value (NV), as described in the *Export Price and Constructed Export Price* and *Normal Value* sections of this notice. In accordance with section 777A(d)(1)(A)(i), we calculated weighted-average EPs and CEPs for comparison to weighted-average NVs.

Mexico experienced significant inflation during the POI, as measured by the wholesale price index published in International Financial Statistics and the consumer price index from the Bank of Mexico. Accordingly, to avoid the distortions caused by the effects of significant inflation on prices and on the weighted-averages of those prices, we calculated EPs, CEPs, and NVs on a monthly average basis, rather than on a POI average basis.

Export Price and Constructed Export Price

For Eco, we calculated EP, in accordance with subsections 772 (a) and (c) of the Act because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP was not otherwise warranted based on the facts of record. We calculated CEP for all other respondents, in accordance with subsections 772(b), (c) and (d) of the Act, where sales to the first unaffiliated purchaser took place after importation into the United States. With the exception of Eco, we found that CEP is warranted for all respondents because all U.S. sales activities, including the setting of prices, take place in the United States through U.S. distributors/consignees and brokers, either affiliated or unaffiliated. (*See, Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand,* 60 FR 29553 (June 5, 1995), and *Preliminary Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand,* 60 FR 2734 (January 11, 1995).)

For all respondents, we calculated EP and CEP based on packed prices to the first unaffiliated customer in the United States. We based date of sale on shipment date to avoid the potential for distortion of cost and price comparisons that occur when there is a significant lag time between date of shipment and date of invoice within the same market and/or between the two markets.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for foreign brokerage and handling, freight expenses between the farm and the U.S. distributor's warehouse, freight insurance, export fees, brokerage and handling, U.S. inspection fees, U.S. duties, and U.S. freight. For Eco, we added the amount of import duties collected on packaging materials which were rebated upon exportation to the United States.

In accordance with section 772(d)(1) of the Act, for Tamazula, RLP, Echavarria, Lomeli, Yory and Camalu, we made deductions, where appropriate, for direct selling expenses including advertising, credit, and commissions paid to unaffiliated distributors and brokers. In addition, we deducted those indirect selling expenses that related to commercial activity in the United States. These included inventory carrying costs, certain indirect

selling expenses incurred in the home market, and the indirect selling expenses of the affiliated U.S. distributors. Where there were commissions paid to affiliated U.S. distributors, we considered the actual reported indirect selling expenses of the producer/exporter and its affiliated distributor, rather than the reported affiliated party commissions. This methodology is consistent with *Final Determination of Sales at Less than Fair Value: Fresh Cut Roses from Colombia,* 60 FR 6981 (February 6, 1995).

Where possible, monthly packing costs were recalculated using monthly indices to account for the effects of inflation. This recalculation was not possible for Lomeli, Eco and Yory since they did not provide monthly packing costs as requested by the Department. For these three respondents, we used packing costs, as reported.

Where payment dates were not reported, we used October 7, 1996, or average credit days, as appropriate, to determine credit expenses. Additionally, we made adjustments for CEP profit for all respondents except Eco in accordance with section 772 (d)(3) and (f) of the Act.

We made company-specific adjustments as follows:

Eco. We calculated Eco's EP sales based on FOB packing shed prices. We excluded from our analysis all reported sales of cocktail tomatoes because cocktail tomatoes are not included in the scope of this investigation (*see* the *Scope of Investigation* section of this notice above). We recalculated warranty expenses to reflect the actual factor reported in Eco's response. Credit was recalculated as follows: (1) We excluded the factoring fee from the imputed credit calculation; and (2) we recalculated the credit period for the first and second payments using the number of days reported in Eco's narrative. Finally, we calculated the factoring fee using the actual percentage derived from sample documentation provided in Eco's questionnaire responses. The factoring fee was treated as a direct selling expense.

Camalu. We calculated CEP based on FOB U.S. distributor's warehouse prices. We excluded from our analysis reported shipments of tomatoes that were given away as gifts or free samples, or shipments that had been discarded in their entirety because of poor quality. Where appropriate, we made deductions for price adjustments which were reported as rebates in the sales database. We recalculated inventory carrying costs based on the actual cost of manufacture of the inventory, rather than the selling price. In addition, in calculating the imputed credit expense and inventory carrying costs, we applied Camalu's actual U.S. dollar denominated short-term borrowing rate for the POI.

Echavarria. We calculated Echavarria's CEP sales based on FOB U.S. distributor's warehouse prices. We excluded from our calculations amounts reported separately for foreign brokerage and handling because that expense had already been included in the amount reported for foreign freight. Reported advertising expenses incurred were reclassified as indirect selling expenses because the advertising was directed at Echavarria's customers.

Lomeli. We calculated Lomeli's CEP sales based on FOB U.S. distributor's warehouse prices. For a small number of sales made through DGL, Lomeli claimed that it was unable to obtain transaction-specific sales data because DGL did not agree to provide its sales information to Lomeli. Therefore, in reporting these sales, Lomeli relied on information contained in liquidation reports received from DGL. These liquidation reports, however, could not be used in calculating CEP because the reports did not contain sufficient data to allow the Department to calculate all of the charges and adjustments incurred on the sales. Given that Lomeli attempted to obtain the transaction-specific data from DGL, the sales represent an extremely small percentage of Lomeli's total U.S. sales, and Lomeli has otherwise complied with all of the Department's requests for information, we find that Lomeli has acted to the best of its ability in this investigation and that an adverse inference is not warranted. Accordingly, we are applying the weighted-average margin calculated for all other sales to the quantity of sales sold through DGL as facts available in our preliminary determination.

Lomeli used different weight bases to convert its reported gross unit prices and charges and adjustments to a per kilogram basis for U.S. and home market sales. We determined it was necessary to select a single weight basis in order to make a fair comparison. Therefore, for all U.S. sales, we used theoretical box weights reported for home market sales, rather than the actual box weights provided in the U.S. sales listing, to convert the gross unit prices, quantities, and charges and adjustments to a per kilogram basis. The theoretical box weight was chosen because data concerning the actual box weights for certain home market box types not sold in the U.S. during the POI were not reported.

We recalculated the reported commission expenses for Lomeli's two unaffiliated distributors as follows: (1) For the first distributor, we used the actual commission percentage specified in Lomeli's contract with the distributor; and (2) for the second distributor, we used the actual commission percentage specified in the contract plus an amount for fees the distributor incurs in making sales through a third party in the United States. For those sales where a negative commission amount was reported, we set the commission equal to zero.

Because we were unable to duplicate Lomeli's calculation of the reported credit expenses, and Lomeli stated that it had no dollar denominated borrowings during the POI, we recalculated credit using the average prime rate for the POI charged by the 25 largest U.S. banks on short-term business loans, as published by the Federal Reserve Bank. We also recalculated Lomeli's reported inventory carrying costs based on the actual cost of manufacture of the inventory, rather than the selling price. In addition, for all sales where Lomeli reported no U.S. inventory carrying costs, we have used the inventory turnover period reported for Lomeli's other transactions because Lomeli claims that it incurred the same theoretical inventory period for all U.S. distributors.

For those U.S. sales where no U.S. inspection fee was reported, we deducted the amount of the inspection fee reported for other sales made through the same distributor because Lomeli did not provide an explanation as to why inspection fees were not reported on all sales.

RLP. We calculated CEP based on FOB U.S. distributor's warehouse and delivered prices. We recalculated inventory carrying costs based on the actual cost of manufacture of the inventory, rather than the selling price. Since RLP reported that it incurred a U.S. brokerage charge on its U.S. sales, but did not report this charge in its database, we recalculated the U.S. brokerage costs accordingly.

Tamazula. We calculated CEP based on FOB U.S. distributor's warehouse and delivered prices. We used an average of the affiliated U.S. distributor's actual short-term borrowing rates during the POI in our credit calculation. Where negative credit expenses were reported in error, we used the average of the recalculated credit expenses.

Yory. We calculated CEP based on FOB U.S. distributor's warehouse and delivered prices. We excluded from our

analysis Canadian sales that were included in the U.S. database. We corrected the reported box weights and tomato types for certain product codes to correct for errors in the database. We recalculated Yory's credit expenses based on the company's actual borrowing rate for a U.S. dollar-denominated short-term loan during the POI. We recalculated freight insurance expenses based on the total expenses incurred and the total quantity sold for the season, on a tomato type-specific basis. Additionally, for the 1995/96 season, we revised Yory's reported export fees and commission expenses to correct for errors in the database. Since Yory reported that it incurred a repacking charge on its U.S. sales, but did not report this charge in its database, we calculated the U.S. repacking costs based on information in Yory's questionnaire response.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Since we have not collapsed Lomeli and Eco (*see* the *Affiliated Persons* section of this notice above), separate viability tests were conducted for Lomeli and Eco. For Eco, we did not find the aggregate volume of home market sales of the foreign like product to be greater than five percent of the aggregate volume of U.S. sales of the subject merchandise. Therefore, we have determined that Eco does not have a viable home market. Because Eco made no third country sales during the POI, normal value was based on constructed value, in accordance with section 773(a)(4) of the Act.

Since the aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for all other respondents. For all respondents except Eco, we have based NV on home market sales. We calculated NV as noted in the *Price to Price Comparisons* and *Price to CV Comparisons* sections of this notice.

Cost of Production Analysis

Based on the allegation contained in the petition, the Department found reasonable grounds to believe or suspect that each respondent made sales in the home market at prices below the cost of producing the merchandise. As a result, the Department initiated investigations to determine whether the respondents made home market sales at prices below their respective costs of production (COP) during the POI within the meaning of section 773(b) of the Act. *(See, Initiation Notice.)*

Before making any fair value comparisons, we conducted the COP analysis described below for all respondents except Eco. We did not perform a COP analysis for Eco because, as noted above, Eco did not have a viable home or third country market.

A. Calculation of COP

We calculated growing season-specific COPs based on the sum of each respondent's growing season costs for the foreign like product, plus amounts for selling, general, and administrative expenses (SG&A) and packing costs, in accordance with section 773(b)(3) of the Act. As noted above, we determined that the Mexican economy experienced significant inflation during the POI. Therefore, in order to avoid the distortive effect of significant inflation on our comparison of costs and prices, we requested that respondents submit monthly cost information for each growing season that fell within the POI. This monthly cost information was to be based on current production costs incurred during each month. This required collecting cost data for months outside the POI, as it was necessary to capture all costs for total production in an entire growing season, in order to accurately determine the per unit COP of that growing season. Using the consumer price index (CPI) published by the Bank of Mexico, we indexed each month's reported costs to end of growing season currency levels in order to compute a weighted-average growing season COP. We relied on the respondents' reported COP amounts except in the following specific instances, wherein the reported costs were determined to be improperly valued:

1. We adjusted each company's reported monthly materials consumption costs for the effect of inflation during the inventory holding period. The adjustment was based on the net inventory and accounts payable turnover period and the CPI.

2. We recomputed reported depreciation expense for each company based on the fixed asset values stated in end of growing season currency levels.

Camalu. We disallowed the reported treatment of livestock feed tomatoes as co-products of the foreign like product.

Echavarria. We disallowed Echavarria's reported other income offset to G&A expenses and increased G&A expense to account for net foreign exchange losses.

Lomeli. We reallocated headquarters G&A costs based on the percentage of cost of sales for the tomato growing farms to the consolidated Lomeli group. Additionally, we computed Lomeli's interest expense rate using its 1995 audited consolidated constant currency financial statements, and disallowed its reported other income offset to G&A expenses.

RLP. For the months in which unusually high material costs were reported for round and cherry tomatoes, we spread these costs evenly over all preceding months in the growing season.

Tamazula. We increased general expenses to account for net foreign exchange transaction and translation losses.

Yory. We reallocated the submitted depreciation expense between products using cultivated hectares rather than the submitted methodology of relative production weight.

B. Test of Home Market Prices

We used the CPI to adjust respondents' submitted monthly cost and home market sales amounts in computing weighted-average COPs and home market sales values stated in end of growing season currency. Because tomatoes are a highly perishable agricultural product, we compared the weighted-average COP figure for each growing season to the weighted-average home market sales for the growing season to determine whether below cost sales were made in substantial quantities during each growing season. *See* SAA at 832 and section 773(b)(2)(c)(ii) of the Act.

Where a respondent's weighted-average home market sales value of a given product for a growing season were at prices above the respective weighted-average COP for the growing season, we did not disregard any below cost sales of that product for that growing season. In such instances, we found that the below costs sales were not made in substantial quantities. Where a respondent's weighted-average home market sales value of a given product for a growing season was less than the weighted-average COP for the same growing season, we found that below cost sales were made in substantial quantities, within the meaning of section 773(b)(2)(C)(ii) of the Act, for that growing season. We identified individual below cost transactions by indexing the weighted-average COP for the growing season back to each month within that growing season, based on

the CPI, and comparing that monthly COP to individual transaction prices within that month.

Where below cost sales were found to have been made in substantial quantities within a growing season, we also found that those sales were made within an extended period of time because each growing season constituted an extended period of time, in accordance with section 773(b)(2)(B) of the Act.

Pursuant to section 773(b)(2)(D) of Act, we also examined whether the individual transaction prices which were found to be below cost provided for recovery of costs within a reasonable period of time. As noted above, because tomatoes are a perishable agricultural product, we determined that the relevant period for examining costs in this investigation is on a growing season basis and applied the cost test accordingly. Specifically, in determining whether prices were sufficient to recover cost within a reasonable period of time, we compared individual below cost sales prices with the growing season average cost.

C. Results of COP Test

We found that, for certain tomato types and growing seasons, respondents' home market sales were sold at prices below the COP within an extended period of time and in substantial quantities. Further, because (i) home market prices were compared to an average growing season COP and (ii) we view the growing season as a ''reasonable period of time'', we did not find that the prices for these sales provided for the recovery of costs within a reasonable period of time. We therefore excluded these sales from our analysis and used the remaining above cost sales as the basis for determining NV, in accordance with 773(b)(1). For those tomato types for which there were no above cost sales in a given month in the ordinary course of trade, we compared constructed export prices to CV.

D. Calculation of CV

We calculated growing season CVs for each respondent in accordance with Section 773(e)(1) of the Act, which indicates that CV shall be based on the sum of each respondent's growing costs for the foreign like product, plus amounts for SG&A, profit, and U.S. packing costs. For each respondent, we indexed the reported monthly growing costs to the end of POI currency level in order to compute weighted-average POI growing costs. With the exception of Eco, we based SG&A and profit on the actual amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market, in accordance with section 773(e)(2)(A). Since the home market is not viable for Eco, we calculated profit and indirect selling expenses in accordance with section 773(e)(2)(A) using an alternative methodology. Specifically, we calculated Eco's profit and indirect selling expenses as described in Section 773(e)(2)(B)(ii). That is, we used the weighted-average profit and indirect selling expenses experienced by the other respondents in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market. In addition, for each respondent we used U.S. packing costs as described in the *Export Price and Constructed Export Price* section of this notice, above.

E. Price-to-Price Comparisons

For those product comparisons for which there were sales at prices above the COP, we based NV on home market prices. We based date of sale on shipment date, as discussed in the *Export Price and Constructed Export Price* section above. For all respondents we made deductions, where appropriate, from the starting price for inland freight, insurance, and other transportation expenses. In addition, we made circumstance of sale adjustments for direct expenses, where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act. Where payment dates were not reported, we used October 7, 1996, or average credit days, as appropriate, to determine credit expenses.

For all respondents, we adjusted for commissions, where appropriate. Where the home market commissions were paid to affiliated parties, we first determined whether the commissions were made at arm's length by comparing these commissions to commissions paid or charged to unaffiliated parties under the same terms. If these commissions were determined to be at arm's length, we treated these commissions in the same manner as unaffiliated commissions in the calculation methodology described below.

Where commissions were paid on some, but not all, home market sales used to calculate NV, and U.S. commissions were greater than home market commissions, we calculated the weighted-average of home market indirect selling expenses (including only those indirect expenses not associated with an affiliated distributor) attributable to those sales on which no commissions were paid. If U.S. commissions were greater than the sum of the home market commissions and home market indirect selling expenses, we deducted the weighted-average home market indirect selling expenses from NV. Otherwise, we adjusted NV for the difference between U.S. and home market commissions. Where no commissions were paid on a home market sale used to calculate NV, we deducted the lesser of either (1) the weighted-average amount of commission paid on a U.S. sale for a particular product, or (2) the weighted-average amount of indirect selling expenses paid on the home market sales for a particular product. Where commissions were paid on all home market sales used to calculate NV, we adjusted NV by the lesser of either (1) the amount of the commission paid on the home market sale, or (2) the weighted average of indirect selling expenses paid on U.S. sales.

As discussed above, we preliminarily determined that each respondent's U.S. sales and home market sales are made at the same level of trade. As stated in the SAA, at page 160: ''Only where different functions at different levels of trade are established under Section 773(a)(7)(A)(i) [and a level of trade adjustment is not appropriate] will Commerce make a constructed export price offset adjustment under Section 773(a)(7)(B).'' Accordingly, we did not grant respondents' request for a CEP offset.

In accordance with section 773(a)(6)(B), we deducted home market packing costs and added U.S. packing costs for all respondents. Where possible, monthly packing costs were recalculated using monthly indices to account for the effects of inflation. This recalculation was not possible for Lomeli and Yory since they did not provide monthly packing costs as requested by the Department. For these two respondents, we made the adverse assumption that the reported packing costs were stated in end of season currency and indexed those costs to the month of sale.

We made company-specific adjustments for price-to-price comparisons as follows:

Camalu. We calculated NV based on packed, FOB packing shed or delivered prices to unaffiliated customers. We recalculated Camalu's reported home market imputed credit expenses by applying monthly peso-denominated short-term interest rates obtained from public information because Camalu did not have peso-denominated borrowings during the POI. Additionally, we

recalculated Camalu's reported indirect selling expenses.

Echavarria. We calculated NV based on packed, FOB packing shed or delivered prices to unaffiliated customers. We excluded from our analysis sales of tomatoes that Echavarria categorized as sales of culls. We used the indirect selling expense per box reported in Echavarria's July 22, 1996, submission, because the indirect selling expense recalculated in the September 5, 1996, response contained errors which resulted in an overstatement of the indirect selling expense amount.

Lomeli. We based NV on packed, FOB packing shed and home market distributor's warehouse prices to unaffiliated customers. Since we are not collapsing Eco and Lomeli, we are treating Lomeli as an affiliated home market distributor of Eco. Therefore, we excluded all sales of merchandise which Lomeli purchased from Eco from Lomeli's home market sales database. In addition, we excluded all zero priced and/or zero quantity transactions from our calculations for the preliminary determination because the quantity of sales involved was insignificant and Lomeli did not provide the Department with evidence indicating that these transactions represent actual sales made in the ordinary course of trade.

We recalculated Lomeli's reported credit expense as follows: (1) We used actual monthly short-term borrowing rates available to Mexican growers, in lieu of the average interest rate reported for each growing season, because Mexico experienced high inflation during the POI; and (2) for those sales with missing payment dates, we used the average credit days for all transactions with a reported shipment and payment date. The average credit days was used, rather than October 7, 1996, because Lomeli contends that these sales were made by a farm that does not track actual payment dates in its normal accounting records.

We recalculated Lomeli's inventory carrying costs based on the actual cost of manufacture of the inventory, rather than the selling price. In addition, as noted above, we applied the monthly short-term borrowing rates in lieu of the growing season averages.

Lomeli assigned a bulk packing cost to its sales of merchandise packed in four-layer boxes. However, because merchandise packed in four-layer boxes is not considered bulk packaging and Lomeli has provided no explanation for assigning a bulk packing rate to these sales, we have applied the ratio of the difference in packing costs reported for two-layer and three-layer boxes to the reported packing cost for three-layer boxes. This has allowed the Department to derive an estimated packing cost for four-layer boxes for its preliminary determination.

RLP. We calculated NV based on packed, FOB warehouses or delivered prices to unaffiliated customers. We recalculated RLP's reported home market imputed credit expenses by applying peso-denominated short-term interest rates obtained from public information because RLP did not have peso-denominated borrowings during the POI. Inventory carrying costs were recalculated based on the actual cost of manufacture of the inventory, rather than the selling price.

Tamazula. We calculated NV based on packed, FOB packing shed or delivered prices to unaffiliated customers. Where payment dates were missing, we used the average credit period for the growing season to calculate credit expenses. Where Tamazula had peso-denominated borrowings during the growing season, we used the actual interest rate in our credit calculation. For the growing seasons where Tamazula did not have actual borrowings, we used public monthly peso-denominated short-term interest rates. We excluded zero quantity transactions and an insignificant amount of ''sample sales'' from our calculations.

Yory. We calculated NV based on packed, delivered prices to unaffiliated customers. We revised Yory's reported credit expenses based on new credit ratios submitted on September 19 and 25, 1996.

Price to CV Comparisons

For Eco, where we compared CV to EP, we added the U.S. product-specific direct selling expenses. For all other respondents, where we compared CV to constructed export prices, we made deductions for the weighted-average home market direct selling expenses. Where appropriate, we adjusted for the difference between U.S. commissions and home market indirect selling expenses.

Currency Conversion

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. However, the Federal Reserve Bank does not track or publish exchange rates for the Mexican peso. We made currency conversions based on the actual daily exchange rates from the Dow Jones News/Retrieval on-line system.

Verification

As provided in section 782(i) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of fresh tomatoes from Mexico, that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the Federal Register. We are also instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the export price, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Camalu	4.16
Echavarria	11.89
Lomeli	26.97
Eco-Cultivos	188.45
RLP	10.26
Tamazula	28.30
Yory	11.95
All Others	17.56

Pursuant to section 735(c)(5)(A) of the Act, the Department has excluded all zero and *de minimis* weighted-average dumping margins and margins determined entirely under section 776 of the Act, from the calculation of the All Others rate.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than February 7, 1997, and rebuttal briefs, no later than February 12, 1997. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to

afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on February 18, 1997, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination no later than 135 days after the publication of this notice in the Federal Register.

This determination is published pursuant to section 733(f) of the Act.

Dated: October 28, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–28091 Filed 10–31–96; 8:45 am]

BILLING CODE 3510–DS–P

federal register

Friday
November 1, 1996

Part III

Department of Commerce

International Trade Administration

Suspension of Antidumping Investigation: Fresh Tomatoes From Mexico; Notice

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–820]

Suspension of Antidumping Investigation: Fresh Tomatoes From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has suspended the antidumping investigation involving fresh tomatoes from Mexico. The basis for the suspension is an agreement between the Department and producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico wherein each signatory producer/exporter has agreed to revise its prices to eliminate completely the injurious effects of exports of this merchandise to the United States.

EFFECTIVE DATE: November 1, 1996.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Judith Wey Rudman, Office of AD/CVD Enforcement II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue N.W., Washington, D.C. 20230; telephone (202) 482–5288 or (202) 482–0192, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 18, 1996, the Department initiated an antidumping investigation under section 732 of the Tariff Act of 1930, (the Act), as amended, to determine whether imports of fresh tomatoes from Mexico are being or are likely to be sold in the United States at less than fair value (61 FR 18377, April 25, 1996). On May 16, 1996, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination. At the request of petitioners in this investigation, the Department postponed the preliminary determination until no later than October 7, 1996 (61 FR 40607, August 5, 1996). On October 7, 1996, the Department further postponed the preliminary determination until no later than October 28, 1996 (61 FR 53702, October 15, 1996).

The Commerce Department and the Mexican tomato growers initialed a proposed agreement suspending this investigation on October 10, 1996. Interested parties were informed that the Department intended to finalize the agreement on October 28, 1996, and were invited to provide written comments on the agreement. The following interested parties filed comments with the Department on or before October 25, 1996: Desert Glory, Ltd.; petitioners; the Asociacion de Agricultura, Baja California, Mexico of San Diego, California; and the Fresh Produce Association of the Americas.

On October 28, 1996, the Department preliminarily determined that imports of fresh tomatoes from Mexico are being sold at less than fair value in the United States (*see*, the *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Tomatoes from Mexico* that is being published concurrently with this notice of suspension of the investigation).

The Department and the signatory producers/exporters of fresh tomatoes from Mexico signed the final suspension agreement on October 28, 1996.

Scope of Investigation

The products covered by this investigation are all fresh or chilled tomatoes (fresh tomatoes) except for cocktail tomatoes and those tomatoes which are for processing. For purposes of this investigation, cocktail tomatoes are green-house grown tomatoes, generally larger than cherry tomatoes and smaller than roma or common round tomatoes, and are harvested and packaged on-the-vine for retail sale. For purposes of this investigation, processing is defined to include preserving by any commercial process, such as canning, dehydrating, drying or the addition of chemical substances, or converting the tomato product into juices, sauces or purees. Further, imports of fresh tomatoes for processing are accompanied by an ''Importer's Exempt Commodity Form'' (FV–6) (within the meaning of 7 C.F.R. sections 980.501(a)(2) and 980.212(l)). Fresh tomatoes that are imported for cutting up, not further processed (*e.g.*, tomatoes used in the preparation of fresh salsa or salad bars), and not accompanied by an FV–6 form are covered by the scope of this investigation.

All commercially-grown tomatoes sold in the United States, both for the fresh market and for processing, are classified as *Lycopersicon esculentum*. Important commercial varieties of fresh tomatoes include common round, cherry, plum, and pear tomatoes, all of which, with the exception of cocktail tomatoes, are covered by this investigation.

Tomatoes imported from Mexico covered by this investigation are classified under the following subheadings of the Harmonized Tariff Schedules of the United States (HTS), according to the season of importation: 0702.00.20, 0702.00.40, 0702.00.60, and 9906.07.01 through 9906.07.09. Although the HTS numbers are provided for convenience and Customs purposes, our written description of the scope of this proceeding is dispositive.

Interested Party Comments

Having analyzed all comments filed by interested parties, we continue to conclude that the Agreement meets the requirements of the statute. For a discussion of the Department's response to interested party comments, see the memorandum from Barbara R. Stafford to Robert S. LaRussa, Acting Assistant Secretary for Import Administration, dated October 28, 1996.

Suspension of Investigation

The Department consulted with the parties to the proceeding and has considered the comments submitted with respect to the proposed suspension agreement. In accordance with section 734(c) of the Act, we have determined that extraordinary circumstances are present in this case, as defined by section 734(c)(2)(A) of the Act. (*See* October 28, 1996, Extraordinary Circumstances Memorandum to Robert S. LaRussa).

The suspension agreement provides that: (1) The subject merchandise will be sold at or above the established reference price; and (2) for each entry of each exporter, the amount by which the estimated normal value exceeds the export price (or constructed export price) will not exceed 15 percent of the weighted average amount by which the estimated normal value exceeded the export price (or constructed export price) price for all less-than-fair-value entries of the producer/exporter examined during the course of the investigation. We have determined that this suspension agreement will: (1) Eliminate completely the injurious effect of exports to the United States of the subject merchandise; and (2) prevent the suppression or undercutting of price levels of domestic fresh tomatoes by imports of that merchandise from Mexico.

We have also determined that the suspension agreement can be monitored effectively and is in the public interest, pursuant to section 734(d) of the Act. (*See* October 21, 1996, Public Interest Memorandum to Robert S. LaRussa). We find, therefore, that the criteria for suspension of the investigation pursuant to section 734(c) of the Act have been met. The terms and conditions of the suspension agreement, signed October 28, 1996, are set forth in Appendix I to this notice.

The suspension of liquidation ordered in the preliminary affirmative determination in this case (published concurrently with this notice) shall continue in effect, subject to section 734(h)(3) of the Act. Section 734(f)(2)(B) of the Act provides that the Department may adjust the security required to reflect the effect of the Agreement. Pursuant to this provision, the Department has found that the Agreement eliminates completely the injurious effects of imports and, thus, the Department is adjusting the security required from signatories to zero. The security rates in effect for imports from non-signatory growers remain as published in our preliminary determination.

Notwithstanding the suspension agreement, the Department will continue the investigation if it receives such a request in accordance with section 734(g) of the Act within 20 days after the date of publication of this notice.

This notice is published pursuant to section 734(f)(1)(A) of the Act.

Dated: October 28, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

Appendix I.—Suspension Agreement Fresh, Tomatoes From Mexico

Pursuant to section 734(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1673c(c)) (''the Act''), and section 353.18 of the U.S. Department of Commerce (''the Department'') regulations (19 C.F.R. 353.18), the Department and the signatory producers/exporters of fresh tomatoes from Mexico enter into this Suspension Agreement (the ''Agreement''). On the basis of this Agreement, the Department shall suspend its antidumping duty investigation, the initiation of which was published on April 25, 1996 (61 FR 18377), with respect to fresh tomatoes from Mexico, subject to the terms and provisions set out below.

I. Product Coverage

The merchandise subject to this Agreement is all fresh or chilled tomatoes (fresh tomatoes) which have Mexico as their origin, except for cocktail tomatoes and those tomatoes which are for processing. For purposes of this Agreement, cocktail tomatoes are green-house grown tomatoes, generally larger than cherry tomatoes and smaller than roma or common round tomatoes, and are harvested and packaged on-the-vine for retail sale. For purposes of this Agreement, processing is defined to include preserving by any commercial process, such as canning, dehydrating, drying or the addition of chemical substances, or converting the tomato product into juices, sauces or purees. Imports of fresh tomatoes for processing are accompanied by an ''Importer's Exempt Commodity Form'' (FV–6) (within the meaning of 7 CFR section 980.501(a)(2) and 980.212(i)). Fresh tomatoes that are imported for cutting up, not further processed (e.g., tomatoes used in the preparation of fresh salsa or salad bars), and not accompanied by an FV–6 form are covered by this Agreement.

II

Commercially-grown tomatoes, both for the fresh market and for processing, are classified as Lycopersicon esculentum. Important commercial varieties of fresh tomatoes include common round, cherry, plum, and pear tomatoes, all of which, with the exception of cocktail tomatoes, are covered by this Agreement.

Tomatoes imported from Mexico covered by this Agreement are classified under the following subheadings of the Harmonized Tariff Schedules of the United States (HTS), according to the season of importation: 0702.00.20, 0702.00.40, 0702.00.60, and 9906.07.01 through 9906.07.09. Although the HTS numbers are provided for convenience and Customs purposes, the written description of the scope of this Agreement is dispositive.

III. U.S. Import Coverage

The signatory producers/exporters collectively are the producers and exporters in Mexico which, during the antidumping duty investigation of the merchandise subject to the Agreement, accounted for substantially all (not less than 85 percent) of the subject merchandise imported into the United States. The Department may at any time during the period of the Agreement require additional producers/exporters in Mexico to sign the Agreement in order to ensure that not less than substantially all imports into the United States are subject to the Agreement.

IV. Basis for the Agreement

Each signatory producer/exporter individually agrees that, in order to prevent price suppression or undercutting, the producer/exporter will not sell, on and after the effective date of the Agreement, merchandise subject to the Agreement at prices that are less than the reference price, in accordance with Appendix A to this Agreement.

In order to satisfy the requirements of section 734(c)(1)(B) of the Act, each signatory producer/exporter of fresh tomatoes from Mexico, individually, agrees that for each entry the amount by which the estimated normal value exceeds the export price (or the constructed export price) will not exceed 15 percent of the weighted average amount by which the estimated normal value exceeded the export price (or the constructed export price) for all less-than-fair-value entries of the producer/exporter examined during the course of the investigation, in accordance with the calculation methodologies described in Appendix B.

V. Monitoring of the Agreement

A. Import Monitoring

1. The Department will monitor entries of fresh tomatoes from Mexico to ensure compliance with Section III of this Agreement.

2. The Department will review publicly-available data and other official import data, including, as appropriate, records maintained by the U.S. Customs Service, to determine whether there have been imports that are inconsistent with the provisions of this Agreement. The Department also will coordinate with U.S. Customs in its collection and review of data in connection with the monitoring of box-specific average weights.

B. Compliance Monitoring

1. The Department may require, and each signatory producer/exporter agrees to provide, confirmation, through documentation provided to the Department, that the price received on any sale subject to this Agreement was not less than the established reference price. The Department may require that such documentation be provided, and be subject to verification, within 30 days of the sale.

2. The Department may require, and each signatory producer/exporter agrees to report, on computer tape in the prescribed format and using the prescribed method of data compilation, each sale of the merchandise subject to this Agreement, either directly or indirectly to unrelated purchasers in the United States, including each adjustment applicable to each sale, as specified by the Department.

Each producer/exporter agrees to permit review and on-site inspection of all information deemed necessary by the Department to verify the reported information.

3. The Department may conduct administrative reviews under section 751 of the Act, upon request or upon its own initiative, to ensure that exports of fresh tomatoes from Mexico are at prices consistent with the terms of this Agreement. The Department may perform verifications pursuant to administrative reviews conducted under section 751 of the Act.

C. Shipping and Other Arrangements

1. The producers/exporters shall include as part of the documentation presented to U.S. Customs for entry of merchandise into the United States a declaration that the entry conforms with the requirement that the merchandise has been or will be sold at or above the reference price.

2. All reference prices will be expressed in U.S.$/lb. in accordance with Appendix A. Subject to paragraph 24 of Annex 703.2 of the North American Free Trade Agreement, the quality of each entry of fresh tomatoes exported to the United States from Mexico will conform with any applicable U.S. Department of Agriculture minimum grade, size and/or quality import requirements in effect. Shipments that do not meet the requirements of this agreement will not be permitted entry into the United States.

3. Producers/exporters agree not to circumvent the Agreement. Not later than 30 days after each quarter, each signatory producer/exporter will submit a written statement to the Department certifying that all sales during the most recently completed quarter were at net prices (after rebates, backbilling, discounts for quality and other claims) at or above the reference price and were not part of or related to any act or

practice which would have the effect of hiding the real price of the fresh tomatoes being sold (e.g., a bundling arrangement, discounts/free goods/financing package, swap, or other exchange). Each producer/exporter agrees to permit full verification of its certification as the Department deems necessary.

D. Rejection of Submissions

The Department may reject any information submitted after the deadlines set forth in this Agreement or any information which it is unable to verify to its satisfaction. If information is not submitted in a complete and timely fashion or is not fully verifiable, the Department may calculate U.S. price based on facts otherwise available, as it determines appropriate, unless the Department determines that Section V applies.

E. Compliance Consultations

1. When the Department identifies, through import or compliance monitoring or otherwise, that sales may have been made at prices inconsistent with Section III of this Agreement, the Department will notify each signatory producer/exporter which it believes is responsible as well as the producer/exporter trade organizations party to this Agreement. The Department will consult with each such party for a period of up to 60 days to establish a factual basis regarding sales that may be inconsistent with Section III of this Agreement.

2. During the consultation period, the Department will examine any information which it develops or which is submitted, including information requested by the Department under Section IV.A. and B. above.

F. Review

If the Department is not satisfied at the conclusion of the consultation period that sales by such signatory producer/exporter are being made in compliance with this Agreement, the Department will conduct a review to determine whether this Agreement is being violated by such signatory producer/exporter. This provision does not limit or restrict the Department's authority to conduct an administrative review under section 751 of the Act and paragraph IV.B.3. of this Agreement.

G. Operations Consultations

During the first anniversary month of this Agreement, the Department will consult with the signatory producers/exporters regarding the operation of the Agreement. Consultations may be requested by any party to the Agreement in any June or December following the first anniversary of the Agreement. Consistent with the statutory requirement that the Agreement prevent the suppression or undercutting of price levels of domestic fresh tomatoes, the Department may revise the reference price following consultations under this provision. In particular, the Department expects to make downward or upward adjustments to the reference price to take into account any significant changes within the most recent semi-annual period relevant to the period under consideration (December–May; June–November). For example, the Department expects to make a downward adjustment to take into account a significant change in the relationship of domestic prices to import prices from that which existed during the base period (as referred to in Appendix A) and which is attributable to a decline in domestic prices. In evaluating the significance of any change, the Department will look both to the extent of the change and its duration. For example, a very high percentage change in the relationship may be significant even though it occurs over a brief time period.

VI. Violations of the Agreement

If the Department determines that the Agreement is being or has been violated or no longer meets the requirements of section 734 (c) or (d) of the Act, the Department shall take action it determines appropriate under section 734(i) of the Act and the Department's regulations.

VII. Other Provisions

A. In entering into this Agreement, the signatory producers/exporters do not admit that any exports of fresh tomatoes from Mexico have an injurious effect on fresh tomato producers in the United States or have been sold at less than fair value. The signatory producers/exporters also do not admit that green-house, cherry or any other particular type of tomatoes are properly considered to be within the scope of the underlying investigation.

B. The signatory producers/exporters may withdraw from this Agreement upon 60 days written notice to the Department.

C. Upon request, the Department will advise any signatory producer/exporter on the Department's methodology for calculating its export price (or constructed export price) and normal value which, for purposes of this Agreement, are described in Appendix B. Further, the Department reserves the right to modify its methodology in calculating export price (or constructed export price) and normal value.

VIII. Disclosure and Comment

A. If the Department proposes to revise the reference price under paragraph IV.G., not later than three months prior to the first day of each semi-annual period, the Department will disclose the results and the methodology of the Department's calculation of the preliminary reference price established for that upcoming semi-annual period.

B. Not later than 7 days after the date of disclosure under paragraph VII.A., the parties to the proceeding may submit written comments to the Department, not to exceed 15 pages. After reviewing these submissions, the Department will provide the final reference price for the upcoming semi-annual period, normally within 30 days after the date of disclosure under paragraph VII.A.

C. The Department may make available to representatives of each interested party to the proceeding, under appropriately drawn administrative protective orders, any business proprietary information submitted to the Department pursuant to Section IV. of this Agreement, as well as the results of the Department's analysis of that information.

IX. Termination

Absent affirmative determinations under the five-year review provisions of sections 751 and 752 of the Act, the Department expects to terminate this Agreement and the underlying investigation no later than November 1, 2001.

X. Effective Date

The effective date of the Agreement is the date on which it is published in the Federal Register.

For Members of Confederacion de Asociaciones Agricolas del Estado (C.A.A.D.E.S.) and Confederacion Nacional de Productores de Hortalizas (C.N.P.H.)

Dated: October 28, 1996.

Luis Cárdenas F.,

Confederacion de Asociaciones Agricolas del Estado (C.A.A.D.E.S.) ''''''''''''

Dated: October 28, 1996.

Basilio Gatzionis T.,

Confederacion Nacional de Productores de Hortalizas (C.N.P.H.)

For U.S. Department of Commerce.

Dated: October 28, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

Appendix A.—Fresh Tomatoes From Mexico, Suspension Agreement

The following is the methodology the Department will use when calculating the reference price for the purposes of this Agreement.

The reference price for the initial period (effective date of Agreement through September 30, 1997) will be calculated as follows:

The Department will determine the lowest average monthly price for fresh tomatoes from Mexico in the United States during each year in the base period (calendar years 1992–1994). The Department will average these three figures to calculate one figure which will serve as the reference price for the initial period of the Agreement. As calculated pursuant to this methodology, the reference price for the initial period is $5.17 for a 25 pound box ($0.2068/lb.).

The reference price from the initial period will remain in effect unless modified in accordance with the provisions of paragraph IV.G.

The term ''reference price'' refers to the price F.O.B. Nogales/San Diego/Laredo from the first handler (importer/broker) to an unrelated purchaser. Any movement expenses beyond the three Customs district points of entry listed above must be added to the reference price and must reflect the actual price of transportation in an arms length transaction. Where imports are sold through affiliated parties, the transfer price from the importer/broker (located at the point of entry) to an affiliate must be at or above the reference price and any subsequent sale to an unaffiliated party must reflect mark-ups usual for the company during the period prior to this Agreement or normal within the industry if the relationship did not exist prior to this Agreement.

The reference price for each type of box shall be determined based on the average weights used by U.S. Customs at the port of Nogales, AZ for duty assessment purposes, with the initial weights being those in use as of December 8, 1995. For example, if U.S. Customs determines that the average weight of a 3-layer, 6X6 box of tomatoes is 30 pounds, the reference price for that box will be equal to 30/25 times the reference price then in effect. If, either on its own or through consultations with the Department, U.S. Customs determines to revise an average weight figure, the Department will provide 15 days notice to signatory producers/exporters (through the producer/exporter trade organizations party to this Agreement) prior to such revised average weights becoming effective for purposes of this Agreement.

In the event that a signatory producer/exporter intends to export subject merchandise to the United States in a box for which U.S. Customs has not assigned an average weight, the signatory producer/exporter shall notify the Department in writing no later than 45 days prior to the date of the first export of such boxes to the United States. The notification shall include a complete description of the size of the box, and the intended packing form (i.e., 4X4, 5X5, loose pack, etc.). The Department shall allow any interested party to submit written comments, not to exceed 10 pages, on the appropriate average weight for the box within 7 days after the filing of the written notification by the signatory producer/exporter, and the Department shall inform the signatory producer/exporter of the average weight for the box no later than 30 days after filing of the written notification by the signatory producer/exporter.

Appendix B.—Fresh Tomatoes From Mexico, Suspension Agreement

Normal Value

The cost or price information reported to the Department that will form the basis of the normal value (NV) calculations for purposes of the Agreement must be comprehensive in nature and based on a reliable accounting system (*e.g.*, a system based on well-established standards and can be tied either to the audited financial statements or to the tax return filed with the Mexican government).

Sales Price

When we base normal value on sales prices, such prices will be the prices at which the foreign like product is first sold for consumption in the comparison market, in the usual commercial quantities and in the ordinary course of trade. Also, to the extent practicable, the comparison shall be made at the same level of trade as the export price or constructed export price.

Constructed Value

When normal value is based on constructed value, we will compute growing season specific constructed values (CVs) based on the sum of each respondent's growing costs for each type of tomato, plus amounts for selling, general and administrative expenses, U.S. packing costs and profit. We will collect this cost data for an entire growing season in order to accurately determine the per unit CV of that growing season.

Export Price and Constructed Export Price

Export price (EP) and constructed export price (CEP) refer to the two types of calculated prices for merchandise imported into the United States. Both EP and CEP are based on the price at which the subject merchandise is first sold to a person not affiliated with the foreign producer or exporter.

Fair Comparisons

To ensure that a fair comparison with NV is made, the Department will make adjustments to the price to the first unaffiliated customer in calculating the export price or constructed export price. For both EP and CEP the Department will add packing costs, if not already included in the price, rebated import duties, and, if applicable, certain countervailing duties. For both EP and CEP, the Department will deduct transportation costs, and export taxes or duties. In calculating CEP, the Department will make additional deductions for commissions, direct selling expenses incurred in selling the merchandise under investigation in the United States, the cost of any further manufacture or assembly performed in the United States, and a portion of profit. In addition, the Department will deduct indirect selling expenses that relate to commercial activity in the United States.

Normal Value

Calculation of CV

Direct Materials
+Direct Labor
+Factory overhead

=Cost of Manufacturing
+Home Market SG & A *

=Cost of Production
+Profit *

=Constructed Value (CV)

* SG & A and profit are based on home market sales of a foreign like product made in the ordinary course of trade.

Calculation of Comparison Price:

The calculation of normal value will vary depending on whether the comparison is price-to-EP or price-to-CEP.

Export Price (EP) and Constructed Export Price (CEP)

Calculation of EP

Gross Unit Price
− Movement Expenses
− Discounts and Rebates

=Export Price (EP)

Calculation of CEP

Gross Unit Price
− Movement Expenses
− Discounts and Rebates
− Direct Selling Expenses
− Indirect Selling Expenses that relate to commercial activity in the U.S.
− The cost of any further manufacture or assembly incurred in the U.S.
− CEP Profit

=Constructed Export Price (CEP)

[FR Doc. 96–28092 Filed 10–31–96; 8:45 am]

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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.

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AGRICULTURE DEPARTMENT

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When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
November 1	November 18	December 2	December 16	December 31	January 30
November 4	November 19	December 4	December 19	January 3	February 3
November 5	November 20	December 5	December 20	January 6	February 3
November 6	November 21	December 6	December 23	January 6	February 4
November 7	November 22	December 9	December 23	January 6	February 5
November 8	November 25	December 9	December 23	January 7	February 6
November 12	November 27	December 12	December 27	January 13	February 10
November 13	November 29	December 13	December 30	January 13	February 11
November 14	November 29	December 16	December 30	January 13	February 12
November 15	December 2	December 16	December 30	January 14	February 13
November 18	December 3	December 18	January 2	January 17	February 18
November 19	December 4	December 19	January 3	January 21	February 18
November 20	December 5	December 20	January 6	January 21	February 18
November 21	December 6	December 23	January 6	January 21	February 19
November 22	December 9	December 23	January 6	January 21	February 20
November 25	December 10	December 26	January 9	January 24	February 24
November 26	December 11	December 26	January 10	January 27	February 24
November 27	December 12	December 27	January 13	January 27	February 25
November 29	December 16	December 30	January 13	January 28	February 27